

Act No. 451
Public Acts of 1994
Approved by the Governor
January 18, 1995
Filed with the Secretary of State
January 18, 1995

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

Introduced by Senator Ehlers

ENROLLED SENATE BILL No. 257

AN ACT to protect the environment and natural resources of the state to codify revise consolidate and classify 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 GENERAL PROVISIONS

PART 1 SHORT TITLE AND SAVINGS CLAUSES

Sec 101 This act shall be known and may be cited as the natural resources and environmental protection act

Sec 102 The repeal of any statute by this act does not relinquish any penalty forfeiture or liability whether criminal or civil in nature and such statute shall be treated as still remaining in force as necessary for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of the penalty forfeiture or liability

Sec 103 A heading or title of an article chapter part or subpart of this act shall not be considered as a part of this act or be used to construe the act more broadly or narrowly than the text of the sections of the act would indicate but shall be considered as inserted for the convenience of the users of this act

Sec 104 When a board commission committee council or other agency created by or pursuant to this act was preceded by an agency with the same or similar name and functions members of the predecessor agency shall continue in office for the duration of the terms of office for which they were appointed and with the new members appointed shall constitute the new agency Members shall be appointed under this act only as terms of the former members expire or vacancies occur Members of the predecessor agency may be appointed to the new agency to succeed themselves subject to the limits for the total period of service set forth in this act

Sec 105 When the department or other agency is directed to promulgate rules by this act and rules exist on the date the requirement to promulgate rules takes effect which rules the department or agency believes adequately cover the matter the department or agency may determine that new rules are not required or may delay the promulgation of new rules until the department or agency considers it advisable

Sec 106 Except as otherwise provided by law this act does not repeal or alter the content or effect of orders that were issued pursuant to an act that is repealed by this act and codified as part of this act

PART 3 DEFINITIONS

Sec 301 Except as otherwise defined in this act as used in this act

- (a) Commission means the commission of natural resources
- (b) Department means the director of the department of natural resources or his or her designee to whom the director delegates a power or duty by written instrument
- (c) Department of natural resources means the principal state department created in section 501
- (d) Director means the director of the department of natural resources
- (e) Local unit of government means a municipality or county
- (f) Municipality means a city village or township
- (g) Person means an individual partnership corporation association governmental entity or other legal entity
- (h) Public domain means all land owned by the state or land deeded to the state under state law
- (i) Rule means a rule promulgated pursuant to 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

PART 5 DEPARTMENT OF NATURAL RESOURCES

GENERAL POWERS AND DUTIES

Sec 501 (1) A department of natural resources for this state is created which shall possess the powers and perform the duties granted and imposed by this act and as otherwise provided by law

(2) The commission of natural resources is created as the head of the department of natural resources and may establish general policies related to natural resources management and environmental protection for the guidance of the director In addition the commission has appellate authority in section 1101 The commission shall be composed of 7 members not more than 4 of whom shall be members of the same political party appointed by the governor by and with the advice and consent of the senate A member of the commission shall be selected with special reference to that person's training and experience related to at least 1 of the principal lines of activities vested in the department of natural resources and the ability and fitness of that person to deal with those activities The term of office of each member of the commission shall be 4 years The governor shall fill a vacancy occurring in the membership of the commission and may remove a member of the commission for cause after a hearing Each member of the commission shall hold office until the appointment and qualification of that member's successor

(3) The commission within 30 days after having qualified and annually after that time shall meet at its office in Lansing and organize by appointing a secretary who need not be a member of the commission The governor shall appoint a chairperson of the commission from among its members who shall serve as chairperson at the pleasure of the governor Four members of the commission constitute a quorum for the transaction of business The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act Act No 267 of the Public Acts of 1976 being sections 15 261 to 15 275 of the Michigan Compiled Laws Public notice of the time date and place of the meeting shall be given in the manner required by Act No 267 of the Public Acts of 1976 A meeting may be called by the chairperson and shall be called on request of a majority of the members of the commission A meeting may be held as often as necessary and at other places than the commissioners' offices at Lansing The commission shall meet at least once each month

(4) The commission shall appoint and employ a director who shall continue in office at the pleasure of the commission The director shall appoint 1 or more deputy directors and other assistants and employees as are necessary to implement this part and any other law of this state affecting the powers and duties of the department of natural resources A person to whom the director has lawfully delegated decision making authority in writing may perform a duty or exercise a power conferred by law upon the department at the time and to the extent the duty and power is delegated to that person by the director When a vacancy in the office of director occurs or the director is unable to perform the director's duties or is absent from the state the powers and duties of the director as prescribed by law shall be imposed on and transferred to a deputy director until the vacancy is filled or the director's inability or absence from the state ceases

(5) The compensation of the deputy directors the assistants and the employees and the number of assistants and employees shall be subject to the approval of the state administrative board The members of the commission shall not receive compensation under this part but each member and the other officers and employees of the department of natural resources shall be entitled to reasonable expenses while traveling in the performance of their duties prescribed by this act The salaries and expenses authorized under this act shall be paid out of the state treasury in the same manner as the salaries of other state officers and employees are paid The department of management and budget shall

furnish suitable offices and office equipment at Lansing for the use of the department of natural resources. Each member of the commission and the director shall qualify by taking and subscribing to the constitutional oath of office and by filing it in the office of the secretary of state.

Sec 502 (1) The powers and duties previously vested by law in the public domain commission, the state game, fish and forest fire commissioner and the state board of fish commissioners, the geological survey and the Michigan state park commission are transferred to and vested in the department. Whenever reference is made in a law of this state to a board, commission or officer whose powers and duties are transferred by this section, reference shall be considered to be made to the department.

(2) The commission may promulgate rules not inconsistent with law governing its organization and procedure. The department may promulgate and enforce reasonable rules concerning the use and occupancy of lands and property under its control in accordance with section 504. It may provide and develop facilities for outdoor recreation, may conduct investigations it considers necessary for the proper administration of this part, may remove and dispose of forest products as required for the protection, reforestation and proper development and conservation of the lands and property under control of the department, and may require the payment of a fee as provided by law for a daily permit or other authorization that allows the person to hunt and take waterfowl on a public hunting area managed and developed for waterfowl.

(3) Except as provided in subsection (4), the department may enter into contracts for the taking of coal, oil, gas and other mineral products from state owned lands upon a royalty basis or upon another basis, and upon the terms the department considers just and equitable. This contract power includes authorization to enter into contracts for the storage of gas or other mineral products in or upon state owned lands if the consent of the state agency having jurisdiction and control of the state owned land is first obtained. A contract permitted under this section for the taking of coal, oil, gas or metallic mineral products or for the storage of gas or other mineral products is not valid unless the contract is approved by the state administrative board. Money received from a contract permitted under this subsection, except money received from lands acquired with money from the game and fish protection fund created in section 601 of the hunting and fishing license act, Act No. 86 of the Public Acts of 1980, being section 316.601 of the Michigan Compiled Laws, shall be transmitted to the state treasurer for deposit in the Michigan natural resources trust fund created in section 35 of article IX of the state constitution of 1963. However, the money received from the payment of service charges by a person using areas managed for waterfowl shall be credited to the game and fish protection fund and used only for the purposes provided by law. Money received from bonuses, rentals, delayed rentals, royalties and the direct sale of resources, including forest resources from lands acquired with money from the game and fish protection fund, shall be credited to the game and fish protection trust fund created in the game and fish protection trust fund act, Act No. 73 of the Public Acts of 1986, being sections 300.211 to 300.216 of the Michigan Compiled Laws, except as otherwise provided by law.

(4) The department shall not enter into a contract that permits drilling operations for the taking of oil or gas from the lake bottomlands of the Great Lakes or connecting or connected bays, harbors or waterways, unless all drilling operations originate from locations above and inland of the ordinary high water mark. The department shall not enter into a contract for exploration of the lake bottomlands of the Great Lakes or connecting or connected bays, harbors or waterways that permits drilling operations unless all drilling operations originate from locations above and inland of the ordinary high water mark.

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

Sec 503 (1) The department shall protect and conserve the natural resources of this state, provide and develop facilities for outdoor recreation, prevent the destruction of timber and other forest growth by fire or otherwise, promote the reforestation of forest lands belonging to the state, prevent and guard against the pollution of lakes and streams within the state and enforce all laws provided for that purpose with all authority granted by law, and foster and encourage the protecting and propagation of game and fish. The department has the power and jurisdiction over the management, control and disposition of all land under the public domain, except for those lands under the public domain that are managed by other state agencies to carry out their assigned duties and responsibilities. On behalf of the people of the state, the department may accept gifts and grants of land and other property and may buy, sell, exchange or condemn land and other property for any of the purposes contemplated by this part. The department may accept funds, money or grants for development of salmon and steelhead trout fishing in this state from the government of the United States or any of its departments or agencies pursuant to the anadromous fish conservation act, Public Law 89-304, 16 U.S.C. 757a to 757g, and may use this money in accordance with the terms and provisions of that act. However, the acceptance and use of federal funds does not commit state funds and does not place an obligation upon the legislature to continue the purposes for which the funds are made available.

(2) The department may lease lands owned or controlled by it that have been designated for use for recreational purposes, but only to responsible legal units within this state, of national or state recognized groups devoted principally to development of character and citizenship training and physical fitness of youth, the financial support of which is by

voluntary public subscriptions or contributions and the property of which is exempt from taxation under the laws of this state. The department may lease land in the Porcupine mountain state park to third parties for purposes as it considers desirable. Any lease entered into under this subsection shall limit the purposes for which the leased land is to be used and shall authorize the department to terminate the lease upon a finding that the land is being used for purposes other than those permitted in the lease.

(3) When any sales of land are made by the department, the deeds by which lands are conveyed may reserve all mineral, coal, oil, and gas rights to the state, but shall not reserve the rights to sand, gravel, clay, or other nonmetallic minerals. The department shall also have the power to provide that all deeds issued for lands along watercourses and streams shall contain a clause reserving the right of ingress and egress over and across the lands. Whenever an exchange of land is made, either with the United States government, a corporation, or an individual for the purpose of consolidating the state forest reserves, the department may issue deeds without reserving to the state the mineral, coal, oil, and gas rights and the rights of ingress and egress. The department may sell the limestone, sand, gravel, or other nonmetallic minerals. However, the department shall not sell a mineral or nonmetallic mineral right if the sale would violate the sand dune protection and management act, Act No. 222 of the Public Acts of 1976, being sections 281.651 to 281.694 of the Michigan Compiled Laws, or any other provision of law. The department may sell all reserved mineral, coal, oil, and gas rights to such lands upon terms and conditions as the department considers proper. The owner of such lands as shown by the records shall be given priority in case the department authorizes any sale of such lands, and unless the landowner waives such rights, the department shall not sell such rights to any other person. For the purpose of this section, mineral rights do not include rights to sand, gravel, clay, or other nonmetallic minerals.

Sec. 504 (1) The department shall promulgate rules for the protection of the lands and property under its control against wrongful use or occupancy as will ensure the carrying out of the intent of this part to protect the lands and property from depredations and to preserve the lands and property from molestation, spoilation, destruction, or any other improper use or occupancy. This section does not allow the department to promulgate a rule that applies to commercial fishing except as otherwise provided by law. The department shall issue orders necessary to implement rules promulgated under this section. These orders shall be effective upon posting.

(2) A person who violates a rule promulgated under this section or an order issued under this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or community service of not more than 30 days or by a fine of not more than \$500.00, or both.

(3) On and after the date the civil procedures act is enacted into law, a person who violates a rule promulgated under this section or an order issued under this section is responsible for a civil infraction and subject to a civil fine of not more than \$500.00.

Sec. 505 The department, in pursuing the state's policy of propagating fish for the purpose of stocking the streams and lakes of the state, shall accept federal fish stock for such programs and shall apply for all federal fish stock programs that do not commit the state to future expenditures.

Sec. 506 (1) A writing prepared, owned, used, in the possession of, or retained by the department or the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Before January 16 of each year in which a regular session of the legislature is held, the department shall make to the governor and the legislature a report covering the operation of the department of natural resources for the preceding biennial period. The report, if ordered by the department of management and budget, shall be printed and distributed in the manner and to the persons as the board directs. The report shall be made available to the public as prescribed in subsection (1).

Sec. 507 This part is declared to be immediately necessary for the preservation of the public health, safety, and welfare and the environment.

Sec. 508 The department may establish and collect fees and rentals for any photographic or publication products or services that the department provides. The fees and rentals shall be credited to a separate fund of the state treasury and shall be available for appropriation to the department of natural resources and used to provide the photographic or publication products or services. The fees and rentals shall not exceed the material costs to the department of providing the products or services. In addition, the expenditures made in a fiscal year to provide the photographic and publication products or services shall not exceed the amount appropriated for that purpose for that fiscal year, plus any amounts carried over from previous fiscal years, or the amount of fees and rentals actually received during that fiscal year, plus any amounts carried over from previous fiscal years, whichever is less. Any unexpended fees and rentals collected pursuant to this section, along with any excess collections from prior fiscal years, shall be carried over into subsequent fiscal years and shall be available for appropriation for the purposes described in this section.

Sec 509 (1) The department may require that a person obtain a permit for the use of a state park or a state forest campground. The department may establish and collect fees for permits to use state parks, state forest campgrounds and specific state forest areas. The revenue realized by the department from permit fees and concessions at state parks shall be credited to a separate fund of the state treasury and shall be available for appropriation to the department of natural resources for improvement and maintenance of state parks. The permit fees for state forest campgrounds shall be used for the operation, maintenance and development of state forest campgrounds. Any unexpended permit fees for state forest campgrounds, along with any excess collections from prior fiscal years, shall be carried over into subsequent fiscal years and shall be available for appropriation for the operation, maintenance and development of state forest campgrounds.

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

Sec 509a There is hereby created and established under the jurisdiction and control of the department a revolving account to be known as the MacMullan conference center account. All of the fees and other revenues generated from the operation of the MacMullan conference center shall be deposited in the MacMullan conference center account. Appropriations shall be made from the account for the support of program operations and the maintenance and operation of the facility, and shall not exceed the estimated revenues for the fiscal year in which they are made, together with any unexpended balances from prior years. The department shall submit an annual report of operations and expenditures regarding the MacMullan conference center account to the appropriations committees of the senate and house of representatives and the house and senate fiscal agencies at the end of the fiscal year.

Sec 509b The MacMullan conference center shall be available only to the following:

- (a) The department
- (b) Federal, state and local government agencies
- (c) Education institutions
- (d) Nonprofit corporations or associations organized pursuant to the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.2101 to 450.3192 of the Michigan Compiled Laws
- (e) Community service clubs
- (f) Handicapper groups
- (g) Members of the legislature for purposes related to the business of the legislature
- (h) Entities and organizations that wish to use the conference center to host an event that has a natural resources or environmental agenda

Sec 510 (1) Money received by the department of natural resources for reimbursement of damages to department of natural resources property, reimbursement of land recording fees, sale of farm animals from Maybury state park, reimbursement for utilities for the Michigan state exposition and fairgrounds, reproduction of the agenda of the commission or other meetings of the department, reimbursement for forest fire protection services provided to the federal government or other states, and money received from forfeited cash bonds, security bonds, and court ordered reimbursements may be credited to the accounts from which these disbursements were or are to be made.

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

Sec 511 The department may establish and collect fees for the department of natural resources magazine, publications and related materials. Fees collected shall be credited to a separate fund of the state treasury and shall be available for appropriation to the department of natural resources and used to pay all direct and indirect operating costs of the magazine and for the purchase of other related publications and materials. The retained earnings balance of the magazine at the end of the fiscal year shall not fall below the retained earnings balance at the end of the prior fiscal year. Any unexpended fees collected pursuant to this section, along with any excess collections from prior fiscal years, shall be carried over into subsequent fiscal years and shall be available for appropriation for the purposes described in this section. The magazine account shall receive an annual allocation of interest earned by the state treasurer's common cash fund on cash balances of the magazine in accordance with procedures established by the state treasurer. Accounting records of the magazine shall be maintained on an accrual basis in accordance with generally accepted accounting principles, including the establishment of separate asset, liability and equity accounts for the magazine. On March 1 of each year, the department shall report to the appropriations committees of the house of representatives and

senate and the house and senate fiscal agencies the status of the natural resources magazine program as of the end of the prior fiscal year

PART 7 FOREST AND MINERAL RESOURCES DEVELOPMENT

PART 9 JOINT ENVIRONMENTAL MANAGEMENT AUTHORITIES

Sec 901 As used in this part

- (a) Articles means the articles of incorporation of an authority
- (b) Authority means a joint city state environmental management authority created pursuant to section 902
- (c) Board means the board of directors of the authority
- (d) Solid waste means solid waste as defined in part 115
- (e) State agency means either the department or the governing body of the state park that is participating in an authority

Sec 902 (1) The governing body of any city within whose corporate boundaries a state park comprises more than 75% of the land area and the governing body of any such state park or if there is none the department may create an environmental management authority for that city An authority may contract and be contracted with sue and be sued and take action in the courts of this state An authority once created shall exercise its powers as an autonomous entity independent of any state department

(2) An authority shall be governed by a board of directors consisting of 5 voting members and 2 nonvoting ex officio members who are appointed as follows

- (a) One individual appointed by the state park governing body or the department if there is no qualifying state park
- (b) One individual appointed by the chair of the state park governing body or the department if there is no qualifying state park
- (c) One individual appointed by the governing body of the city
- (d) One individual appointed by the mayor of the city
- (e) One individual appointed by agreement of at least 3 of the 4 individuals appointed pursuant to subdivisions (a) and (b)

(f) The director of the department of management and budget or an employee of the department of management and budget who is designated by the director of the department of management and budget shall serve as a nonvoting ex officio member

(g) One member of the joint capital outlay subcommittee of the appropriations committees of the senate and house of representatives appointed by the chair of that subcommittee shall serve as a nonvoting ex officio member

(3) Voting members of the board shall serve terms of 4 years Vacancies shall be filled in the same manner as the original appointment for an unexpired term Of the members first appointed the members appointed by the chair of the state agency and the mayor of the city shall serve for 2 years the members appointed by the state agency and the governing body of the city shall serve for 3 years and the member appointed by agreement of the other members shall serve for 4 years Ex officio nonvoting members do not have fixed terms of office

(4) An individual appointed by the governing body of a city or by the mayor may be removed in the same manner as provided by the city's charter

(5) A majority of the members of a board constitutes a quorum for the purpose of conducting business and exercising the powers of the authority Official action may be taken by an authority upon the vote of a majority of the board members present unless the bylaws of the authority require a larger number

(6) Members of the board shall not receive compensation for services as members of an authority but are entitled to necessary expenses including travel expenses incurred in the discharge of their duties

(7) The business that an authority may perform shall be conducted at a public meeting of the authority held in compliance with the open meetings act Act No 267 of the Public Acts of 1976 being sections 15 261 to 15 275 of the Michigan Compiled Laws Public notice of the time date and place of the meeting shall be given in the manner required by Act No 267 of the Public Acts of 1976

(8) A writing prepared owned or used by an authority in the performance of an official function shall be made available in compliance with the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

(9) At its first meeting a board shall elect a chairperson and any other officers it considers necessary The authority shall meet at least quarterly

Sec 903 (1) A board shall draft and adopt articles of incorporation and bylaws for the administration of the authority

(2) An authority's articles shall state the name of the authority the name of the participating city and state agency the purposes for which the authority is formed the powers duties and limitations of the authority and its board the manner in which participating local and state governmental units shall take part in the governance of the authority the general method of amending the articles and any other matters that the board considers advisable

Sec 904 (1) The articles of an authority shall be adopted and may be amended by an affirmative vote of a majority of the members serving on the governing body of the participating city and state agency

(2) Before the articles or amendments to the articles are adopted the articles or amendments to the articles shall be published by the clerk of the city at least once in a newspaper generally circulated within the participating city

(3) The adoption of articles or amendments to the articles by the respective governing bodies shall be evidenced by an endorsement on the articles or amendments by the clerk or secretary of the governing bodies in a form substantially as follows

These articles of incorporation (or amendments to the articles of incorporation) were adopted by an affirmative vote of a majority of the members serving on the governing body of _____ at a meeting duly held on the _____ day of _____ A D _____

(4) Upon adoption of the articles or amendments to the articles a printed copy of the articles or the amended articles shall be filed with the secretary of state the clerk of the city and the secretary of the state commission

Sec 905 (1) The articles may authorize an authority to propose standards criteria and regulations

(2) To the extent authorized in the articles an authority may plan promote finance issue bonds for acquire improve enlarge extend own lease construct replace or contract for public improvements and services including but not limited to the following

(a) Water and sewer public improvements and services

(b) Solid waste collection recycling and disposal

(c) Other public improvements relating to environmental matters that the city and the state agency in writing agree to assume

Sec 906 An authority may do 1 or more of the following

(a) Acquire and hold by purchase lease grant gift devise land contract installment purchase contract bequest or other legal means real and personal property inside or outside the boundaries of the authority The property may include franchises easements or rights of way on under or above any property The authority may pay for the property or pledge for the payment of the property from revenue of the authority

(b) Apply for and accept grants loans or contributions from the federal government or any of its agencies this state the city or other public or private agencies to be used for any of the purposes of this part

(c) Contract with the city for the provision of services of a type listed in section 905(2) for a period not exceeding 30 years The service may be established or funded in conjunction with an existing service of a local governmental unit and the provision of a service of a local governmental unit may be delegated to an authority A charge specified in a contract is subject to increase by the authority if that increase is necessary to provide funds to meet the authority's obligations

(d) Retain full time employees to staff the authority and to implement the policies of the authority

(e) Provide for and be responsible for the maintenance of all of the following for a public purpose subject to the articles and bylaws of the authority

(i) Potable water

(ii) Sewage systems

(iii) Solid waste management

(iv) Other municipal functions delegated to it in writing by the respective governing bodies of the participating city and state agency

(f) Assess and collect fees for its services and expenses

(g) Receive revenue from any source as appropriated by the legislature or the governing body of the city

Sec 907 Upon the expiration of a term agreed by the incorporating units the authority shall be dissolved unless the city and the state agency agree to extend the existence of the authority for an additional term of years The authority may only be dissolved during a term upon the vote of a 2/3 majority of the governing bodies of both the city and the state agency Upon dissolution the assets of the authority become the property of the city

PART 11 GENERAL APPELLATE RIGHTS AND PUBLIC ACCESS TO GOVERNMENT

Sec 1101 (1) If a person has legal standing to challenge a final decision of the department under this act regarding the issuance denial suspension revocation annulment withdrawal recall cancellation or amendment of a permit or operating license the commission upon request of that person shall review the decision and make the final agency decision A preliminary procedural or intermediate decision of the department is reviewable by the commission only if the commission elects to grant a review If a person is granted review by the commission under this section the person is considered to have exhausted his or her administrative remedies with regard to that matter The commission may utilize administrative law judges or hearing officers to conduct the review of decisions as contested case hearings and to issue proposals for decisions as provided by law or rule

(2) In all instances except those described in subsection (1) if a person has legal standing to challenge a final decision of the department under this act that person may seek direct review by the courts as provided by law Direct review by the courts is available to that person as an alternative to any administrative remedy that is provided in this act A preliminary procedural or intermediate action or ruling of the department is not immediately reviewable except that the court may grant leave for review of a preliminary procedural or intermediate action or ruling if the court determines that review of the final decision would not provide an adequate remedy If a person is granted direct review by the courts under this section the person is considered to have exhausted his or her administrative remedies with regard to that matter

(3) If the court does not review a decision of the department brought before the court as provided in this section the person with legal standing retains any administrative appeal rights that are otherwise provided by law

(4) If the court reviews a preliminary procedural or intermediate decision of the department brought before the court as provided in this section the person with legal standing retains the right to judicial review of the final decision of the department as provided by law

PART 13 PERMITS

PART 15 ENFORCEMENT

Sec 1501 Conservation officers appointed by the department and trained and certified pursuant to the Michigan law enforcement officers training council act of 1965 Act No 203 of the Public Acts of 1965 being sections 28 601 to 28 616 of the Michigan Compiled Laws are peace officers and except as otherwise provided by law are vested with all the powers privileges prerogatives and immunities conferred upon peace officers as provided in this act in Act No 109 of the Public Acts of 1986 being sections 300 21 to 300 22 of the Michigan Compiled Laws and in the general laws of this state

Sec 1502 Except as otherwise provided by law conservation officers appointed by the department have the same power to serve criminal process and to require aid in executing criminal process as sheriffs and are entitled to the same fees as sheriffs in performing those duties under this act under Act No 109 of the Public Acts of 1986 being sections 300 21 to 300 22 of the Michigan Compiled Laws and under the general laws of this state

PART 17 MICHIGAN ENVIRONMENTAL PROTECTION ACT

Sec 1701 (1) The attorney general or any person may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air water and other natural resources and the public trust in these resources from pollution impairment or destruction

(2) In granting relief provided by subsection (1) if there is a standard for pollution or for an antipollution device or procedure fixed by rule or otherwise by the state or an instrumentality agency or political subdivision of the state the court may

(a) Determine the validity applicability and reasonableness of the standard

(b) If a court finds a standard to be deficient direct the adoption of a standard approved and specified by the court

Sec 1702 If the court has reasonable grounds to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment that might be rendered against him or her in an action brought under this part the court may order the plaintiff to post a surety bond or cash in an amount of not more than \$500 00

Sec 1703 (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has polluted impaired or destroyed or is likely to pollute impair or destroy the air water or other natural resources or

the public trust in these resources the defendant may rebut the prima facie showing by the submission of evidence to the contrary The defendant may also show by way of an affirmative defense that there is no feasible and prudent alternative to defendant's conduct and that his or her conduct is consistent with the promotion of the public health safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution impairment or destruction Except as to the affirmative defense the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts apply to actions brought under this part

(2) The court may appoint a master or referee who shall be a disinterested person and technically qualified to take testimony and make a record and a report of his or her findings to the court in the action

(3) Costs may be apportioned to the parties if the interests of justice require

Sec 1704 (1) The court may grant temporary and permanent equitable relief or may impose conditions on the defendant that are required to protect the air water and other natural resources or the public trust in these resources from pollution impairment or destruction

(2) If administrative licensing or other proceedings are required or available to determine the legality of the defendant's conduct the court may direct the parties to seek relief in such proceedings Proceedings described in this subsection shall be conducted in accordance with and subject to 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 If the court directs parties to seek relief as provided in this section the court may grant temporary equitable relief if necessary for the protection of the air water and other natural resources or the public trust in these resources from pollution impairment or destruction In addition the court retains jurisdiction of the action pending completion of the action to determine whether adequate protection from pollution impairment or destruction is afforded

(3) Upon completion of proceedings described in this section the court shall adjudicate the impact of the defendant's conduct on the air water or other natural resources and on the public trust in these resources in accordance with this part In adjudicating an action the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this part

(4) If judicial review of an administrative licensing or other proceeding is available notwithstanding the contrary provisions of Act No 306 of the Public Acts of 1969 pertaining to judicial review the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review

Sec 1705 (1) If administrative licensing or other proceedings and judicial review of such proceedings are available by law the agency or the court may permit the attorney general or any other person to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct that has or is likely to have the effect of polluting impairing or destroying the air water or other natural resources or the public trust in these resources

(2) In administrative licensing or other proceedings and in any judicial review of such a proceeding the alleged pollution impairment or destruction of the air water or other natural resources or the public trust in these resources shall be determined and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health safety and welfare

(3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits

Sec 1706 This part is supplementary to existing administrative and regulatory procedures provided by law

PART 19 THE NATURAL RESOURCES TRUST FUND

PART 21 GENERAL REAL ESTATE POWERS

ARTICLE II POLLUTION CONTROL

CHAPTER 1 POINT SOURCE POLLUTION CONTROL

PART 31 WATER RESOURCES PROTECTION

Sec 3101 As used in this part

(a) Municipality means the state a county city village or township or an agency or instrumentality of any of these entities

(b) Waters of the state means groundwaters lakes rivers and streams and all other watercourses and waters within the jurisdiction of the state and also the Great Lakes bordering the state

Sec 3102 The director shall implement this part

Sec 3103 (1) The department shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes which are or may be affected by waste disposal of any person The department may make or cause to be made surveys studies and investigations of the uses of waters of the state both surface and underground and cooperate with other governments and governmental units and agencies in making the surveys studies and investigations The department shall assist in an advisory capacity a flood control district that may be authorized by the legislature The department in the public interest shall appear and present evidence reports and other testimony during the hearings involving the creation and organization of flood control districts The department shall advise and consult with the legislature on the obligation of the state to participate in the costs of construction and maintenance as provided for in the official plans of a flood control district or intercounty drainage district The department shall enforce this part and shall promulgate rules as it considers necessary to carry out its duties under this part

(2) The department may promulgate rules and take other actions as may be necessary to comply with the federal water pollution control act chapter 758 86 Stat 816 33 U S C 1251 to 1252 1253 to 1254 1255 to 1257 1258 to 1270 1281 1282 to 1293 1294 to 1299 1311 to 1313 1314 to 1330 1341 to 1345 1361 to 1377 and 1381 to 1387 and to expend funds available under such law for extension or improvement of the state or interstate program for prevention and control of water pollution This part shall not be construed as authorizing the department to expend or to incur any obligation to expend any state funds for such purpose in excess of any amount that is appropriated by the legislature

Sec 3104 (1) The department is designated the state agency to cooperate and negotiate with other governments governmental units and governmental agencies in matters concerning the water resources of the state including but not limited to flood control beach erosion control and water quality control planning development and management The department shall have control over the alterations of natural or present watercourses of all rivers and streams in the state to assure that the channels and the portions of the floodplains that are the floodways are not inhabited and are kept free and clear of interference or obstruction that will cause any undue restriction of the capacity of the floodway The department may take steps as may be necessary to take advantage of any act of congress that may be of assistance in carrying out the purposes of this part including the water resources planning act Public Law 89 80 42 U S C 1962 to 1962 1 and 1962a to 1962d 3 and the federal water pollution control act chapter 758 86 Stat 816 33 U S C 1251 to 1252 1253 to 1254 1255 to 1257 1258 to 1263 1265 to 1270 1281 1282 to 1293 1294 to 1299 1311 to 1313 1314 to 1326 1328 to 1330 1341 to 1345 1361 to 1377 and 1381 to 1387

(2) The department shall report to the governor and to the legislature at least annually any plans or projects being implemented or considered for implementation and shall include in the report requests for any legislation needed to implement any proposed projects or agreements made necessary as a result of a plan or project together with any requests for appropriations The department may make recommendations to the governor on the designation of areawide water quality planning regions and organizations relative to the governor's responsibilities under the federal water pollution control act

(3) A person shall submit an application for a permit to alter a floodplain on a form approved by the department and shall include information that may be required by the department to assess the proposed alteration's impact on the floodplain If an alteration includes activities at multiple locations in a floodplain 1 application may be filed for combined activities

(4) Except as provided in subsections (5) and (6) until October 1 1995 an application for a floodplain permit shall be accompanied by a fee of \$500 00 Until October 1 1995 if the department determines that engineering computations are required to assess the impact of a proposed floodplain alteration on flood stage or discharge characteristics the department shall assess the applicant an additional \$1 500 00 to cover the department's cost of review

(5) Until October 1 1995 an application for a floodplain permit for a minor project category shall be accompanied by a fee of \$100 00 Minor project categories shall be established by rule and shall include activities and projects that are similar in nature and have minimal potential for causing harmful interference

(6) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee required under subsection (4) or (5)

(7) The department shall forward fees collected under this section to the state treasurer for deposit in the land and water management permit fee fund created in section 16 of the inland lakes and streams act of 1972 Act No 346 of the Public Acts of 1972 being section 281 966 of the Michigan Compiled Laws

(8) A project that requires review and approval under this part and 1 or more of the following acts is subject to only the single highest permit fee required under this part or the following acts

(a) The inland lakes and streams act of 1972 Act No 346 of the Public Acts of 1972 being sections 281 951 to 281 965 of the Michigan Compiled Laws

(b) The Goemaere Anderson wetland protection act Act No 203 of the Public Acts of 1979 being sections 281 701 to 281 722 of the Michigan Compiled Laws

(c) The Great Lakes submerged lands act Act No 247 of the Public Acts of 1955 being sections 322 701 to 322 715 of the Michigan Compiled Laws

(d) The shorelands protection and management act of 1970 Act No 245 of the Public Acts of 1970 being sections 281 631 to 281 644 of the Michigan Compiled Laws

(e) Section 117 of the subdivision control act of 1967 Act No 288 of the Public Acts of 1967 being section 560 117 of the Michigan Compiled Laws

Sec 3105 The department may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the state and the obstruction of the floodways of the rivers and streams of this state The department may call upon any officer board department school university or other state institution and the officers or employees thereof for any assistance considered necessary to implement this part

Sec 3106 The department shall establish pollution standards for lakes rivers streams and other waters of the state in relation to the public use to which they are or may be put as it considers necessary The department shall issue permits that will assure compliance with state standards to regulate municipal industrial and commercial discharges or storage of any substance that may affect the quality of the waters of the state The department may set permit restrictions that will assure compliance with applicable federal law and regulations The department may ascertain and determine for record and in making its order what volume of water actually flows in all streams and the high and low water marks of lakes and other waters of the state affected by the waste disposal or pollution of any persons The department may promulgate rules and issue orders restricting the polluting content of any waste material or polluting substance discharged or sought to be discharged into any lake river stream or other waters of the state The department shall take all appropriate steps to prevent any pollution the department considers to be unreasonable and against public interest in view of the existing conditions in any lake river stream or other waters of the state

Sec 3107 The department may promulgate rules and issue orders for the prevention of harmful interference with the discharge and stage characteristics of streams The department may ascertain and determine for record and in making its order the location and extent of floodplains stream beds and channels and the discharge and stage characteristics of streams at various times and circumstances

Sec 3108 A person shall not occupy or permit the occupation of land for residential commercial or industrial purposes or fill or grade or permit the filling or grading for any purposes other than agricultural of land in the floodplains stream bed or channel of any stream as ascertained and determined for record by the department or undertake or engage in any activity on or with respect to land that is determined by the department to interfere harmfully with the discharge or stage characteristics of a stream unless the occupation filling grading or other activity is permitted under this part

Sec 3109 (1) A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following

(a) To the public health safety or welfare

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

(c) To the value or utility of riparian lands

(d) To livestock wild animals birds fish aquatic life or plants or the growth or propagation thereof be prevented or injuriously affected or whereby the value of fish and game is or may be destroyed or impaired

(2) The discharge of any raw sewage of human origin directly or indirectly into any of the waters of the state shall be considered prima facie evidence of a violation of this part by the municipality in which the discharge originated unless the discharge is permitted by an order or rule of the department If the discharge is not the subject of a valid permit issued by the department a municipality responsible for the discharge may be subject to the remedies provided in section 3115 If the discharge is the subject of a valid permit issued by the department pursuant to section 3112 and is in violation of that permit a municipality responsible for the discharge is subject to the penalties prescribed in section 3115

(3) Unless authorized by a permit order or rule of the department the discharge into the waters of this state of any medical waste as defined in part 138 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 13801 to 333 13831 of the Michigan Compiled Laws is prima facie evidence of a violation of this part and subjects the responsible person to the penalties prescribed in section 3115

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

Sec 3110 (1) Each industrial or commercial entity that discharges liquid wastes into any surface water or groundwater or underground or on the ground other than through a public sanitary sewer shall have waste treatment or control facilities under the specific supervision and control of persons who have been certified by the department as properly qualified to operate the facilities. The department shall examine all supervisory personnel having supervision and control of the facilities and certify that the persons are properly qualified to operate or supervise the facilities.

(2) The department may conduct a program for training persons seeking to be certified as operators or supervisors under subsection (1) or seeking to be certified as operators or supervisors of municipal wastewater treatment facilities. The department may charge a fee based on the costs to the department of operating the training program. The fees shall be deposited in the state treasury credited to a separate fund and used to conduct the training program. Any unexpended fees collected pursuant to this subsection along with any excess collections from prior fiscal years shall be carried over into subsequent fiscal years and shall be available for appropriation for the purposes of conducting the program described in this subsection.

(3) A person certified as required by subsection (1) shall file monthly or at such longer intervals as the department may designate on forms provided by the department reports showing the effectiveness of the treatment or control facility operation and the quantity and quality of discharged liquid wastes. A person who knowingly makes a false statement in a report may have his or her certificate as an approved treatment facility operator revoked.

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

Sec 3111 A person doing business within this state who discharges to the waters of the state or to any sewer system wastewater that contains wastes in addition to sanitary sewage shall file an annual report on a form provided by the department. The report described in this section shall set forth the nature of the enterprise indicating the quantities of materials used in and incidental to its manufacturing processes and including by products and waste products that appear on a register of critical materials compiled by the department and the estimated annual total number of gallons of wastewater including but not limited to process and cooling water to be discharged to the waters of the state or to any sewer system. The information shall be used by the department only for purposes of water pollution control. The department shall provide proper and adequate facilities and procedures to safeguard the confidentiality of manufacturing proprietary processes except that confidentiality shall not extend to waste products discharged to the waters of the state. Operations of a business or industry that violate this section may be enjoined by an action commenced by the attorney general in a court of competent jurisdiction. The department shall promulgate rules as it considers necessary to effectuate the administration of this section including where necessary to meet special circumstances reporting more frequently than annually.

Sec 3112 (1) A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department. Compliance with the terms of an outstanding order of determination or final order of determination or stipulation with the former water resources commission that is in effect on April 15, 1973 shall be considered to meet the requirements of this section until the department issues its permit. The department shall condition the continued validity of a permit upon the permittees meeting the effluent requirements that the department considers necessary to prevent unlawful pollution by the dates that the department considers to be reasonable and necessary and to assure compliance with applicable federal law and regulations. If the department finds that the terms of a permit have been or may be violated it may modify, suspend, or revoke the permit or grant the permittee a reasonable period of time in which to comply with the permit. The department may reissue a revoked permit upon a showing satisfactory to the department that the permittee has corrected the violation. A person who has had a permit revoked may apply for a new permit.

(2) If the department determines that a person is causing or is about to cause unlawful pollution of the waters of this state, the department may notify the alleged offender of its determination and enter an order requiring the person to abate the pollution or refer the matter to the attorney general for legal action or both.

(3) A person who is aggrieved by an order of abatement of the department or by the reissuance, modification, suspension, or revocation of an existing permit of the department executed pursuant to this section may file a sworn petition with the commission setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to 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. A petition filed more than 60 days after action on the order or permit may be rejected by the commission as being untimely.

Sec 3112a (1) If untreated sewage from a combined sewer system is discharged into the waters of the state the municipality responsible for the discharge shall do all of the following

(a) Notify the department local health departments as defined in section 1105 of the public health code Act No 368 of the Public Acts of 1978 being section 333 1105 of the Michigan Compiled Laws a daily newspaper of general circulation in the county or counties in which a municipality notified pursuant to subsection (2) is located and a daily newspaper of general circulation in the county in which the municipality responsible for the discharge is located of all of the following

(i) Promptly after the discharge starts that the discharge is occurring

(ii) At the conclusion of the discharge in writing all of the following

(A) The amount of the discharge as measured pursuant to procedures approved by the department

(B) The reason for the discharge

(C) The time the discharge began and ended as measured pursuant to procedures approved by the department

(D) Verification that the municipality is in full compliance with the requirements of its national pollutant discharge elimination system permit

(b) Upon the request of a local health department responsible for testing the affected waters either pay the actual reasonable cost of the testing that is necessary to assess the risk to the public health as a result of the discharge or if the municipality has conducted testing necessary to assess the risk to public health as a result of the discharge provide the test results to the local health department

(2) A municipality that operates a combined sewer system that may discharge untreated sewage into the waters of the state shall annually contact municipalities whose waters may be affected by such discharges and if those contacted municipalities wish to be notified in the same manner as provided in subsection (1) the municipality operating the combined sewer system shall provide that notification

(3) A municipality that is responsible for a discharge of untreated sewage from a combined sewer system into the waters of the state shall meet the requirements of its national pollutant discharge elimination system permit

(4) This section does not authorize the discharge of untreated sewage into the waters of the state or limit the state from bringing legal action as otherwise authorized by this part

(5) Combined sewer system means a sewer designed and used to convey both storm water runoff and sanitary sewage and which contains lawfully installed regulators and control devices that allow for delivery of sanitary flow to treatment during dry weather periods and divert storm water and sanitary sewage to surface waters during storm flow periods

(6) The penalties and fines provided for in section 3115 apply to a violation of this section

Sec 3113 (1) A person who seeks a new or increased use of the waters of the state for sewage or other waste disposal purposes shall file with the department an application setting forth the information required by the department including the nature of the enterprise or development contemplated the amount of water required to be used its source the proposed point of discharge of the wastes into the waters of the state the estimated amount to be discharged and a statement setting forth the expected bacterial physical chemical and other known characteristics of the wastes

(2) Within 180 days after receipt of a complete application the department shall either grant or deny a permit unless the applicant and the department agree to extend this time period If a permit is granted the department shall condition the permit upon such restrictions that the department considers necessary to adequately guard against unlawful uses of the waters of the state as are set forth in section 3109

(3) If the permit or denial of a new or increased use is not acceptable to the permittee the applicant or any other person the permittee the applicant or other person may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to 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 A petition filed more than 60 days after action on the permit application may be rejected by the commission as being untimely

Sec 3114 An employee of the department of natural resources or an employee of another governmental agency appointed by the department may with the concurrence of the department enforce this part and may make a criminal complaint against a person who violates this part

Sec 3115 (1) The department may request the attorney general to commence a civil action for appropriate relief including a permanent or temporary injunction for a violation of this part or a provision of a permit order rule or stipulation of the department An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located resides or is doing business The court has jurisdiction to

restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court shall impose a civil fine of not less than \$2 500 00 and may award reasonable attorney fees and costs to the prevailing party. However, the maximum fine imposed by the court shall be not more than \$25 000 00 per day of violation.

(2) A person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this part or contrary to a permit, order, rule, or stipulation of the department, or who intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the department, is guilty of a felony and shall be fined not less than \$2 500 00 or more than \$25 000 00 for each violation. The court may impose an additional fine of not more than \$25 000 00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25 000 00 per day and not more than \$50 000 00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to a rule, order, or permit of the department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

(3) Upon a finding by the court that the actions of a civil defendant pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (1), a fine of not less than \$500 000 00 and not more than \$5 000 000 00.

(4) Upon a finding by the court that the actions of a criminal defendant pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (2), a fine of not less than \$1 000 000 00 and, in addition to a fine, a sentence of 5 years imprisonment.

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

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

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

(6) Knowledge possessed by a person other than the defendant under subsection (5) may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

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

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

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

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

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

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

Sec 3115a (1) Except as provided in subsections (2) and (3), a person who alters or causes the alteration of a floodplain in violation of this part is guilty of a misdemeanor punishable by a fine of not more than \$2 500 00 for each occurrence.

(2) A person who commits a minor offense is guilty of a misdemeanor punishable by a fine of not more than \$500 00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764 9a to 764 9g of the Michigan Compiled Laws.

(3) A person who willfully or recklessly violates a condition of a floodplain permit issued under this part is guilty of a misdemeanor punishable by a fine of not more than \$2 500 00 per day.

(4) As used in this section, minor offense means either of the following violations of this part if the department determines that restoration of the affected floodplain is not required:

- (a) The failure to obtain a permit under this part
- (b) A violation of a permit issued under this part

Sec 3116 This part does not repeal any law governing the pollution of lakes and streams but shall be held and construed as ancillary to and supplementing the other laws and in addition to the laws now in force except as a law may be in direct conflict with this part This part does not apply to copper or iron mining operations whereby such operations result in the placement removal use or processing of copper or iron mineral tailings or copper or iron mineral deposits from such operations being placed in inland waters on bottomlands owned by or under the control of the mining company and only water which may contain a minimal amount of residue as determined by the department resulting from such placement removal use or processing being allowed or permitted to escape into public waters This part does not apply to the discharge of water from underground iron or copper mining operations subject to a determination by the department

Sec 3117 This part is supplemental to and in addition to the drain code of 1956 Act No 40 of the Public Acts of 1956 being sections 280 1 to 280 630 of the Michigan Compiled Laws This part does not amend or repeal any law of the state relating to the public service commission the department and the department of public health relating to waters and water structures or any act or parts of acts not inconsistent with this part

Sec 3118 (1) Until October 1 1995 the department shall collect storm water discharge fees from persons who apply for or have been issued storm water discharge permits as follows

(a) The fee for a permit related solely to a site of construction activity is a 1 time fee of \$125 00 per permitted site The fee shall be submitted by the permit applicant with his or her application for a general or individual permit If rules promulgated under this part provide for a permit by rule the fee shall be submitted by the construction permittee along with his or her notice of coverage A person needing more than 1 permit may submit a single payment for more than 1 permit and receive appropriate credit Payment of the fee under this subdivision or verification of prepayment is a necessary part of a valid permit application or notice of coverage under a permit by rule

(b) The fee for a permit not related solely to a site of construction activity is \$200 00 to be paid as follows

(i) A person who before March 1 1994 has applied for or been issued a permit not related solely to a site of construction activity shall be assessed a fee in the fiscal year ending September 30 1994 The department shall notify those persons of their fee assessments by March 31 1994 and payment shall be postmarked no later than May 15 1994 The department shall not assess a fee for applications received before October 1 1993 for which a permit has been denied or for a permit that has expired before October 1 1993 without application for reissuance

(ii) In the fiscal year beginning October 1 1994 and in each following fiscal year a person possessing a permit not related solely to a site of construction activity as of January 1 of that fiscal year shall be assessed a fee The department shall notify those persons of their fee assessments by February 1 of that fiscal year Payment shall be postmarked no later than March 15 of that fiscal year

(2) The department shall assess interest on all fee payments submitted under this section after the due date The permittee shall pay an additional amount equal to 0 75% of the payment due for each month or portion of a month the payment remains past due

(3) The department shall forward all fees collected under this section to the state treasurer for deposit into the fund

(4) The department shall make payment of the required fee assessed under this section a condition of a permit not related solely to a site of construction activity at the time of permit issuance or reissuance

(5) If a person fails to pay the fee required under this section in full plus any interest accrued by October 1 of the year following the date of notification of the fee assessment the department may revoke the permit held by that person The failure by a person to pay a fee imposed by this section is a violation of this part and subjects that person to the penalty provisions in section 3115

(6) Within 1 year after the reauthorization of the clean water act the department shall convene a committee to review the storm water discharge fee system provided in this section The committee shall be composed of a member of the department and representatives of groups affected by the storm water discharge fee The committee shall make recommendations for changes in the fee system to the department and to the chairpersons of the house and senate appropriations committees

(7) As used in this section and section 3119

(a) Clean water act means the federal water pollution control act chapter 758 86 Stat 816 33 U S C 1251 to 1252 1253 to 1254 1255 to 1257 1258 to 1263 1265 to 1270 1281 1282 to 1293 1294 to 1299 1311 to 1313 1314 to 1326 1328 to 1330 1341 to 1345 1361 to 1377 and 1381 to 1387

(b) Construction activity means a human made earth change or disturbance in the existing cover or topography of land that is 5 acres or more in size for which a national permit is required pursuant to 40 C F R 122 26(a) and which is described as a construction activity in 40 C F R 122 26(b)(14)(x) Construction activity includes clearing grading and

excavating activities Construction activity does not include the practice of clearing plowing tilling soil and harvesting for the purpose of crop production

(c) Fee means a storm water discharge fee authorized under this section

(d) Fiscal year means the state fiscal year beginning October 1 and ending September 30

(e) Fund means the storm water fund created in section 3119

(f) Permit or storm water discharge permit means a permit authorizing the discharge of wastewater or any other substance to surface waters of the state under the national pollutant discharge elimination system pursuant to the clean water act or this part and the rules and regulations promulgated under that act or this part

(g) Storm water means storm water runoff snowmelt runoff and surface runoff and drainage

Sec 3119 (1) The storm water fund is created within the state treasury

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

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

(4) The department shall expend money from the fund upon appropriation only for 1 or more of the following purposes

(a) Review of storm water permit applications

(b) Storm water permit development issuance reissuance and modification

(c) Surface water monitoring to support the storm water permitting process

(d) Assessment of compliance with storm water permit conditions

(e) Enforcement against storm water permit violations

(f) Classification of storm water control facilities

(g) Certification of storm water operators

(5) Money in the fund shall not be used to support the direct costs of litigation undertaken to enforce this part

(6) Upon the expenditure or appropriation of money raised in section 3118 for any other purpose than those specifically listed in this section authorization to collect fees under section 3118 shall be suspended until such time as the money expended or appropriated for purposes other than those listed in this section is returned to the fund

PART 33 CONTAMINATION OF WATERS

Sec 3301 All fish offal or filth of any description accruing from the catching and curing of fish shall be burned or buried at least 10 rods from the beach or shore of any stream pond or lake

Sec 3302 Upon receipt of an application by a person who is not a resident of this state for a license to use a pound or trap net and payment of a \$50 00 fee for each trap net the county board of commissioners of each county or a majority of the county board of commissioners shall grant written permission to the nonresident applicant for 1 year to use 1 or more pound or trap nets within the water of this state A person who violates this section is responsible for a civil fine of \$100 00 and the costs of suit The county board of commissioners or a majority of them shall enforce this part Money accruing from fees and civil fines under this part shall be paid to the county treasurer

Sec 3303 (1) A person shall not put into the waters of this state any sand coal cinders ashes log slabs decayed wood bark sawdust or filth

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

Sec 3304 A person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100 00 or both In addition a person who violates this part is liable civilly for damages done in an action in any court having jurisdiction

Sec 3305 A person shall not willfully cut tear untie remove or in any manner injure damage molest or destroy a net rope line stake anchor or other property belonging to in use or to be used in any pound net or trap net or other net or fixture that is lawfully set and used to take fish from any of the waters of the state A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$500 00 or both In addition the person is liable civilly for all damages done willfully to the property to the legal owners

or occupants of the property. An action filed under this section may be filed in a court of proper jurisdiction in the county where the property is located.

PART 35 IRON ORE BENEFICIATION

PART 37 WATER POLLUTION CONTROL FACILITIES

PART 39 CLEANING AGENTS

Sec. 3901 (1) As used in this part:

(a) **Cleaning agent** means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound, or other substance intended to be used for cleaning purposes. Cleaning agent does not include any of the following:

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

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

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

(b) **Nutrient** means a substance or combination of substances that, when added to the waters of this state in a sufficient quantity, provide nourishment that promotes the growth of aquatic vegetation in the waters to such a density as to interfere with or be detrimental to use of the waters by human beings or by an animal, fish, or plant useful to human beings.

(c) **Water conditioner** means a water softening chemical, antiscaling chemical, corrosion inhibitor, or other substance intended to be used to treat water.

(2) Notwithstanding any other provision of this part:

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

(b) A person shall not sell or distribute for use in this state a cleaner, rinsing aid, or sanitizing agent intended primarily for use in dairy, agricultural, and farm operations and in the manufacture, preparation, and processing of foods and food products, including those used in dairy, beverage, egg, fish, brewery, poultry, meat, fruit, and vegetable processing that contains phosphorus in excess of 14% by weight expressed as elemental phosphorus.

(c) A person shall not sell or distribute for use in this state a metal cleaner, metal brightener, metal treatment compound, conversion coating agent, corrosion remover, paint remover, rust inhibitor, etchant, phosphatizer, degreasing compound, industrial cleaner, or commercial cleaner intended primarily for use in industrial and manufacturing processes that contains phosphorus in excess of 28% by weight expressed as elemental phosphorus.

Sec. 3902 A person shall not sell or distribute for use in this state a cleaning agent that contains phosphorus in any form in excess of 8.7% by weight expressed as elemental phosphorus.

Sec. 3903 The department shall promulgate rules to implement this part. The rules may further restrict the nutrient content and other contents of cleaning agents and water conditioners to prevent unlawful pollution and control nuisance growths of algae, weeds, and slimes that are or may become injurious to other lawful water uses; to prevent cleaning agents and water conditioners, separately or in combination with other substances, from rendering or tending to render any waters of this state harmful or inimical to public health, animal or aquatic life, or beneficial water uses; and to minimize any hazard to the health or safety of users of the cleaning agents or water conditioners. The burden of proof is on a manufacturer of a cleaning agent or water conditioner, before distribution for sale or use in this state, to establish that its contents comply with this part and rules promulgated under this part, and will not or is not likely to adversely affect human health or the environment. A person shall not sell or distribute for use in this state a cleaning agent or water conditioner in violation of a rule promulgated under this part.

Sec. 3904 A person shall not sell detergents or cleaning compounds containing any substance other than phosphorus that may cause unlawful pollution of the waters of the state when discharged into the waters of the state, if the department determines that the other substance will cause unlawful pollution under the circumstances of its expected use and disposal or will pose a hazard to human health and safety. A determination by the department does not limit, restrain, or in any way affect an action as it finds appropriate under part 31. The department may establish by rule the criteria by which it will determine the possible pollutional effect of any substance. This part does not apply to a detergent or cleaning compound contained in fuel or lubricating oil.

Sec 3905 A local unit of government shall not enact or enforce an existing or future ordinance or rule with respect to the sale of cleaning agents containing phosphorus or any other substance that is or may be regulated under this part

Sec 3906 The department shall enforce this part and seek court enforcement of its orders pursuant to part 31

SEWAGE DISPOSAL AND WATERWORKS SYSTEMS

PART 41 SEWERAGE SYSTEMS

Sec 4101 As used in this part

(a) Governmental agencies means local units of government metropolitan districts or other units of government or the officers of the units of government authorized to own construct or operate sewerage systems to serve the public

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

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

Sec 4102 The department is given power and control as limited in this part over persons engaged in furnishing sewerage or sewage treatment service or both and over sewerage systems

Sec 4103 The department may enter at reasonable times the sewerage systems and other property of a person for the purpose of inspecting a sewerage system and carrying out the authority vested in the department by this part

Sec 4104 The department may promulgate and enforce rules as the department considers necessary governing and providing a method of conducting and operating all or a part of sewerage systems including sewage treatment works The department shall classify sewage treatment works with regard to size type location and other physical conditions affecting those works and according to the skill knowledge experience and character that the person who is in charge of the active operation of the sewage treatment works has to possess in order to successfully operate the works to prevent the discharge of deleterious matter capable of being injurious to the health of the people or to other public interests The department shall examine or provide for the examination of persons as to their qualifications to operate sewage treatment works The department shall promulgate rules regarding the classification of sewage treatment works the examinations for certification of operators for those works and the issuance and revocation of certificates and shall issue and revoke certificates in accordance with those rules Every sewage treatment works subject to this part shall be under the supervision of a properly certified operator except that this section does not require the employment of a certified operator in a waste treatment works that receives only wastes that are not potentially prejudicial to the public health

Sec 4105 (1) The mayor of each city the president of each village the township supervisor the responsible executive officer of a governmental agency and all other persons operating sewerage systems in this state shall file with the department a true copy of the plans and specifications of the entire sewerage system owned or operated by that person including filtration or other purification plant or treatment works as may be operated in connection with the sewerage system and also plans and specifications of all alterations additions or improvements to the systems that may be made The plans and specifications shall in addition to all other things show all the sources through or from which water is or may be at any time pumped or otherwise permitted to enter into the sewerage system and the drain watercourse river or lake into which sewage is to be discharged The plans and specifications shall be certified by the mayor and city engineer of a city by the president and engineer if employed for a village by the proper officer and the engineer employed by any other governmental agency association or private corporation for the governmental agency association or private corporation and by an individual member of a partnership or by the individual owner of a sewerage system owned and operated by a partnership or 1 or more individuals including the engineer employed if any Before constructing a sewerage system filtration or other purification plant or treatment works or any alteration addition or improvement to the system or plant the mayor of each city the president of each village and the responsible official of all other governmental agencies associations private corporations and partnerships or individuals shall submit the plans and specifications to the department and secure from the department a permit for construction The department may promulgate and enforce rules regarding the preparation and submission of plans and specifications and for the issuance and period of validity of construction permits for the work A contractor builder governmental agency corporation association partnership or individual shall not engage in or commence the construction of a sewerage system filtration or other purification plant or treatment works or an alteration addition

or improvement until a valid permit for the construction is secured from the department. An official of the governmental agency, corporation, association, partnership, or individual shall not issue a voucher or check or in any other way expend the money of the governmental agency, corporation, association, partnership, or individual for the construction unless a valid permit issued by the department is in effect.

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

Sec 4106 (1) A person who operates a sewage treatment works shall file with the department reports under oath as required by the department. The reports shall be sworn to by a responsible officer or person acquainted with the facts and employed by the person required to report under this part.

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

Sec 4107 (1) The department on receipt of plans and specifications for a sewerage system shall inspect them with reference to their adequacy to protect the public health and if the public water supply of the city or village is impure and dangerous to individuals or to the public generally, he or she shall inspect the sewerage systems or any parts of the sewerage system and the manner of its operation. If upon inspection the department finds the plans and specifications or the sewerage systems are inadequate or operated in a manner that does not adequately protect the public health, he or she may order the person owning or operating the sewerage system to make alterations in the plans and specifications or in the sewerage systems or the method of operation of the sewerage system as may be required or advisable in his or her opinion in order that the sewage is not potentially prejudicial to the public health.

(2) The recommendations or orders of the department shall be served in writing upon the owner or operator of the sewerage system and the owner and operator shall comply with the recommendations or orders.

Sec 4108 The department shall exercise due care to see that sewerage systems are properly planned, constructed, and operated to prevent unlawful pollution of the streams, lakes, and other water resources of the state. The department shall counsel owners and operators of sewerage systems or any parts of sewerage systems when disputes between public agencies over sewerage service or sewage treatment rates occur and may act as arbitrator in these cases when called upon to do so by a majority of the parties to the controversy. The department shall cooperate with appropriate federal or state agencies in the determination of grants of assistance for the preparation of plans or for the construction of waterworks systems, sewerage systems, or waste treatment projects or both.

Sec 4109 The department may employ engineers and other assistants as may be necessary to administer this part.

Sec 4110 (1) A person who violates this part or a written order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$25.00 or more than \$100.00 or both and payment of the costs of prosecution.

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

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

Sec 4111 The department may bring an appropriate action in the name of the people of this state as may be necessary to carry out this part and to enforce any and all laws, rules, and regulations relating to this part.

PART 43 WATERWORKS SYSTEMS, SEWERS, AND DISPOSAL PLANTS

Sec 4301 A local unit of government in this state, either individually or jointly by agreement with another local unit of government, may own, acquire, construct, equip, operate, and maintain, either within or outside of the statutory or corporate limits of the local unit or units of government, intercepting sewers, other sanitary and storm sewers, pumping stations, and a plant or plants for the treatment, processing, purification, and disposal in a sanitary manner approved by the department of the liquid and solid wastes, refuse, sewage, and night soil, storm water, and garbage of the local unit or units of government. A local unit of government, either individually or jointly by agreement with another local unit of government, may own, acquire, construct, equip, operate, and maintain, either within or outside of the statutory or corporate limits of the local unit or units of government, waterworks systems approved by the department of public health, including such facilities as water mains, treatment works, source facilities, pumping stations, reservoirs, storage tanks, and other appurtenances for the purpose of obtaining, treating, and delivering pure and wholesome water in adequate quantity to the local unit or units of government. They may acquire by gift, grant, purchase, or condemnation necessary lands, either within or outside of the statutory or corporate limits of the local unit or units of government.

However a township shall not condemn land outside its corporate limits For the purpose of acquiring property for the uses described in this part the local unit of government has all the rights powers and privileges granted to public corporations under Act No 149 of the Public Acts of 1911 being sections 213 21 to 213 25 of the Michigan Compiled Laws These powers are in addition to any powers granted to the local unit of government by statute or charter

Sec 4302 The waterworks system intercepting sewers pumping stations sewage disposal plant and system transfer station and garbage and refuse processing or disposal plant and system are public utilities within the meaning of any constitutional or statutory provisions for the purpose of acquiring purchasing owning operating constructing equipping and maintaining the waterworks system intercepting sewers pumping stations sewage disposal plant and system transfer station and garbage and refuse processing or disposal plant and system A local unit of government may issue faith and credit bonds or mortgage bonds for the purposes described in this part beyond the general limits of the bonded indebtedness prescribed by law except as provided in this section The mortgage bonds as provided in this section shall not impose any general liability upon the local unit of government but shall be secured only on the property and revenues of the utility as provided in this section including a franchise stating the terms upon which the purchaser may operate the utility in case of foreclosure The franchise shall not extend for a longer period than 20 years from the date of the sale on foreclosure The mortgage bonds shall be sold for not less than par bear interest at a rate not to exceed the maximum rate permitted by the municipal finance act Act No 202 of the Public Acts of 1943 being sections 131 1 to 139 3 of the Michigan Compiled Laws and the total amount shall not exceed 60% of the original cost of the utility except as provided in this section Bonds shall not be issued as general obligations of the local unit of government except upon a 3/5 affirmative vote of the qualified electors of the local unit of government and except as provided in this section not in excess of 3% of the assessed valuation of the real and personal property of the local unit of government as shown by the last preceding tax roll Bonds shall not be issued as faith and credit bonds or mortgage bonds of the utility except upon a 3/5 affirmative vote of the legislative body of the local unit of government

Sec 4303 The legislative body of a local unit of government or the respective legislative bodies of the local units of government who have agreed to jointly own and operate waterworks systems intercepting sewers or sewage treatment plants may create a separate board or may designate certain officials of the local unit or units of government to have the supervision and control of the waterworks systems intercepting sewers, transfer stations or sewage and refuse and garbage processing or disposal plants The legislative body respective legislative bodies or the board may make all necessary rules governing the use operation and control of the facilities and systems The legislative body or respective legislative bodies may establish just and equitable rates or charges to be paid to them for the use of the waterworks system or disposal or processing plant and system by each person whose premises are served and the rates or charges may be certified to the tax assessor and assessed against the premises served and collected or returned in the same manner as other county or municipal taxes are certified assessed collected and returned

Sec 4304 Bonds that are issued and secured by a mortgage on the utility as provided in this part shall not be a general obligation of the local unit of government but shall be paid only out of revenues received from the service charges as provided in section 4303 or from a sale of the property and franchises under a foreclosure of the mortgage If a service rate is charged a sufficient portion shall be set aside as a sinking fund for the payment of the interest on the bonds and the principal of the bonds at maturity

Sec 4305 Instead of owning and operating a sewer system and sewage disposal plant transfer station garbage or refuse collection processing and disposal plant or system as provided in section 4301 a local unit of government may grant a franchise for a period not to exceed 30 years to a private corporation organized under or authorized by the laws of this state to engage in such business to build construct own and operate a sewage or garbage and refuse processing or disposal system for the purpose of receiving and treating sewage and night soil refuse and garbage from the local unit or units of government The franchise may authorize the corporation to charge each person owning property from which the sewage refuse or garbage is received a fee determined to be reasonable by the public service commission of this state upon proper application made either by the corporation or local unit or units of government and after holding a public hearing The franchise may also grant to the corporation the right and privilege to provide collection services and to lay all intercepting and other sewers and connecting pipes in the streets and public alleys of the local unit or units of government as are necessary to receive transfer and conduct the sewage garbage or refuse to the processing or disposal plant and under reasonable rules regulations and supervision as are established by the local unit or units of government The franchise is void unless approved by 3/5 of the electors of the local unit or units of government voting at a general or special election This franchise shall not duplicate existing private solid waste management services or facilities that have been developed under part 115

Sec 4306 The local unit or units of government may enter into a contract with a person to receive treat transfer and process in the manner provided in this part the sewage night soil garbage and refuse of the local unit or units of government The contract may authorize the person to charge the owners of the premises served a service rate determined by the local unit or units of government to be just and reasonable or the local unit or units of government

may contract to pay a flat rate for the service paid out of their general fund or funds or assess the owners of the property served a reasonable charge to be collected as provided in this part and paid into a fund to be used to defray the contract charges

Sec 4307 (1) In accordance with and to the extent authorized by law when the department the department of public health or a court of competent jurisdiction in the state has ordered or when the department has issued a permit for the installation construction alteration improvement or operation of a sewage system solid waste facility or waterworks system in a local unit of government and the plans for the facility or system have been prepared and approved by the state department or commission having the authority by law to grant the approval the legislative body or the respective legislative bodies of the local unit or units of government may issue and sell the necessary bonds for the construction installation alteration operation or improvement including the treatment works and other facilities as may be ordered or set forth in the permit as being necessary to provide for the effective operation of the system This provision shall be construed to allow a local unit of government the option of selling bonds under a department order or permit or of taking or permitting the matter to go into court and selling bonds under a court order The bonds shall bear interest at a rate not to exceed the maximum rate permitted by the municipal finance act Act No 202 of the Public Acts of 1943 being sections 131 1 to 139 3 of the Michigan Compiled Laws and be payable in not more than 40 years from the date of issuance The legislative body or the respective legislative bodies shall determine the denomination of the bonds and the date time and manner of payment The amount of the bonds either issued or outstanding shall not be included in the amount of bonds which the local unit or units of government are authorized to issue under any statutes of this state or charters Local units of government issuing bonds under this section may raise a sum annually by taxation as the legislative body or respective legislative bodies consider necessary to pay interest on the bonds and to pay the principal as it falls due The annual amount may be in excess of the authorized annual tax rate fixed by the statutes or charters

(2) Except as otherwise provided in this part all bonds issued under this section shall be issued and sold in conformity with Act No 202 of the Public Acts of 1943 Court ordered bonds do not require approval of the electors and are not subject to section 5(g) of Act No 279 of the Public Acts of 1909 being section 117 5 of the Michigan Compiled Laws as to publication of notice petition and referendum Bonds other than court ordered bonds issued under this part require approval of the electors at a general or special election only if an appropriate petition is filed in accordance with the law

Sec 4308 If an order is made by a court of competent jurisdiction pursuant to this part the fact that the order was issued shall be recited in the official minutes of the legislative body or the respective legislative bodies The body or bodies shall require that plans and specifications be prepared for a waterworks sewage garbage or refuse transfer processing or disposal system including the necessary other facilities After the plans are approved by the legislative body or respective legislative bodies they shall be submitted to the department of public health or the department for approval If the plans are approved the legislative body or respective legislative bodies shall authorize the issuance and sale of the necessary bonds to construct the proposed system or facilities in accordance with the approved plans

Sec 4309 The authority given by this part is in addition to and not in derogation of any power existing in any of the local units of government under any statutory or charter provisions which they may now have or may adopt

Sec 4310 Proceedings under this part shall be taken only in a court of competent jurisdiction in the county in which the proposed waterworks system interceptors sewage garbage or refuse transfer processing or disposal plants are to be constructed

Sec 4311 If considered expedient for the safety and health of the people local units of government may enter into agreement with each other to raise money and issue bonds to erect and maintain waterworks systems intercepting sewers sewage treatment plants or garbage or refuse transfer processing or disposal systems

Sec 4312 If local units of government desire to act under this part the relationship established between such local units of government shall be fixed by contract and such contracts may be made by local units of government under this part in a manner and to the extent that natural persons might make contracts for like purposes Such contracts before becoming operative shall be approved by a vote of the majority of the members elect of each of the respective legislative bodies of the local units of government operating under this part

PART 45 BONDS FOR PREVENTION AND ABATEMENT OF WATER POLLUTION

PART 47 SEWAGE DISPOSAL AND WATER SUPPLY DISTRICTS

Sec 4701 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 and 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, a water or sewer authority created by law, or a 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) United States or agencies of the United States includes the United States of America or any bureau, department, agency, or instrumentality of the United States or otherwise created by the congress of the United States.

(e) Water supply and sewage disposal district means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this part for the purpose, with the powers, and subject to the restrictions in this part.

(f) Water supply system includes all plants, work, instrumentalities, and properties used or useful in connection with obtaining a water supply, the treatment of water, and the distribution of water.

Sec. 4702 The department under this part has all of the following powers and duties:

(a) To foster and encourage the organization of sewage disposal and water supply districts to act as the administrative agency in the proceedings incident to the formation of districts and to offer and lend appropriate assistance to the directors of districts organized as provided in this part in the carrying out of any of their powers, functions, and programs.

(b) To cooperate, negotiate, and enter into contracts with the other governments, governmental units, and agencies in matters concerning water supply systems and sewage disposal systems to take steps and perform acts and execute documents as may be necessary to take advantage of any act enacted by the congress of the United States that may make available funds for any of the purposes enumerated in this part or be otherwise of assistance in carrying out the purposes of this part to disburse money that may be appropriated by the legislature for the use and benefit of the districts created under this part or municipalities or local units of government of this state in accordance with the formula prescribed in this part or in the acts of appropriation, and to disburse money that may be received by this state from the United States government for the purposes provided for in this part in accordance with the formula set forth by applicable acts of congress.

(c) To act as the fiscal agent for this state for the purpose of making available to local units of government and the districts as may be organized under this part money or instruments of indebtedness that may be approved by the legislature or the people of this state for the construction and operation of sewage disposal systems by local units of government or districts.

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

Sec. 4703 (1) Two or more municipalities, by resolution of their legislative bodies, may file a petition with the department requesting that a sewage disposal district or a water supply district or a combination of both be organized to function in the area described in the petition. The petition shall set forth all of the following:

(a) The proposed name of the district.

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

(c) A description of the area proposed to be organized as a district. The description is not required to be given by metes and bounds or by legal subdivision, but is sufficient if the description is generally accurate and designates the local units of governments comprised within the proposed district. The territory shall include only area within the boundaries of the petitioning municipality.

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

(2) When more than 1 petition is filed covering a portion of the same territory, the agency may consolidate all or any of the petitions.

Sec. 4704 Within 30 days after a petition is filed with the department, or later if authorized by the department, but not to exceed 90 days, the department shall cause due notice to be given of a hearing upon the question of the desirability and necessity in the interests of public health and welfare of the creation of the district upon the question

of appropriate boundaries to be assigned to the district upon the propriety of the petition and of the proceedings taken under this part and upon all other questions relative to this matter. All interested parties have the right to attend the hearings and be heard. Due notice of the time and place of holding the hearing shall be given to all of the executive officials of the municipalities included within the involved territory. If it appears upon the hearing that it is desirable to include within the proposed district territory outside of the area within which due notice has been given or if it is made to appear that more data or information is needed the hearing shall be publicly adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district and a further hearing held. The department shall cooperate to the fullest extent possible with the local units of government included within the territorial limits of the proposed district in the making of the necessary investigations and engineering and financial studies that may be required for the proper decisions to be made by the department upon the conclusion of the hearing. After the hearing if the department determines upon the facts presented and upon other relevant facts and information as may be available to it that there is need in the interests of public health and welfare for a sewage disposal or water supply district or both to be created and to function in the territory considered at the hearing it shall make and record this determination and shall define the boundaries of the districts by the territorial limits of municipalities included within the district or by metes and bounds. In making the determination and in defining the boundaries the department may give due weight and consideration to the physical and topographical conditions of the area considered availability or nonavailability of water resources engineering and economic feasibility of the construction and management of the works required and all other relevant and pertinent facts that may be brought to its attention or of which it may have knowledge. Such additional territory shall not be included without the approval by resolution of the legislative body of any municipality affected including the original petitioners.

Sec 4705 (1) If the department determines after the hearing that there is no need for a district to be formed in the territory considered at the hearing and that the operation of the district within the defined boundaries is not practicable and feasible from the standpoint of engineering administration and financing the department shall make and record the determination and shall deny any petition filed with it.

(2) If the department has made and recorded a determination that in the interests of public health and welfare there is a need for the formation organization and functioning of a district in a particular territory and has defined the boundaries of the district it shall consider the question of whether the operation of that district within the boundaries with the powers conferred upon districts in this part is desired by a majority of the electors within the boundaries of the district. To assist the department in the determination of this question it is the duty of the department within a reasonable time of entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district to order a referendum within the proposed district upon the proposition of the creation of the district and to order the municipalities affected to cause due notice of the referendum to be given. The department shall direct the officials in charge of the holding of elections in the local units of government included within the district to call a special election or to place the referendum on the ballot at the next general election to be held in all of the territory comprising the district. The question shall be submitted by ballots prepared by the department that shall succinctly describe the district proposed to be formed the area in which it shall function and in appropriate language require those voting on the proposition to vote for or against the creation of the district in accordance with the requirements of law for the holding of referendums on state questions. Municipalities affected are responsible for the costs of the preparation of the ballots. Only electors who have property assessed for taxes within the boundaries of the district are eligible to vote in the referendum. Upon the completion of the referendum the department shall publish the result of the referendum.

(3) The department shall pay all expenses for the issuance of the notice and the conduct of the hearings described in this section and shall supervise the conduct of the hearings. The referendum shall be held by the regular established election officials and any costs shall be borne by the affected municipalities. The department shall promulgate rules governing the conduct of the hearings.

(4) If the results of the referendum described in subsection (3) call for the formation of the proposed district the department shall call a conference of all the officials of all of the municipalities within the boundaries of the proposed district and the department shall make every effort to encourage the municipalities to incorporate an authority for the purpose of constructing and operating a sewage disposal system or water supply system under the terms and authority vested in the municipalities pursuant to law. If after the expiration of 180 days from the holding of the conference or within an additional period as the department may consider necessary the municipalities have not created an authority as provided in this part the department shall make file and publish as provided in this part a determination creating the district as contained in the application and as approved by the referendum.

(5) Upon the making and filing of the determination as described in subsection (4) due notice shall be served and published and the department shall appoint 5 directors who for the purpose of this part are electors within the territory comprising the district and who shall comprise a temporary governing body of the district. The members of the temporary governing body shall hold office until the officers of the first permanent governing body have been elected and qualified.

(6) The district shall be a governmental subdivision of this state and a public body corporate when the appointed directors present to the secretary of state an application signed by them that sets forth all of the following

(a) That a petition for the creation of the district was filed with the department pursuant to this part that the proceedings specified in this part were taken that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body corporate under this part and that the applicants are the temporary directors of the district

(b) The name and official residence of each of the directors together with a certification of their appointment

(c) The name which is proposed for the district

(d) The location of the present office that has been selected for the district by the directors

(7) The application shall be subscribed and sworn to by at least a majority of the directors before an officer authorized by the laws of the state to administer oaths. The officer shall certify upon the application that he or she personally knows the directors and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a certified statement made by the department that a petition was filed, notice issued, and hearing held as required in this part that the department determined that there is need in the interests of the public health and welfare for a district to function in the proposed territory that the boundaries are defined that notice was given and referendum held in the question of creation of the district that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of such a district and that the department did determine that the operation of the proposed district is administratively practicable and feasible. In addition, the statement shall set forth the boundaries of the district.

(8) The secretary of state shall examine the application and statement and if he or she finds that the name proposed for the district is not identical with any similar district of this state or so nearly identical as to lead to confusion or uncertainty, the secretary of state shall receive and file the application and statement and shall record them in an appropriate book of record in the office of the secretary of state. When the application and statement have been made, filed, and recorded as provided in this section, the district shall constitute a governmental subdivision of this state and a public body corporate. The secretary of state shall make and issue to the directors a certificate under the seal of the state of the due organization of the district and shall record such certificate with the application and statement.

(9) Petitions for including additional territory within a district may be filed with the department and the proceedings provided for in this part or petitions to organize a district shall be observed in the case of petitions for inclusion. The department shall prescribe the form for the petitions which shall be as nearly as possible to the form prescribed in this part for petitions to organize a district. The petition shall be filed with the department and upon its receipt it shall be referred to the governing body of the district to be affected by the petition and if, after due consideration, the governing body determines against the inclusion of the additional territory, the petition shall be denied.

(10) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract, proceeding, or action of the district, the district shall be considered to be legally established in accordance with this part upon proof of the issuance of the certificate by the secretary of state. The certificate of the secretary of state shall be admissible in evidence in any suit, action, or proceeding described in this subsection and shall be proof of the filing and contents of the certificate.

Sec 4706 (1) The first permanent governing body of the district after the district has been organized and has received the secretary of state certificate described in section 4705 shall consist of 5 directors. The directors shall be nominated and elected at the next general state election in the same manner and pursuant to the election laws applicable to members of the house of representatives.

(2) Except for the first directors, the directors shall hold office for a term of 6 years. Among the first directors to be elected, the 2 receiving the highest number of votes shall hold office for the full term of 6 years and the 3 receiving the next highest number of votes shall hold office for 4 years. The secretary of state shall be responsible for the certification of the election of the directors. A vacancy shall be filled by appointment made by the remaining directors for the unexpired term.

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

Sec 4707 (1) The directors may employ an executive secretary, technical experts, and other officers, agents, and employees, permanent or temporary, as required and shall determine their qualifications, duties, and compensation.

The directors may delegate to the chairperson to 1 or more directors or to 1 or more agents or employees powers and duties as they consider proper

(2) The directors shall furnish to the department upon request copies of all rules orders contracts forms minutes proceedings and other documents that they adopt or employ and other information concerning their activities as required by the department in the performance of the department's duties under this part A writing prepared owned used in the possession of or retained by the directors in the performance of an official function shall be made available to the public in compliance with the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

(3) The directors shall provide for the execution of surety bonds for employees and officers entrusted with funds or property shall provide for the keeping of a full and accurate record of their proceedings and of rules and orders promulgated or adopted and shall provide for an annual audit of the accounts of receipts and disbursements The directors shall request that the legislative body and executive officers of a municipality located within the territory comprised within the district designate a representative to advise and consult with the directors of the district on questions of program and policy that may affect the property water supply or sewage disposal problems or other interests of the municipality

Sec 4708 A district organized under this part constitutes a governmental subdivision of this state and a body corporate exercising public powers with power to sue and to be sued in any court of this state A district shall possess all the powers necessary to organize itself and also shall possess powers incident to the powers enumerated in this part The district is authorized and empowered to do all of the following

(a) Pursuant to the terms of any contract entered into under section 4709 of this part to construct and operate sewage disposal systems and water supply systems within the area comprising its territorial limits and to acquire extend and improve the systems

(b) To make and cause to be made surveys studies and investigations of water resources of the area within its territorial limits for the purpose of determining the feasibility and practicability of developing new sources of water supply to municipalities industrial and commercial establishments and agricultural and residential lands and areas so that water is available to agricultural and residential lands in a quantity and quality necessary for the protection of the public health and the promotion of the general welfare within the areas

(c) To make and cause to be made surveys studies and investigations for the purpose of ascertaining the requirements of municipalities industrial and commercial establishments individual and collective groups or occupants of lands for sewage disposal systems so that sewers and sewage disposal facilities are available to the entities described in this subdivision that are situated within the territorial limits of the district and that may need or require the facilities for the protection of public health and the promotion of the general welfare

(d) To cooperate with and enter into agreements with any person as may be necessary for the full performance of its functions and duties and to acquire by purchase exchange lease gift grant bequest devise or otherwise any property real or personal or rights or interests in property either within or outside of its territorial limits to maintain administer and improve any acquired properties to receive income from same and to expend the income in implementing this part and its purposes and to sell lease or otherwise dispose of any of its property or interests in property to implement this part and its purposes The district is invested with the power of eminent domain in acquiring private property for public use For the purposes of exercising the power the district may proceed under Act No 149 of the Public Acts of 1911 being sections 213 21 to 213 25 of the Michigan Compiled Laws or any other statute that grants to any municipality or public body the authority to acquire private property for public use

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

(f) To accept and receive any funds or money which may be appropriated by any act of congress either directly from any federal governmental agency responsible for the disbursement and allocation of the funds or through the department and for that purpose the districts are authorized to execute contracts documents or agreements as may be required by the congressional act as a prerequisite to the securing of the funds

Sec 4709 (1) The district may enter into contracts with any municipality located within its territorial limits providing for the acquisition construction improvement enlargement extension operation and financing of a sewage disposal system or water supply system A contract shall provide for the allocation and payment of the share of the total cost to be borne by the municipality in annual installments for a period not exceeding 40 years Each contracting municipality may pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract If a contracting municipality pledges its full faith and credit the municipality shall include in its annual tax levy a sufficient amount so that the estimated collections will be sufficient to promptly pay when due the portion of the obligation falling due before the time of the following year's tax collection The district shall make a reasonable charge for its services which it renders to the users in order to cover the retirement of outstanding indebtedness costs of operation maintenance and replacement of its plants and reserves for capital improvements If there is excess money in the treasury of the district after all of the contingencies have been met the excess shall be rebated to the contracting

municipalities in proportion to the total amount that the municipality paid for services it has received from the district. No limitation in any statute or charter shall prevent the levy and collection by each of the contracting municipalities of the full amount of taxes necessary for the payment of the contractual obligation. If at the time of making the annual tax levy there are other funds on hand earmarked for the payment of the contractual obligation then credit therefor may be taken upon the annual levy for the payment of the obligation. These funds may be raised by each contracting municipality by the use of 1 or more of the following methods

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

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

(c) From money received or to be received derived from the imposition of taxes by this state unless the money for this purpose is expressly prohibited by the constitution of this state

(d) From any other fund or funds that may be validly used for the purpose. The contract may provide for any and all matters relating to the acquisition, construction, operation and financing of the sewage disposal system or water supply system as are considered necessary, including authorization to the district to issue bonds secured by the full faith and credit pledges of the contracting municipalities as authorized in this part. The contract may provide for appropriate remedies in case of default, including but not limited to the right of the municipalities to authorize the county treasurer or other official charged with the disbursement of funds derived from the state sales tax levy under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws, to withhold sufficient funds to make up any default or deficiency in funds.

(2) A municipality desiring to enter into a contract with the district under this section shall authorize, by resolution of its governing body, the execution of the contract. The resolution shall be published in 1 or more newspapers of general circulation within the municipality, and the contract may be executed without a vote of the electors upon the expiration of 30 days after the date of the publication unless, within the 30 day period, a petition signed by not less than 10% of the registered electors residing within the limits of the municipality is filed with the clerk of the municipality requesting a referendum upon the execution of the contract. If this occurs, the contract shall not be executed until approval by the vote of a majority of the electors of the municipality qualified to vote and voting thereon at a general or special election to be held not more than 90 days after the filing of the petition. A special election called for this purpose shall not be included in any statutory or charter limitation as to the number of special elections to be called within any period of time. Signatures on any petition shall be verified by some person under oath as the actual signatures of the persons whose names are signed on the petition, and the clerk of the municipality has the same power to reject signatures as city clerks under section 25 of Act No. 279 of the Public Acts of 1909, being section 117.25 of the Michigan Compiled Laws. The number of registered electors in a municipality is determined by the registration books as of the date of the filing of the petition.

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

Sec. 4710 The district may enter into a contract for the furnishing of sewage treatment services by any sewage treatment plant owned or operated by the district as a part of its sewage disposal system or the furnishing of water service from any water facilities owned or operated by the district. This contract shall provide for reasonable charges or rates for the service furnished. Any income derived from a contract described in this section shall be applied by the district to the costs of operation and maintenance of its sewage disposal system or its water supply system, and any balances remaining after payment of its cost shall be applied in reduction of its outstanding bonded indebtedness incurred for the acquisition or improvement of its sewage disposal system or water supply system. A contract shall not exceed a period of 40 years.

Sec. 4711 If territory that is part of a district created under this part is detached from a municipality and transferred to a municipality that is not part of the district, the territory shall remain a part of the municipality from which detached only for the purpose of carrying out any contractual obligations or for the purpose of levying a tax to retire any bonded indebtedness incurred by such district for which the territory is liable until the contractual

obligations are fulfilled or the bonds are redeemed or sufficient funds are available in the district's debt retirement fund for this purpose. A territory described in this section is a part of the municipality to which transferred for all other purposes and subsequent to the redemption of the bonds or the time when sufficient funds are available to redeem the bonds, the territory is no longer a part of the district.

Sec 4712 If the governing body of a district formed under this part acquires, extends, improves, or operates a sewage disposal system or water supply system or provides for the sale and purchase of sewage disposal service or water supply service from an existing system or systems and executes contracts that may be necessary, the authority may, pursuant to any contract entered into under section 4709, issue self-liquidating revenue bonds in accordance with the revenue bond act of 1933, Act No. 94 of the Public Acts of 1933, being sections 141.101 to 141.140 of the Michigan Compiled Laws, or any other act providing for the issuance of revenue bonds. However, these bonds are payable solely from the revenues of the sewage disposal system or the water supply system. The charges specified in any contract are subject to increase by the district at any time if necessary to provide funds to meet its obligations, and any contract authorized by this part is for a period of not more than 40 years. The legislative body of any municipality that enters into a contract with the district may raise by taxes or pay from its general funds any money required to be paid under the terms of the contract to obtain maps, plans, designs, specifications, and cost estimates of the proposed sewage disposal system or water supply system.

PART 49 CONSTRUCTION OF COLLECTING SEWERS

Sec 4901 As used in this part

(a) Collecting sewers means lateral, branch, submain, and trunk sewers consisting of pipes or conduits including pumps, lift stations, force mains, and other appurtenances necessary for a system to prevent or eliminate discharges of raw or inadequately treated sewage of human origin into any waters of the state. Collecting sewers do not include pipes or conduits that carry storm water, surface water, and street wash, or that convey sewage from a building to a common public sewer except that part lying within a public right of way, and sewers eligible for grants under Act No. 329 of the Public Acts of 1966, being sections 323.111 to 323.128 of the Michigan Compiled Laws.

(b) Construction means the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary to the construction of collecting sewers, the installation, erection, and building of collecting sewers, and the inspection and supervision of the construction of such sewers. Construction does not include acquisition of lands and rights of way.

(c) Local agencies means local units of government or other public bodies created by or pursuant to state law and having jurisdiction over collecting sewers.

Sec 4902 Grants to local agencies shall be funded from the state sewer construction fund for collecting sewer projects in the descending order of their priority as established by the department under sections 4909 to 4912.

Sec 4903 A fund to be known as the state sewer construction fund is established to be used for state grants to local agencies for their construction of collecting sewers. Grants shall be made only for collecting sewers on which contracts for construction were awarded prior to the exhaustion of the fund.

Sec 4904 The proceeds of the sale of \$50,000,000.00 of the bonds authorized by Act No. 76 of the Public Acts of 1968, being sections 323.371 to 323.382 of the Michigan Compiled Laws, or any series of the bonds, and any premiums and accrued interest received on the delivery of the bonds, shall be deposited with the state treasurer in the state sewer construction fund. Disbursements from the fund shall be made only for specific eligible collecting sewer projects approved, as provided in section 4912, by the appropriations committees and by the legislature by concurrent resolution adopted by a roll call vote of a majority of the members elected to and serving in each house. A concurrent resolution shall include all or part of the projects on the priority list of eligible projects reported to the legislature by the department as provided in section 4912, but in case of a part only it shall be the entire part containing all projects on the list having priorities higher than those of projects not included in the resolution and shall not include projects lower in the order of priority. The income from temporary investments of the proceeds shall be deposited in the general fund.

Sec 4905 (1) A local agency may apply to the department for a grant under this part.

(2) A grant shall be made in an amount equal to 1/2 that portion of the cost of construction of collecting sewers computed upon the cost of the current year's project only, in excess of 10% of the state equalized value of all taxable property within the political boundaries of the unit of government served by the collecting sewers, certified under subsection (2) of section 4906, or \$1,000,000.00, whichever is less.

(3) Grants are subject to the following limitations:

(a) A grant shall not be made for collecting sewers required under the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being sections 560.101 to 560.293 of the Michigan Compiled Laws.

(b) A grant shall not be made for collecting sewers for which a federal grant has been made if the amount of the federal grant equals or exceeds the amount of the state grant that the collecting sewers would have received if there had been no federal grant. If the amount of the federal grant made for the collecting sewers is less than the amount of the state grant that the collecting sewers would have received if there had not been a federal grant, the amount of the state grant made for the collecting sewers shall not exceed the difference between the state grant that the collecting sewers would have received if there had not been a federal grant and the federal grant.

(c) A grant shall not be made for collecting sewers the construction of which would result in the discharge of untreated or inadequately treated sewage to the waters of the state.

(d) A grant shall not be made unless the local agency has received approval by the department of an official pollution control plan as required by sections 7 and 8 of Act No. 329 of the Public Acts of 1966, being sections 323.117 and 323.118 of the Michigan Compiled Laws, and the collecting sewers are in conformity with the official plan.

(e) A grant shall not be made for collecting sewers which the department determines would not meet an existing or imminent need or would constitute a noneconomic or speculative project.

(f) A local agency shall not be allotted more than 2% of the fund.

Sec. 4906 (1) Disbursements from the state sewer construction fund shall be made by the director of the department of management and budget and the state treasurer in accordance with the accounting laws of the state only for the following purposes for which the bonds have been authorized:

(a) Expense of issuing the bonds.

(b) Grants to local agencies as provided in section 4905(2) and (3).

(2) Before any disbursement from the fund as provided in subsection (3) is made to a local agency for a grant for the construction of collecting sewers, the department shall certify to the director of the department of management and budget and the state treasurer the amount of the grant which the agency is eligible to receive under this part. The certificate shall include or have attached to it a certificate by the department or by the department of public health when so requested by the department of the necessity and sufficiency of the collecting sewers.

(3) A disbursement from the fund to a local agency shall be made for projects on the priority list established under sections 4904 and 4912 upon certification to the director of the department of management and budget and the state treasurer by the department that the disbursement is due. A local agency may request and receive disbursement of the state grant in not more than 5 installments.

(a) An installment of 50% of the reasonable cost for preparing completed final construction plans and specifications but not to exceed the amount of the grant for the collecting sewers which have been certified as eligible for a state grant on issuance of a construction permit by the department of public health for the collecting sewers for which the construction plans and specifications have been prepared and on receipt of evidence satisfactory to the department of the local agency's ability and intent to finance the local share of the project cost. A disbursement shall not be made under this subsection to a local agency which has received federal or other state grants for the preparation of final plans and specifications.

(b) An installment when not less than 25% of the cost of construction of the collecting sewers is completed.

(c) An installment when not less than 50% of the cost of construction of the collecting sewers is completed.

(d) An installment when not less than 75% of the cost of construction of the collecting sewers is completed.

(e) A final installment of the unpaid balance of the grant based upon the actual cost of the collecting sewers when construction is completed.

Sec. 4907 The department may promulgate rules to implement this part.

Sec. 4908 (1) The department, with consent of the head of any other agency of this state, shall use the officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this part.

(2) A recipient of a grant under this part shall keep records as the department prescribes, including records that fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of construction of the collecting sewers in connection with the grant given or used, and the amount of that portion of the cost of construction of the collecting sewers supplied by other sources, and other records as will facilitate an effective audit. The department, the auditor general, and the state treasurer or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to grants received under this part.

Sec. 4909 Notwithstanding any other provision of this part or of any rule of the department, compliance with sections 4909 to 4912 is a prerequisite to the making of a grant under this part. Sections 4909 to 4912 provide procedures

for establishing the priority of eligible projects and for certifying projects for grants for construction of collecting sewers

Sec 4910 (1) Points assigned to a collecting sewer project as a complete measure of pollution control needs shall not exceed 15

(2) Two points shall be assigned for each of the following interests subject to pollution caused injuries which injuries will be corrected or substantially lessened by the proposed project

- (a) Public health safety or welfare but not including bathing
- (b) Public water supply for domestic use
- (c) Water supply for commercial or industrial use
- (d) Irrigation or livestock water supply for agricultural use
- (e) Organized public recreational use including bathing
- (f) Aesthetic value or utility of riparian lands
- (g) Water supply for wild animals birds and fish and adverse effects on aquatic life or plants
- (h) Usefulness of fish or game for human consumption

(3) Collecting sewers required to be constructed in compliance with a judgment rendered by a court of competent jurisdiction a stipulation or an order of the department or an agreement with the department of public health shall be assigned from 1 to 4 points in accordance with the following schedule if the stipulation order or agreement specifically recites the existence of unlawful pollution and was in effect not less than 30 days before the deadline for filing applications and if the pollution abatement date is such that compliance would make it necessary to start construction during the year ending

- (a) June 30 of the fiscal year for which the application is filed 4 points
- (b) June 30 of the first succeeding fiscal year 3 points
- (c) June 30 of the second succeeding fiscal year 2 points
- (d) June 30 of the third succeeding fiscal year 1 point

(4) An applicant in default of a performance date specified by an order stipulation or agreement may be assigned points under the preceding schedule only at the discretion of the department

(5) A collecting sewer project for which construction contracts were awarded before the deadline date for filing applications shall be assigned 4 points The combined total points assigned pursuant to subsections (3) to (5) shall not exceed 4 points

Sec 4911 (1) Total priority points for a collecting sewer project shall be the sum of the points assigned for water pollution control needs

(2) If 2 or more projects receive the same priority point totals the department shall assign priorities to the tied projects after considering factors such as waters affected extent of public interests involved relative magnitude of pollution injury and other factors as the department considers appropriate

Sec 4912 (1) For the purposes of sections 4909 to 4912 the fiscal year is July 1 to June 30

(2) Applications for collecting sewer construction grants and official pollution control plans required by sections 7 and 8 of Act No 329 of the Public Acts of 1966 being sections 323 117 and 323 118 of the Michigan Compiled Laws shall be filed with the department not later than September 15 preceding the period or fiscal year for which the application is filed Applications postmarked not later than midnight of September 15 meet this requirement

(3) A point total shall be assigned by the department to each application that has been timely filed and conforms to the requirements of this part no later than the following January 1

(4) Projects entitled to construction grants shall be certified to the director of the department of management and budget and the state treasurer from the eligibility list established by the department and as approved by the legislature Certification shall be made following approval by the legislature

(5) Certification of a project for a grant is subject to the condition that construction contracts for the project be awarded not later than March 1 of the fiscal year for which application for a state grant has been filed Failure to comply with this condition of certification is cause for the department to take any action necessary to withdraw any grant offer that may have been obligated to such project However on a showing satisfactory to the department that the project will proceed within an extended period the department may allow 30 day extensions totaling not more than 90 days

(6) Except as otherwise provided in this part an application for a collecting sewer construction grant filed with the department is valid only for the fiscal year for which the application is filed

(7) The department shall report to the legislature by January 15 of each year a list of collecting sewer projects eligible for grants the points and priorities assigned to them pursuant to this part a list of projects that are recommended to be funded and a list of projects which failed to comply with the conditions of certifications set forth in subsection (5) and on which the department has taken action to withdraw offers of state grants If legislative approval or rejection of eligible projects is not given each year within 45 days after receipt of the department s list of eligible projects the department list shall be considered approved

PART 51 WASTEWATER DISPOSAL

Sec 5101 As used in this part land disposal wastewater management program means the program developed in the United States army corps of engineers southeastern Michigan survey scope wastewater management study as authorized by section 102 of title I of the federal water pollution control act chapter 758 86 Stat 817 33 U S C 1252 and the resolution of the United States house of representatives public works committee and the United States senate public works committee or any other study by the corps of engineers proposing disposal of municipal wastewater on land

Sec 5102 Upon receipt of a proposal to implement a land disposal wastewater management program as defined in this part by a federal state or local unit of government the department shall submit to the governor the legislature and local units of government its views as to the environmental consequences cost effectiveness and social acceptability of the program The department of agriculture shall present its views to the governor the legislature and local units of government regarding the impact of the program on agriculture

Sec 5103 Upon receipt of the views of the department and the department of agriculture the local units of government shall either approve or disapprove by resolution and the legislature shall either approve or disapprove by concurrent resolution the implementation of the program

PART 53 CLEAN WATER ASSISTANCE

Sec 5301 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 projects stormwater treatment projects 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 22 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

(c) Capitalization grant means the federal grant made to this state by the United States environmental protection agency for the purpose of establishing a state water pollution control revolving fund as provided in title VI of the federal water pollution control act chapter 758 101 Stat 22 33 U S C 1381 to 1387

(d) Construction activities means any actions undertaken in the designing or building of sewage treatment works projects stormwater treatment projects or nonpoint source projects Construction activities include but are not limited to all of the following

(i) Engineering services

(ii) Legal services

(iii) Financial services

(iv) Design of plans and specifications

(v) Acquisition of land or structural components or both

(vi) Building erection alteration remodeling or extension of a sewage treatment works

(vi) Building erection alteration remodeling or extension of projects designed to control nonpoint source pollution consistent with section 319 of title III of the federal water pollution control act chapter 758 101 Stat 52 33 U S C 1329

(vii) Building erection alteration or remodeling of a stormwater treatment project

(ix) Municipal supervision of the project activities described in subparagraphs (i) to (viii)

(e) Federal water pollution control act means chapter 758 86 Stat 816 33 U S C 1251 to 1252 1253 to 1254 1255 to 1257 1258 to 1263 1265 to 1270 1281 1282 to 1293 1294 to 1299 1311 to 1313 1314 to 1326 1328 to 1330 1341 to 1345 1361 to 1377 and 1381 to 1387

(f) Fund means the state water pollution control revolving fund 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 established pursuant to title VI of the federal water pollution control act

(g) Fundable range means those projects taken in descending order on the priority lists for which sufficient funds are estimated by the department to exist to provide assistance at the beginning of each annual funding cycle

(h) Municipality means a city village county township authority or other public body including an inter municipal agency of 2 or more municipalities authorized or created under state law or an Indian tribe that has jurisdiction over construction and operation of sewage treatment works or other projects qualifying under section 319 of title III of the federal water pollution control act chapter 758 101 Stat 52 33 U S C 1329

(i) Nonpoint source project means construction activities designed to reduce nonpoint source pollution consistent with the state nonpoint source management plan pursuant to section 319 of title III of the federal water pollution control act chapter 758 101 Stat 52 33 U S C 1329

(j) Priority list means the annual ranked listing of projects developed by the department in section 5303 or used by the department pursuant to section 5315

(k) Project means a sewage treatment works project a stormwater treatment project or a nonpoint source project or a combination of these

(l) Project refinancing assistance means buying or refinancing the debt obligations of municipalities within the state if construction activities commenced after March 7 1985 and the debt obligation was incurred after March 7 1985

(m) Sewage treatment works project means construction activities on any device or system for the treatment storage collection conveyance recycling or reclamation of the sewage of a municipality including combined sewer overflow correction and major rehabilitation of sewers

(n) Stormwater treatment project means construction activities of a municipality on any device or system for the treatment storage recycling or reclamation of stormwater that is conveyed by a storm sewer that is separate from a sanitary sewer

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

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

Sec 5302 (1) This part shall be construed liberally to effectuate the legislative intent All powers granted under this part shall be broadly interpreted to effectuate the intent and purposes of this part and shall not be interpreted as a limitation of powers

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

(3) This state is not liable to a municipality or any other person performing services for the municipality for costs incurred in developing or submitting an application for assistance under this part

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

Sec 5303 (1) Municipalities shall consider and utilize where possible cooperative regional or intermunicipal projects in satisfying sewerage needs in the development of project plans

(2) A municipality may submit a project plan for use by the department in developing a priority list

(3) The project plan for a tier I project shall include documentation that demonstrates that the project is needed to assure maintenance of or to progress toward compliance with the federal water pollution control act or part 31 and to meet the minimum requirements of the national environmental policy act of 1969 Public Law 91 190 42 U S C 4321 4331 to 4335 and 4341 to 4347 The documentation shall demonstrate all of the following

(a) The need for the project

(b) That feasible alternatives to the project were evaluated taking into consideration the demographic topographic hydrologic and institutional characteristics of the area

(c) That the project is cost effective and implementable from a legal institutional financial and management standpoint

(d) Other information as required by the department

(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 31 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 department to be in excess of those costs justified will not be eligible for assistance under this part

(5) After notice and an opportunity for public comment the department shall annually develop a priority list for sewage treatment works projects and stormwater treatment 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 31 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 act shall be first priority for funding for a period of not more than 3 years after funds were first committed under those programs

(c) If the project is a sewage treatment works project or a stormwater treatment project all of the following criteria

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

(ii) A determination of whether a project is or was necessary to comply with an order permit or other document issued by the department or entered as part of an action brought by the state against the municipality or any component of the municipality

(iii) The population to be served by the project

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

(d) Rankings for nonpoint source projects shall be consistent with the state nonpoint source management plan developed pursuant to section 319 of title III of the federal water pollution control act chapter 758 101 Stat 52 33 U S C 1329

(e) Any other criteria established by the department by rule

(6) The priority list shall be submitted annually to the chair of the senate and house of representatives standing committees that primarily consider legislation pertaining to the protection of natural resources and the environment

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

(8) This section does not limit other actions undertaken to enforce part 31 the federal water pollution control act or any other act

Sec 5304 Subject to sections 5309 and 5310 assistance provided to municipalities to construct sewage treatment works projects stormwater projects and nonpoint source projects shall be in accordance with all of the following

(a) Assistance for approved sewage treatment works projects and stormwater treatment projects shall be provided for projects in the fundable range of the priority list developed pursuant to section 5303(3) or (4) and to other projects that may become fundable pursuant to section 5310

(b) Assistance for approved qualified nonpoint source projects shall be provided for projects in the fundable range of the priority list developed pursuant to section 5303(3) or (4)

Sec 5305 The department shall provide written descriptions and timetables for actions required under this part including the intended use plan developed under section 5306 and may provide to municipalities that request assistance in writing other information that the department considers appropriate

Sec 5306 (1) The department shall prepare and submit an intended use plan annually to identify proposed annual intended uses of the fund and to facilitate the negotiation process that the department may conduct with the United States environmental protection agency for the capitalization grant agreement and schedule of payments to be made to this state under the federal water pollution control act

(2) The department shall provide for a public participation process that requires not less than 1 public hearing for the intended use plan. The department may make changes in the intended use plan without holding additional hearings in response to the comments received from the United States environmental protection agency and through the public participation process.

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

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

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

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

(d) A description of the projects that are on the priority lists including project categories and types applicable discharge or enforceable requirements proposed terms of the assistance including a schedule of estimated disbursements of funds and the names of the municipalities proposed to receive assistance.

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

(f) A description of the criteria and method for distribution of the fund.

(g) A description of the public participation process followed in the development of the intended use plan and the results of that process.

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

(i) Any other information considered appropriate by the department.

(4) Upon notice from the United States environmental protection agency that the intended use plan is approved, the department shall notify each municipality of its inclusion on the intended use plan and shall further provide copies of the sewage treatment works projects and stormwater treatment projects priority list, the nonpoint source project priority list, and the intended use plan to all persons requesting such information. Following notification, the department shall establish, with the concurrence of the municipality, a schedule for project plan approval. Submittal of a complete application for assistance and approval of plans and specifications.

Sec 5307 (1) The department shall review, generally in priority order, the project plans for projects in the fundable range and either approve or disapprove the plans within 120 days of notifying the municipalities of their inclusion in the intended use plan. Upon determination by the department that a project is complex and warrants additional review, the department shall notify the municipality and may extend the review period for not more than 60 days.

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

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

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

Sec 5308 (1) To apply for assistance from the fund, a municipality shall submit the following, if applicable, as determined by the department:

(a) If assistance is in the form of a loan, financial documentation that a dedicated source of revenue is established consistent with municipal bond obligations existing at the time assistance is requested and pledged to both of the following purposes:

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

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

(b) A project plan approved under section 5307.

(c) A certification by an authorized representative of a municipality affirming that the municipality has the legal, managerial, institutional, and financial capability to build, operate, and maintain the project.

(d) A letter of credit, insurance, or other credit enhancement to support the credit position of the municipality, as required by the department.

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

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

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

(h) A certification from an authorized representative of the municipality that an undisclosed fact or event, or pending litigation, will not materially or adversely affect the project, the prospects for its completion, or the municipality's ability to make timely loan repayments, if applicable.

- (i) If applicable all executed intermunicipal service agreements
- (j) An agreement that the municipality will operate the project in compliance with applicable state and federal laws
- (k) An agreement that the municipality will not sell lease abandon or otherwise dispose of the project without an effective assignment of obligations and the prior written approval of the department and the authority
- (l) An agreement that all municipal project accounts will be maintained in accordance with generally accepted government accounting standards as defined and required under the federal water pollution control act
- (m) An agreement that the municipality will provide written authorizations to the department for the purpose of examining the physical plant and for examining reviewing or auditing the operational or financial records of the project and that the municipality will require similar authorizations from all contractors consultants or agents with which it negotiates an agreement
- (n) An agreement that all municipal contracts with contractors will provide that the contractor and any subcontractor may be subject to a financial audit and that contractors and subcontractors shall comply with generally accepted governmental accounting standards
- (o) An agreement that all pertinent records shall be retained and available to the department for a minimum of 3 years after initiation of the operation and that if litigation a claim an appeal or an audit is begun before the end of the 3 year period records shall be retained and available until the 3 years have passed or until the action is completed and resolved whichever is longer As used in this subdivision initiation of the operation means the date certain set by the municipality and accepted by the department on which use of the project begins for the purposes for which it was constructed
- (p) If the project is segmented as provided in section 5309 a schedule for completion of the project and adequate assurance that the project shall be completed with or without assistance from the fund or that the segmented project shall be operational without completion of the entire project
- (q) An agreement that the project shall proceed in a timely fashion if the application for assistance is approved
- (r) An application fee if required by the department
- (2) The requirement of subsection (1)(a) for a dedicated source of revenue may include a revenue source pledged to repay the debt to the fund from sources including but not limited to 1 or more of the following
 - (a) Ad valorem taxes
 - (b) Special assessments
 - (c) User based revenue collections
 - (d) General funds of the municipality
 - (e) Benefit charges
 - (f) Tap in fees or other 1 time assessments
- (3) The department shall accept applications for assistance from municipalities in the fundable range of the priority list that have approved project plans and shall determine whether an application for assistance is administratively complete and notify the applicant within 30 calendar days of receipt of the application specifying any additional information necessary to complete the application
- (4) The department shall approve or disapprove an application within 30 calendar days of the determination that the application is complete

Sec 5309 To ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single sewage treatment work project or stormwater project the department may segment a sewage treatment work project if either of the following criteria is present

- (a) The cost of the proposed project is more than 30% of the amount available in the fund
- (b) Upon application of a municipality the department has approved a municipality's application for segmenting a project

Sec 5310 A project in the fundable range of a priority list that fails to meet the schedule established by the department under section 5306 or does not have approved plans and specifications and an approvable application 90 days prior to the last day of the fiscal year whichever comes first is subject to bypass A municipality may request an extension of the schedule for cause A project bypassed pursuant to this section shall not be considered for an order of approval until all other projects in the fundable range have either been funded or rejected This section does not prohibit the inclusion of the project in the priority list of the next annual funding cycle or the resubmission of an application for assistance in the next annual funding cycle After a project within the fundable range has been bypassed the department may award assistance to projects outside the fundable range Assistance shall be made available to projects outside the fundable range in priority order contingent upon the municipality's satisfaction of all applicable

requirements for assistance pursuant to section 5308 within the time period established by the department but not to exceed 60 days from the date of notification of bypass

Sec 5311 (1) The department shall review a complete application for assistance for a project in the fundable range. If the department approves the application for assistance, the department shall issue, subject to section 5310, an order of approval to establish the specific terms of the assistance. The order of approval shall include, but not be limited to, all of the following:

- (a) The term of the assistance
- (b) The maximum principal amount of the assistance
- (c) The maximum rate of interest or method of calculation of the rate of interest that will be used, or the premium charged
- (2) The order of approval shall incorporate all requirements, provisions, or information included in the application and other documents submitted to the department during the application process
- (3) After issuance of the order, the department shall certify to the authority that the municipality is eligible to receive assistance
- (4) Within each annual funding cycle, the method of establishing the interest rate applicable to a loan or project refinancing assistance shall be applied equally within tier I and tier II projects to all municipalities receiving such assistance
- (5) The method of establishing interest rates may provide for a different level of subsidy for tier I projects than for tier II projects

Sec 5312 (1) The department may make a determination that assistance should be terminated and may issue an order recommending that the authority take appropriate action to terminate assistance.

- (2) Cause for making a determination under subsection (1) includes, but is not limited to, 1 or more of the following:
 - (a) Substantial failure to comply with the terms and conditions of the agreement providing assistance
 - (b) A legal finding or determination that the assistance was obtained by fraud
 - (c) Practices in the administration of the project that are illegal or that may impair the successful completion or organization of the project
 - (d) Misappropriation of assistance for uses other than those set forth in the agreement providing assistance
- (3) The department shall give written notice to the municipality by certified letter of the intent to issue an order recommending that assistance be terminated. This notification must be issued not less than 30 days before the department forwards the order recommending that the authority take appropriate action to terminate assistance.
- (4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.
- (5) Termination of assistance under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

Sec 5313 (1) A municipality may petition the department to make a determination and issue an order under section 5312(1) for cause.

- (2) The department may issue an order to terminate the project for cause that is effective on the date the project ceases activities.
- (3) Subject to the termination of assistance by the authority and payment of any appropriate termination settlement costs, the department shall issue an order to the authority recommending appropriate action.
- (4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.
- (5) Termination of the loan under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

Sec 5314 The costs of administering and implementing this part by the department, the designated agents of the department, and the authority may be paid from funds annually appropriated by the legislature from 1 or more of the following sources:

- (a) An amount taken from the federal capitalization grant, subject to the limitations prescribed in the federal water pollution control act.
- (b) Loan fees, not to exceed the ratio that the annual appropriation for administration of this part bears to the total value of loans awarded for the fiscal year in which the appropriation was made, as estimated in the intended use plan.

- (c) Interest or earnings realized on loan repayments to the fund unless the earnings are pledged to secure or repay any indebtedness of the authority
- (d) Proceeds of bonds or notes issued pursuant to the fund and sold by the authority
- (e) Any other money appropriated by the legislature

Sec 5315 The priority list developed under Act No 329 of the Public Acts of 1966 being sections 323 111 to 323 128 of the Michigan Compiled Laws and rules promulgated under that act shall remain in effect until a priority list is developed by the department pursuant to this part

Sec 5316 The department has the powers necessary or convenient to carry out and effectuate the purpose objectives and provisions of this part and the powers delegated by other laws or executive orders including but not limited to the power to

- (a) Make execute and deliver contracts conveyances and other instruments necessary or convenient to the exercise of his or her powers
- (b) Solicit and accept gifts grants loans allocations appropriations and other aid including capitalization grant awards from any person or the federal state or a local government or any agency of the federal state or local government to enter into agreements with any person or the federal state or a local government or to participate in any other way in any federal state or local government program consistent with this part and the purposes of this part
- (c) Negotiate and enter into agreements and amendments to agreements with the federal government to implement establishment and operation of the fund including capitalization grant agreements and schedules of payments
- (d) Engage personnel as is necessary and engage the services of private consultants managers counsel auditors engineers and scientists for rendering professional management and technical assistance and advice
- (e) Charge impose and collect fees and charges in connection with any transaction authorized under this part and provide for reasonable penalties for delinquent payment of fees or charges
- (f) Review and approve all necessary documents in a municipality's application for assistance and issue an order authorizing assistance to the authority
- (g) Promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part
- (h) Administer manage and do all other things necessary or convenient to achieve the objectives and purposes of the fund the authority this part or other state and federal laws that relate to the purposes and responsibilities of the fund
- (i) Make application requesting a capitalization grant and prepare submit and certify any required or appropriate information with that application
- (j) Establish priority lists and fundable ranges for projects and the criteria and methods used to determine the distribution of the funds available to the fund among the various types of assistance to be offered and to select projects to be funded
- (k) Prepare and submit an annual report required by the federal water pollution control act

AIR RESOURCES PROTECTION

PART 55 AIR POLLUTION CONTROL

Sec 5501 As used in this part

- (a) Air contaminant means a dust fume gas mist odor smoke vapor or any combination thereof
- (b) Air pollution means the presence in the outdoor atmosphere of air contaminants in quantities of characteristics under conditions and circumstances and of a duration that are or can become injurious to human health or welfare to animal life to plant life or to property or that interfere with the enjoyment of life and property in this state and excludes all aspects of employer employee relationships as to health and safety hazards With respect to any mode of transportation nothing in this part or in the rules promulgated under this part shall be inconsistent with the federal regulations emission limits standards or requirements on various modes of transportation Air pollution does not mean those usual and ordinary odors associated with a farm operation if the person engaged in the farm operation is following generally accepted agricultural and management practices
- (c) Air pollution control equipment means any method process or equipment that removes reduces or renders less noxious air contaminants discharged into the atmosphere
- (d) Category I facility means a fee subject facility that is a major stationary source as defined in section 302 of title III of the clean air act 77 Stat 400 42 U S C 7602 an affected source as defined pursuant to section 402 of title IV of

the clean air act chapter 360 104 Stat 2641 42 U S C 7651a or a major stationary source as defined in section 169a of subpart 2 of part C of title I of the clean air act chapter 360 91 Stat 742 42 U S C 7491

(e) Category II facility means a fee subject facility that is a major source as defined in section 112 of part A of title I of the clean air act 84 Stat 1685 42 U S C 7412 or a facility subject to requirements of section 111 of part A of title I of the clean air act chapter 360 84 Stat 1683 42 U S C 7411 except that a category II facility that also meets the definition of a category I facility is a category I facility

(f) Category III facility means any fee subject facility that is not a category I or category II facility

(g) Clean air act means chapter 360 69 Stat 322 42 U S C 7401 to 7431 7470 to 7479 7491 to 7492 7501 to 7509a 7511 to 7515 7521 to 7525 7541 to 7545 7547 to 7550 7552 to 7554 7571 to 7574 7581 to 7590 7601 to 7612 7614 to 7617 7619 to 7622 7624 to 7627 7641 to 7642 7651 to 7651o 7661 to 7661f and 7671 to 7671q and regulations promulgated under the clean air act

(h) Emission means the emission of an air contaminant

(i) Farm operation has the meaning ascribed to it in the Michigan right to farm act Act No 93 of the Public Acts of 1981 being sections 286 471 to 286 474 of the Michigan Compiled Laws

(j) Fee subject air pollutant means particulates sulfur dioxide volatile organic compounds nitrogen oxides ozone lead and any pollutant regulated under section 111 or 112 of part A of title I of the clean air act chapter 360 84 Stat 1683 and 1685 42 U S C 7411 and 7412 or title III of the clean air act chapter 360 77 Stat 400 42 U S C 7601 to 7612 7614 to 7617 7619 to 7622 and 7624 to 7627

(k) Fee subject facility means the following sources

(i) Any major source as defined in 40 C F R 70 2

(ii) Any source including an area source subject to a standard limitation or other requirement under section 111 of part A of title I of the clean air act chapter 360 84 Stat 1683 42 U S C 7411 when the standard limitation or other requirement becomes applicable to that source

(iii) Any source including an area source subject to a standard limitation or other requirement under section 112 of part A of title I of the clean air act 84 Stat 1685 42 U S C 7412 when the standard limitation or other requirement becomes applicable to that source However a source is not a fee subject facility solely because it is subject to a regulation limitation or requirement under section 112(r) of part A of title I of the clean air act chapter 360 84 Stat 1685 42 U S C 7412

(iv) Any affected source under title IV

(v) Any other source in a source category designated by the administrator of the United States environmental protection agency as required to obtain an operating permit under title V when the standard limitation or other requirement becomes applicable to that source

(l) Fund means the emissions control fund created in section 5521

(m) General permit means a permit to install permit to operate authorized pursuant to rules promulgated under section 5505(6) or an operating permit under section 5506 for a category of similar sources processes or process equipment General provisions for issuance of general permits shall be provided for by rule

(n) Generally accepted agricultural and management practices has the meaning ascribed to it in Act No 93 of the Public Acts of 1981

(o) Major emitting facility means a stationary source that emits 100 tons or more per year of any of the following

(i) Particulates

(ii) Sulfur dioxides

(iii) Volatile organic compounds

(iv) Oxides of nitrogen

(p) Process means an action operation or a series of actions or operations at a source that emits or has the potential to emit an air contaminant

(q) Process equipment means all equipment devices and auxiliary components including air pollution control equipment stacks and other emission points used in a process

(r) Responsible official means for the purposes of signing and certifying as to the truth accuracy and completeness of permit applications monitoring reports and compliance certifications any of the following

(i) For a corporation a president secretary treasurer or vice president in charge of a principal business function or any other person who performs similar policy or decision making functions for the corporation or an authorized representative of that person if the representative is responsible for the overall operation of 1 or more manufacturing production or operating facilities applying for or subject to a permit under this part and either the facilities employ more than 250 persons or have annual sales or expenditures exceeding \$25 000 000 00 or if the delegation of authority to the representative is approved in advance by the department

(v) For a partnership or sole proprietorship a general partner or the proprietor

(vi) For a county or municipality or a state federal or other public agency either a principal executive officer or ranking elected official For this purpose a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency

(vii) For sources affected by the acid rain program under title IV the designated representative insofar as actions standards requirements or prohibitions under that title are concerned

(s) Schedule of compliance means for a source not in compliance with all applicable requirements of this part rules promulgated under this part and the clean air act at the time of issuance of an operating permit a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an applicable requirement and a schedule for submission of certified progress reports at least every 6 months Schedule of compliance means for a source in compliance with all applicable requirements of this part rules promulgated under this part and the clean air act at the time of issuance of an operating permit a statement that the source will continue to comply with these requirements With respect to any applicable requirement of this part rules promulgated under this part and the clean air act effective after the date of issuance of an operating permit the schedule of compliance shall contain a statement that the source will meet the requirements on a timely basis unless the underlying applicable requirement requires a more detailed schedule

(t) Source means a stationary source as defined in section 302(z) of title III of the clean air act 77 Stat 400 42 U S C 7602 and has the same meaning as stationary source when used in comparable or applicable circumstances under the clean air act A source includes all the processes and process equipment under common control that are located within a contiguous area or a smaller group of processes and process equipment as requested by the owner or operator of the source if in accordance with the clean air act

(u) Title IV means title IV of the clean air act pertaining to acid deposition control chapter 360 104 Stat 2584 42 U S C 7651 to 7651o

(v) Title V means title V of the clean air act chapter 360 104 Stat 2635 42 U S C 7661 to 7661f

Sec 5502 (1) Except as provided in subsection (2) the department shall not issue a permit to install or an operating permit to a municipal solid waste incinerator unless the municipal solid waste incinerator is located at least 1 000 feet from all of the following

- (a) Any residential dwelling
- (b) A public or private elementary or secondary school
- (c) A preschool facility for infants or children
- (d) A hospital
- (e) A nursing home

(2) Subsection (1) does not apply to a municipal solid waste incinerator that existed prior to June 15 1993 or to the modification alteration expansion including but not limited to the addition of 1 or more combustion units and any accompanying features or fixtures or retrofit of such a municipal solid waste incinerator after June 15 1993 regardless of whether the activity requires a permit

(3) For the purposes of this section a municipal solid waste incinerator existed prior to June 15 1993 if it was issued a permit to operate or a permit to install for installation construction modification alteration or retrofit prior to June 15 1993 unless it was denied a permit to operate prior to June 15 1993 A municipal solid waste incinerator also existed prior to June 15 1993 if it is located at a geographical site at which 1 or more incinerator units incinerated waste during the 6 months prior to June 15 1993

(4) By December 15 1995 the department shall promulgate rules pertaining to municipal solid waste siting setbacks from structures listed in subsection (1) Subsections (1) (2) and (3) apply only until December 15 1995

Sec 5503 The department may do 1 or more of the following

- (a) Promulgate rules to establish standards for ambient air quality and for emissions
- (b) Issue permits for the construction and operation of sources processes and process equipment subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this part rules promulgated under this part and the clean air act
- (c) In accordance with this part and rules promulgated under this part deny terminate modify or revoke and reissue permits for cause If an application for a permit is denied or is determined to be incomplete by the department the department shall state in writing with particularity the reason for denial or the determination of incompleteness and if applicable the provision of this part or a rule promulgated under this part that controls the decision
- (d) Compel the attendance of witnesses at proceedings of the department upon reasonable notice
- (e) Make findings of fact and determinations

- (f) Make modify or cancel orders that require in accordance with this part the control of air pollution
- (g) Enforce permits air quality fee requirements and the requirements to obtain a permit
- (h) Institute in a court of competent jurisdiction proceedings to compel compliance with this part rules promulgated under this part or any determination or order issued under this part
- (i) Enter and inspect any property as authorized under section 5526
- (j) Receive and initiate complaints of air pollution in alleged violation of this part rules promulgated under this part or any determination permit or order issued under this part and take action with respect to the complaint as provided in this part
- (k) Require reports on sources and the quality and nature of emissions including but not limited to information necessary to maintain an emissions inventory
- (l) Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution
- (m) Encourage voluntary cooperation by all persons in controlling air pollution and air contamination
- (n) Encourage the formulation and execution of plans by cooperative groups or associations of municipalities counties or districts or other governmental units industries and others who severally or jointly are or may be the source of air pollution for the control of pollution
- (o) Cooperate with the appropriate agencies of the United States or other states or any interstate or international agencies with respect to the control of air pollution and air contamination or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements
- (p) Conduct or cause to be conducted studies and research with respect to air pollution control abatement or prevention
- (q) Conduct and supervise programs of air pollution control education including the preparation and distribution of information relating to air pollution control
- (r) Determine by means of field studies and sampling the degree of air pollution in the state
- (s) Provide advisory technical consultation services to local communities
- (t) Serve as the agency of the state for the receipt of money from the federal government or other public or private agencies and the expenditure of that money after it is appropriated for the purpose of air pollution control studies or research or enforcement of this part
- (u) Do such other things as the department considers necessary proper or desirable to enforce this part a rule promulgated under this part or any determination permit or order issued under this part or the clean air act

Sec 5504 (1) Beginning on June 6 1991 or on the effective date of the rules promulgated under subsection (5) whichever is later a facility that incinerates medical waste shall not be operated unless the facility has been issued an operating permit by the department

(2) An application for an operating permit under subsection (1) shall be submitted in the form and contain the information required by the department The department shall issue an operating permit only if the facility is in compliance with this part and the rules promulgated under this part

(3) A permit issued under this section shall be valid for 5 years Upon expiration a permit may be renewed

(4) Within 2 years after the effective date of the rules promulgated under subsection (5) the department shall review all operating permits issued under this part for facilities that incinerate medical waste that were issued permits prior to the promulgation of the rules under subsection (5) If upon review the department determines that the facility does not meet the requirements of the rules promulgated under subsection (5) and cannot be retrofitted to comply with these rules the department shall issue an interim operating permit that is valid for 2 years only If the facility only needs retrofitting in order to comply with the rules the facility shall be granted an interim permit that is valid for 1 year only However in either case the facility shall comply with this part and all other rules promulgated under this part for the interim period An interim operating permit shall provide that if the facility is within 50 miles of another facility that is in compliance with the rules promulgated under subsection (5) the facility operating under the interim operating permit may receive only medical waste that is generated on the site of that facility at a facility owned and operated by the person who owns and operates that facility or at the private practice office of a physician who has privileges to practice at that facility if the facility is a hospital The department shall renew an operating permit for a facility only if the facility is in compliance with this part and the rules promulgated under this part

(5) The department shall promulgate rules to do both of the following

- (a) Regulate facilities that incinerate medical waste These rules shall cover at least all of the following areas
 - (i) Incinerator design and operation
 - (ii) Ash handling and quality

- (iii) Stack design
- (iv) Requirements for receiving medical waste from generators outside the facility
- (v) Air pollution control requirements
- (vi) Performance monitoring and testing
- (vii) Record keeping and reporting requirements
- (viii) Inspection and maintenance

(b) Regulate the operation of facilities that incinerate only pathological waste and limited other permitted solid waste

(6) A permit issued under this section may allow a facility to receive pathological or medical wastes that were generated off the site of the facility. However, the owner or operator of the facility shall keep monthly records of the source of the wastes and the approximate volume of the wastes received by the facility.

(7) As used in this section

(a) Medical waste means that term as it is defined in part 138 of the public health code Act No. 368 of the Public Acts of 1978 being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

(b) Pathological waste means that term as it is defined in part 138 of the public health code.

Sec. 5505 (1) Except as provided in subsection (4), a person shall not install, construct, reconstruct, relocate, alter, or modify any process or process equipment without first obtaining from the department a permit to install or a permit to operate authorized pursuant to rules promulgated under subsection (6) if applicable, authorizing the conduct or activity.

(2) The department shall promulgate rules to establish a permit to install program to be administered by the department. Except as provided in subsections (4) and (5), the permit to install program is applicable to each new or modified process or process equipment that emits or may emit an air contaminant.

(3) A permit to install may authorize the trial operation of a process or process equipment to demonstrate that the process or process equipment is operating in compliance with the permit to install issued under this section.

(4) The department may promulgate rules to provide for the issuance of general permits and to exempt certain sources, processes, or process equipment or certain modifications to a source, process, or process equipment from the requirement to obtain a permit to install or a permit to operate authorized pursuant to rules promulgated under subsection (6). However, the department shall not exempt any new source or modification that would meet the definition of a major source or major modification under parts C and D of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(5) The department may issue a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6) if applicable, that authorizes installation, operation, or trial operation as applicable of a source, process, or process equipment at numerous temporary locations. Such a permit shall include terms and conditions necessary to assure compliance with all applicable requirements of this part, the rules promulgated under this part, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, emission limits, and increment and visibility requirements pursuant to part C of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479, and 7491 to 7492, at each location, and shall require the owner or operator of the process, source, or process equipment to notify the department at least 10 days in advance of each change in location.

(6) The department may promulgate rules to establish a program that authorizes issuance of nonrenewable permits to operate for sources, processes, or process equipment that are not subject to the requirement to obtain a renewable operating permit pursuant to section 5506.

(7) The failure of the department to act on an administratively and technically complete application for a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6) in accordance with a time requirement established pursuant to this part, rules promulgated under this part, or the clean air act may be treated as a final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department on the application without additional delay.

(8) Any person may appeal the issuance or denial by the department of a permit to install, a general permit, or a permit to operate authorized in rules promulgated under subsection (6) for a new source in accordance with section 631 of the revised judiciary act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws. Petitions for review shall be the exclusive means to obtain judicial review of such a permit and shall be filed within 90 days after the final permit action, except that a petition may be filed after that deadline only if the petition is based solely on grounds arising after the deadline for judicial review. Such a petition shall be filed no later than 90 days after the new grounds for review arise. Appeals of permit actions for existing sources shall be in accordance with section 5506(14).

Sec 5506 (1) After the date established pursuant to subsections (3) and (4)(n) if an application for an operating permit is required to be submitted a person shall not operate a source that is required to obtain an operating permit under section 502a of title V of the clean air act chapter 360 104 Stat 2641 42 U S C 7661a and which is thereby subject to the requirements of this section except in compliance with an operating permit issued by the department A permit issued under this section does not convey a property right or an exclusive privilege

(2) If a person who owns or operates a source has submitted a timely and administratively complete application for an operating permit including an application for renewal of an operating permit but final action has not been taken on the application the source's failure to have an operating permit is not a violation of subsection (1) unless the delay in final action is due to the failure of the person owning or operating the source to submit information required or requested to process the application A source required to have a permit under this section is not in violation of subsection (1) before the date on which the source is required to submit an application pursuant to subsections (3) and (4)(n) Except as otherwise provided in subsection (5) expiration of an operating permit terminates a person's right to operate a source This subsection does not waive an applicable requirement to obtain a permit under section 5505

(3) A person who owns or operates a source required to have an operating permit pursuant to this section shall submit to the department within 12 months after the date on which the source becomes subject to the requirement to obtain a permit under subsection (1) or on an earlier date specified by rule a compliance plan and an administratively complete application for an operating permit signed by a responsible official who shall certify the accuracy of the information submitted The department shall approve or disapprove a timely and administratively complete application and shall issue or deny the operating permit within 18 months after the date of receipt of the compliance plan and an administratively complete operating application except that the department shall establish a phased schedule for acting on the timely and administratively complete operating permit applications submitted within the first full year after the operating permit program becomes effective The schedule shall assure that at least 1/3 of the applications will be acted on by the department annually over a period not to exceed 3 years after the operating permit program becomes effective

(4) The department shall promulgate rules to establish an operating permit program required under title V to be administered by the department This permit program shall include all of the following and at a minimum shall be consistent with the requirements of title V

(a) Provisions defining the categories of sources that are subject to the operating permit requirements of this section Operating permits under this section are not required for any source category that is not required to obtain an operating permit under section 502(a) of the clean air act title V of chapter 360 104 Stat 2641 42 U S C 7661a

(b) Requirements for operating permit applications including standard application forms the minimum information that must be submitted with an administratively complete application and criteria for determining in a timely fashion the administrative completeness of an application

(c) A requirement that each operating permit application include a compliance plan describing how the source will comply with all applicable requirements of this part rules promulgated under this part and the clean air act

(d) Provisions for inspection entry monitoring record keeping and reporting applicable to each operating permit issued under this section

(e) Requirements and provisions for expeditiously determining when applications are technically complete for processing applications

(f) Provisions for transmitting copies of each operating permit application and proposed and final permits including each modification or renewal to the administrator of the United States environmental protection agency and for notifying all other states whose air quality may be affected and are contiguous to this state and for providing an opportunity for those states to provide written recommendations on each operating permit application and proposed permit pursuant to the requirements of section 505(a) and (d) of the clean air act title V of chapter 360 104 Stat 2643 42 U S C 7661d

(g) Provisions for issuance of operating permits and in accordance with this part and rules promulgated under this part for denial termination modification revocation renewal and revision of operating permits for cause

(h) Provisions to allow for changes within a permitted source without a revision to the operating permit if the changes are not modifications under any provision of title I of the clean air act chapter 360 77 Stat 392 42 U S C 7401 to 7431 7470 to 7479 7491 to 7492 7501 to 7509a and 7511 to 7515 and the changes do not exceed the emissions allowed under the operating permit if the owner or operator of the source provides the department and the administrator of the United States environmental protection agency with written notification at least 7 days in advance of the proposed changes However the department may provide a different time frame for an emergency as defined in section 5527 The emissions allowed under the operating permit include any enforceable emission limitation standard or other condition including a work practice standard determined by the department to be required by an applicable requirement of this part rules promulgated under this part or the clean air act or that establishes an emission limit or an enforceable emissions cap that the source has assumed to avoid an applicable requirement of this part rules promulgated under this part or the clean air act to which the source would otherwise be subject These provisions shall include the following

- (i) Changes that contravene an express permit condition. Such changes shall not include changes that would violate any applicable requirement of this part, the rules promulgated under this part, or the clean air act, or changes that would contravene any applicable requirement for monitoring, record keeping, reporting, or compliance certification.
- (ii) Changes that involve emissions trading if trading has been approved by the administrator of the United States environmental protection agency as a part of the state implementation plan.
- (i) Provisions to allow changes within a permitted source pursuant to 40 C.F.R. 70.4(b)(14) that are not addressed or prohibited by the operating permit, if all of the following criteria are met:
- (i) The change meets all applicable requirements of this part, the rules promulgated under this part, and the clean air act and does not violate any existing emission limitation, standard, or other condition of the operating permit.
- (ii) The change does not affect any applicable requirement of the acid rain program under title IV and is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.
- (iii) The source provides prompt written notice to the department and the administrator of the United States environmental protection agency, except for changes that qualify as insignificant processes or activities pursuant to section 5507(2).
- (j) Provisions to allow changes within a permitted source pursuant to 40 C.F.R. 70.7(e)(2) that may be made immediately after the source files an application with the department, if all of the following criteria are met:
- (i) The change does not violate any applicable requirement of this part, the rules promulgated under this part, or the clean air act.
- (ii) The change does not significantly affect an existing monitoring, record keeping, or reporting requirement in the operating permit.
- (iii) The change does not require or modify a case-by-case determination of an emission limitation or other standard or a source-specific determination for temporary sources of ambient air impacts, or a visibility or increment analysis.
- (iv) The change does not seek to establish or modify an emission limitation, standard, or other condition of the operating permit that the source has assumed to avoid an applicable requirement of this part, the rules promulgated under this part, or the clean air act, to which the source would otherwise be subject.
- (v) The change is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.
- (k) Provisions for expeditiously handling administrative changes within a permitted source pursuant to 40 C.F.R. 70.7(d). These changes are limited to the following:
- (i) Correction of a typographical error.
- (ii) A change in the name, address, or phone number of any person identified in the permit, or other similar minor administrative change.
- (iii) A change that requires more frequent monitoring or reporting by the person owning or operating the source.
- (iv) A change in ownership or operational control of the source, if the department determines that no other change in the operating permit is necessary, and if a written agreement containing a specific date for transfer of operating permit responsibility, coverage, and liability between the current and new owners or operators has been submitted to the department.
- (v) Incorporation into the operating permit of the requirements of a permit to install issued pursuant to section 5505, if the permit to install has met procedural requirements that are substantially equivalent to the requirements of this section, including the content of the permit, and the provisions for participation by the United States environmental protection agency and other affected states and participation of the public under section 5511.
- (l) Provisions for including reasonably anticipated alternate operating scenarios in an operating permit pursuant to 40 C.F.R. 70.6(a)(9).
- (m) Provisions to allow for the trading of emission increases and decreases within a permitted source solely for the purpose of complying with an enforceable emissions cap that is established in the permit pursuant to 40 C.F.R. part 70.4(b)(12)(iii), independent of any otherwise applicable requirements of this part, the rules promulgated under this part, or the clean air act.
- (n) A schedule of the dates when submittal of an application for an operating permit is required for the source categories subject to this section and a phased schedule for taking final action on those applications.
- (5) Each operating permit issued under this section shall be for a fixed term not to exceed 5 years. A permit applicant shall submit a timely application for renewal of an operating permit at least 6 months, but not more than 18 months, prior to the expiration of the term of the existing operating permit. If a timely and administratively complete application is submitted, but the department has not approved or denied the renewal permit before the expiration of the term of the existing permit, the existing permit shall not expire until the renewal permit is approved or denied.

(6) Each operating permit issued pursuant to this section shall include those enforceable emissions limitations and standards applicable to the source if any and other conditions necessary to assure compliance with the applicable requirements of this part rules promulgated under this part and the clean air act a schedule of compliance and a requirement that the owner or operator of a source submit to the department at least every 6 months a report summarizing the results of any required monitoring Each operating permit issued pursuant to this section shall also include a severability clause to ensure the continued validity of the unchallenged terms and conditions of the operating permit if any portion of a permit is challenged

(7) The department shall require revision of an operating permit prior to the expiration of the permit consistent with section 5506(4)(g) for any of the following reasons or to do any of the following

(a) To incorporate new applicable emissions limitations standards or rules promulgated under this part or regulations promulgated under the clean air act issued or promulgated after the issuance of the permit if 3 or more years remain in the term of the permit A revision shall occur as expeditiously as practicable but not later than 18 months after the promulgation of the emission limitation standard rule or regulation A revision is not required if the effective date of the emission limitation standard rule or regulation is after the expiration date of the permit

(b) To incorporate new applicable standards and requirements of the acid rain program under title IV into the operating permits of sources affected by that program

(c) If the department determines that the permit contains a material mistake that information required by this part rules promulgated under this part or the clean air act was omitted or that an inaccurate statement was made in establishing the emissions limitations standards or conditions of the permit

(d) If the department determines that the permit must be revised to assure compliance with the applicable requirements of this part rules promulgated under this part or the clean air act

(8) At the request of the permit holder a permit revision under subsection (7) may be treated as a permit renewal if it complies with the applicable requirements for permit renewals of this part rules promulgated under this part and the clean air act

(9) A person who owns or operates a source subject to an operating permit issued pursuant to this section shall promptly report to the department any deviations from the emissions limitations standards or conditions of the permit and shall annually certify to the department that the source has been and is in compliance with all emissions limitations standards and conditions of the permit except for those deviations reported to the department during the reporting period A responsible official shall sign all reports submitted pursuant to this subsection

(10) The department shall not approve or otherwise issue any operating permit for a source required to obtain an operating permit pursuant to section 502(a) of title V of the clean air act chapter 360 104 Stat 2641 42 U S C 7661a if the administrator of the United States environmental protection agency objects to issuance of the permit in a timely manner pursuant to section 505(b) of title V of the clean air act chapter 360 104 Stat 2643 42 U S C 7661d

(11) Each operating permit shall contain a statement that compliance with an operating permit issued in accordance with this section is compliance with subsection (1) In addition the statement shall provide that compliance with the operating permit is compliance with other applicable requirements of this part rules promulgated under this part and the clean air act as of the date of permit issuance if either of the following requirements is met

(a) The permit specifically includes the applicable requirement

(b) The permit includes a determination that any other requirements that are specifically referred to in the determination are not applicable

(12) An application for an operating permit may include a request that the permit include reference to specific requirements of this part rules promulgated under this part or the clean air act that the person owning or operating the source believes are not applicable to the source The operating permit shall include a determination of applicability for the requirements included in the request

(13) Subsection (11) does not apply to a change at a source made pursuant to subsection (4)(h) (i) or (j) Subsection (11) does not apply to a change in a source made pursuant to subsection (4)(k) until the change is incorporated into the operating permit

(14) A person who owns or operates an existing source that is required to obtain an operating permit under this section a general permit or a permit to operate authorized under rules promulgated under section 5505(6) may file a petition with the department for review of the denial of his or her application for such a permit the revision of any emissions limitation standard or condition or a proposed revocation of his or her permit This review shall be conducted pursuant to the contested case and judicial review procedures of 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 Any person may appeal the issuance or denial of an operating permit in accordance with section 631 of the revised judicature act of 1961 Act No 236 of the Public Acts of 1961 being section 600 631 of the Michigan Compiled Laws A petition for judicial review is the exclusive means of obtaining judicial review of a permit and shall be filed within 90 days after the final permit action Such a petition may be filed after that deadline only if it is based solely on grounds arising after the

deadline for judicial review and if the appeal does not involve applicable standards and requirements of the acid rain program under title IV. Such a petition shall be filed within 90 days after the new grounds for review arise.

(15) The failure of the department to act on a technically and administratively complete application or renewal application for an operating permit in accordance with a time requirement established pursuant to subsection (3) and rules promulgated under subsection (4)(n) is final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department without additional delay on the application or renewal application.

(16) The department may, after notice and opportunity for public hearing pursuant to the requirements of section 5511, issue a general permit covering numerous similar sources, processes or process equipment, or a permit that authorizes operation of a source at numerous temporary locations. A general permit or a permit that authorizes operation of a source at numerous temporary locations shall comply with all requirements applicable to operating permits pursuant to this section. A permit that authorizes operation of a source at numerous temporary locations shall include terms and conditions necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, applicable emission limits, and applicable increment and visibility requirements pursuant to part C of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479 and 7491 to 7492, at each authorized location and shall require the owner or operator of the source to notify the department at least 10 days in advance of each change in location. A source covered by a general permit is not relieved from the obligation to file an application for a permit pursuant to subsections (3) and (5).

(17) As used in this section, technically complete means, for the purposes of an application for an operating permit required by this section, all of the information required for an administratively complete application and any other specific information requested by the department that may be necessary to implement and enforce all applicable requirements of this part, the rules promulgated under this part, or the clean air act, or to determine the applicability of those requirements. An application is not technically complete if it omits information needed to determine the applicability of any lawful requirement or to enforce any lawful requirement or any information necessary to evaluate the amount of the annual air quality fee for the source.

Sec. 5507. (1) An administratively complete application means an application for an operating permit required in section 5506 that is submitted on standard application forms provided by the department and includes all of the following:

(a) Source identifying information, including company name and address, owner's name, and the names, addresses, and telephone numbers of the responsible official and permit contact person.

(b) A description of the source's processes and products using the applicable standard industrial classification codes.

(c) A description of all emissions of air contaminants emitted by the source that are regulated under this part, the rules promulgated under this part, and the clean air act.

(d) A schedule for submission of annual compliance certifications during the permit term, unless more frequent certifications are specified by an underlying applicable requirement.

(e) A certification by a responsible official of the truth, accuracy, and completeness of the application. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete.

(f) For each process, except for any insignificant processes listed by the department pursuant to subsection (2), all of the following:

(i) A description of the process using the standard classification code.

(ii) Citation and description of all applicable requirements, including any applicable test method for determining compliance with each applicable requirement.

(iii) Actual and allowable emission rates in tons per year and in terms that are necessary to establish compliance with all applicable emission limitations and standards, including all calculations used to determine those emission rates. Actual emission information shall be used for verifying the compliance status of the process with all applicable requirements. Actual emission information shall not be used, except at the request of the permit applicant, to establish new emission limitations or standards or to modify existing emission limitations or standards, unless such limitation or standard is required to assure compliance with a specific applicable requirement.

(iv) Information on fuels, fuel use, raw materials, production rates, and operating schedules, to the extent it is needed to determine or regulate emissions.

(v) Limitations on source operation affecting emissions or any work practice standards, if applicable.

(vi) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vii) Identification and description of all emission points in sufficient detail to establish the basis for fees or to determine applicable requirements.

(viii) Other information required by any applicable requirement

(ix) A statement of the methods proposed to be used for determining compliance with the applicable requirements under the operating permit including a description of monitoring record keeping and reporting requirements and test methods

(x) An explanation of any proposed exemptions from otherwise applicable requirements

(xi) Information necessary to define any alternative operating scenarios that are to be included in the operating permit or to define permit terms and conditions implementing section 5506(4)(l)

(xii) A compliance plan

(xiii) A schedule of compliance

(2) The department shall promulgate a list of insignificant processes or activities which are exempt from all or part of the information requirements of this section. For any insignificant processes or activities that are exempt because of size or production rate the application shall include a list of the insignificant processes and activities.

(3) As used in section 5506 and this section, compliance plan means a description of the compliance status of the source with respect to all applicable requirements for each process as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet these requirements on a timely basis.

(c) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

Sec 5508 (1) As used in this section, section 112 means section 112 of part A of title I of the clean air act, 84 Stat 1685, 42 U.S.C. 7412.

(2) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(d) or for which a control technology determination has been made pursuant to section 112(g) or 112(j) is not subject to the best available control technology for toxics (T BACT) requirements of rules promulgated under this part for any of the following:

(a) The hazardous air pollutants listed in section 112(b).

(b) Other toxic air contaminants that are volatile organic compounds if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also volatile organic compounds.

(c) Other toxic air contaminants that are particulate matter if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also particulate matter.

(d) Other toxic air contaminants that are similar to the compounds controlled by the standard promulgated under section 112(d) or controlled by the determination made under section 112(g) or 112(j).

(3) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(f) is not subject to the health based screening level requirements in rules promulgated under this part for the hazardous air pollutants listed in section 112(b).

Sec 5509 (1) As used in this section, malfunction means any sudden failure of a source, air pollution control equipment, process, or process equipment to operate in a normal or usual manner. A malfunction exists only for the time reasonably necessary to implement corrective measures. Malfunction does not include failures arising as a result of substandard maintenance that does not conform to industry standards, or periods when the source is being operated carelessly or in a manner that is not consistent with good engineering practice or judgment.

(2) By May 13, 1995, the department shall promulgate general rules and may promulgate rules that pertain to specific categories of sources that are consistent with, but are not limited to, the requirements of the clean air act to establish standards of performance, emission standards, and requirements for monitoring, record keeping, and reporting that will apply during start up, shutdown, and malfunction of a source, process, or process equipment. The rules shall require that during periods of start up, shutdown, and malfunction, the operator shall, to the extent reasonably possible, operate a source, process, or process equipment in a manner consistent with good air pollution control practices for minimizing emissions.

(3) During periods of start up, shutdown, or malfunction of a source, process, or process equipment, the emission of an air contaminant in excess of a standard or emission limitation, or a violation of any other requirement established by this part, a rule promulgated under this part, or specified in a permit to install, a permit to operate authorized pursuant to rules promulgated under section 5505(6), or an operating permit under section 5506, is prohibited unless the following applicable requirements and any applicable rules promulgated pursuant to subsection (2) are complied with:

(a) At all times including periods of start up shutdown and malfunction owners and operators shall to the extent practicable operate a source process or process equipment in a manner consistent with good air pollution control practice for minimizing emissions

(b) Notice of a malfunction of a source process or process equipment that results in excess emissions of an air contaminant shall be provided to the department if the malfunction results in excess emissions that continue for more than 2 hours Notice by any reasonable means includes but is not limited to oral telephonic or electronic notice and shall be provided as soon as reasonably possible but no later than 2 business days after the discovery of the malfunction Written notice of malfunction shall be provided within 10 days after the malfunction has been corrected Written notice shall specify all of the following

- (i) The cause of the malfunction if known
- (ii) The date time location and duration of the malfunction
- (iii) The actions taken to correct and prevent the reoccurrence of the malfunction
- (iv) Actions taken to minimize emissions during the malfunction if any
- (v) The type and where known or where it is reasonably possible to estimate the quantity of any excess emissions of air contaminants
- (vi) Contemporaneous operational logs and continuous emission monitoring information where continuous emission monitoring is required by the clean air act or rules promulgated under this part or is specified as a condition of a permit issued under this part or an order entered under this part

(c) The malfunctioning source process or process equipment shall have been maintained and operated in a manner consistent with the applicable provisions of a malfunction abatement plan approved under this part if any

(d) During start up or shutdown the source process or process equipment shall be operated in accordance with applicable start up or shutdown provisions of its installation permit nonrenewable permit to operate or operating permit if any

(4) Notwithstanding the provisions of subsection (3) the department may take action under section 5518(1) to immediately discontinue and take action to contain an imminent and substantial endangerment to public health safety or welfare

(5) Notwithstanding the provisions of subsection (3) enforcement action may be taken against a person who violates section 5531(4) (5) or (6)

(6) Subsections (3) to (5) do not apply upon the effective date of the general rules required under subsection (2) or November 13 1996 whichever is first

Sec 5510 In accordance with this part and rules promulgated under this part the department may after notice and opportunity for public hearing deny or revoke a permit issued under this part if any of the following circumstances exist

(a) Installation modification or operation of the source will violate this part rules promulgated under this part or the clean air act unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order

(b) Installation construction reconstruction relocation alteration or operation of the source presents or may present an imminent and substantial endangerment to human health safety or welfare or the environment

(c) The person applying for the permit makes a false representation or provides false information during the permit review process

(d) The source has not been installed constructed reconstructed relocated altered or operated in a manner consistent with the application for a permit or as specified in a permit

(e) The person owning or operating the source fails to pay an air quality fee assessed under this part

(f) The person proposes a major offset source or the owner or operator of a proposed major offset modification that owns or operates another source in the state that has the potential to emit 100 tons or more per year of any air contaminant regulated under the clean air act and that source is in violation of this part rules promulgated under this part the clean air act or a permit or order issued under this part unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order

Sec 5511 (1) The department shall establish and maintain a list of all applications for permits submitted pursuant to sections 5505 and 5506 The list shall report the status of each application The information on the list shall be updated by the department on a monthly basis The department shall send a copy of the pertinent sections of the list to the chairperson of the county board of commissioners of each county Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying handling and mailing The department shall make the list available at district offices selected by the department The department may also

develop an electronic data base that includes the capability of making this list available to the public. This list shall include all of the following information:

- (a) The name of the permit applicant
- (b) The street address, if available, the county, and the municipality in which the source is located or proposed to be located
- (c) The type of application, such as installation, operation, renewal, or general permit
- (d) The date the permit application was received by the department
- (e) The date when the permit application is determined to be administratively complete, if applicable
- (f) A brief description of the source, process, or process equipment covered by the permit application
- (g) Brief pertinent comments regarding the progress of the permit application, including the dates of public comment periods and public hearings, if applicable

(2) The department shall establish and maintain a list of all proposed consent order public notices. This information shall be updated by the department on a monthly basis. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. This list shall include all of the following information:

- (a) The name of the parties to the proposed consent order
- (b) The street address, if available, and the county and municipality in which the source is located
- (c) A brief description of the source
- (d) A brief description of the alleged violation to be resolved by the proposed consent order
- (e) A brief description of the respondent's position regarding the alleged violation if the respondent requests such inclusion and supplies to the department a brief statement of the respondent's position regarding the alleged violation

(3) The department shall not issue a permit to install or a nonrenewable permit to operate pursuant to section 5505 for a major source or for a major modification under title I of the clean air act, chapter 360.77 Stat. 392.42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, or issue, renew, or significantly modify any operating permit issued under section 5506, or enter into a consent order, without providing public notice, including offering an opportunity for public comment and a public hearing on the draft permit or proposed consent order. In addition, the department shall not issue a permit for which there is a known public controversy without providing public notice, including an opportunity for public comment and public meeting. For the purposes of an operating permit issued under section 5506, a significant modification does not include any modifications to a permit made pursuant to section 5506(4)(h), (i), (j), or (k). For a general permit issued pursuant to section 5505(4) or section 5506(16), public notice and opportunity for public comment and a public hearing shall only be provided before the base general permit is approved, not as individual sources apply for coverage under that general permit. Public notice and an opportunity for public comment and a public hearing as required under this section shall be provided as follows:

(a) Public notice shall be provided by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice, and by other means determined to be necessary by the department to assure adequate notice to the public. Notice shall also be provided to persons on a mailing list developed by the department, including those persons who request in writing to be on that list, and to any other person who requests in writing to be notified of a permit action involving a specific source.

(b) The notice shall identify the source, the name and address of the responsible official, the mailing address of the department, the activity or activities involved in the proposed permit action or consent order, the emissions change involved in any significant permit modification, the name, address, and telephone number of a representative of the department from whom interested persons may obtain additional information, including copies of the draft permit or proposed consent order, the application, all relevant supporting material, and any other materials available to the department that are relevant to the permit or consent order decision, a brief description of the comment procedures required by this section, and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

(c) The department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(d) The department shall keep a record of the commenters and the issues raised during the public comment period and public hearing, if held, and these records shall be available to the public.

Sec. 5512. (1) The department shall promulgate rules for purposes of doing all of the following:

- (a) Controlling or prohibiting air pollution
- (b) Complying with the clean air act

- (c) Controlling any mode of transportation that is capable of causing or contributing to air pollution
 - (d) Reviewing proposed locations of stationary emission sources
 - (e) Reviewing modifications of existing emission sources
 - (f) Prohibiting locations or modifications of emission sources that impair the state's ability to meet federal ambient air standards
 - (g) Establishing suitable emission standards consistent with ambient air quality standards established by the federal government and factors including but not limited to conditions of the terrain wind velocities and directions land usage of the region and the anticipated characteristics and quantities of potential air pollution sources This part does not prohibit the department from denying or revoking a permit to operate a source process or process equipment that would adversely affect human health or other conditions important to the life of the community
 - (h) Implementing sections 5505 and 5506
- (2) Unless otherwise provided in this part each rule permit or administrative order promulgated or issued under this part prior to November 13 1993 shall remain in effect according to its terms unless the rule or order is inconsistent with this part or is revised amended or repealed

Sec 5513 Notwithstanding any other provision of this part or the rules promulgated under this part car ferries having the capacity to carry more than 110 motor vehicles and coal fueled trains used in connection with tourism or an historical museum or carrying works of art or items of historical interest are not subject to regulation under this part

Sec 5514 A congressionally chartered patriotic organization that disposes of an unserviceable flag of the United States by burning that flag is not subject to regulation or penalty for violating a state law or local ordinance pertaining to open burning of materials or substances

Sec 5515 (1) If the department believes that a person is violating this part a rule promulgated under this part a permit issued under this part or a determination other than an order issued under this part the department shall make a prompt investigation If after this investigation the department finds that a violation of this part a rule promulgated under this part a permit issued under this part or a determination other than an order issued under this part exists the department shall attempt to enter into a voluntary agreement with the person

(2) If the department believes that a person is violating an order issued under this part the department shall make a prompt investigation If after this investigation the department finds that a person has failed to comply with the terms of an order issued under this part the department may attempt to enter into a voluntary agreement with the person

(3) If a voluntary agreement is not entered into under subsection (1) the department may issue an order requiring a person to comply with this part a rule promulgated under this part a determination made under this part or a permit issued under this part If the department issues an order it shall be accompanied by a statement of the facts upon which the order is based

(4) A person aggrieved by an order issued under subsection (3) may file a petition for a contested case hearing pursuant to 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 A petition shall be submitted to the department within 30 days of the effective date of the order The department shall schedule the matter for hearing within 30 days of receipt of the petition for a contested case hearing A final order or determination of the department upon the matter following the hearing is conclusive unless reviewed in accordance with Act No 306 of the Public Acts of 1969 in the circuit court for the county of Ingham or for the county in which the person resides

Sec 5516 (1) A public hearing with reference to pollution control may be held before the department Persons designated to conduct the hearing shall be described as presiding officers and shall be disinterested and technically qualified persons

(2) A copy of each permit permit application order compliance plan and schedule of compliance emissions or compliance monitoring report sample analysis compliance certification or other report or information required under this part rules promulgated under this part or permits or orders issued under this part shall be available to the public to the extent provided by the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

(3) A person whose activities are regulated under this part may designate a record or other information or a portion of a record permit application or other information furnished to or obtained by the department or its agents as being only for the confidential use of the department The department shall notify the person asserting confidentiality of a request for public records under section 5 of the freedom of information act Act No 442 of the Public Acts of 1976 being section 15 235 of the Michigan Compiled Laws the scope of which includes information that has been designated by the regulated person as being confidential The person asserting confidentiality has 25 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because

the information is a trade secret or secret process or is production commercial or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained and make available information not otherwise publicly available The department shall grant the request for the information unless the person regulated under this part demonstrates to the satisfaction of the department that the information should not be disclosed If there is a dispute between the person asserting confidentiality and the person requesting information under Act No 442 of the Public Acts of 1976 the department shall make the decision to grant or deny the request After the department makes a decision to grant a request the information requested shall not be released until 8 business days after the regulated person's receipt of notice of the department's decision This does not prevent the use of the information by the department in compiling or publishing analyses or summaries relating to ambient air quality if the analyses or summaries do not identify the person or reveal information which is otherwise confidential under this section This section does not render data on the quantity composition or quality of emissions from any source confidential Data on the amount and nature of air contaminants emitted from a source shall be available to the public

Sec 5517 Application for relief from a rule promulgated by the department shall be made by petition to the circuit court for the county of Ingham or for the county in which the petitioner resides The petition shall be verified as in a civil action Each petition shall contain a plain and concise statement of the material facts on which the petitioner relies shall set forth the rule or part of the rule that the petitioner claims is unreasonable or prejudicial to the petitioner and shall specify the grounds for the claim The petition may be accompanied by affidavits or other written proof and shall demand the relief to which the petitioner alleges he or she is entitled in the alternative or otherwise The petition may be made by 1 or more persons jointly or severally who are aggrieved by a rule whether or not the petitioner is or was a party to the proceeding in which the rule was promulgated by the department

Sec 5518 (1) If the department finds that a person is discharging or causing to be discharged into the atmosphere directly or indirectly an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health safety or welfare or to the environment and it appears to be prejudicial to the interests of the people of the state to delay action the department shall notify the person by written notice that he or she must immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment or both The written notice shall specify the facts that are the basis of the allegation Within 7 days the department shall provide the person the opportunity to be heard and to present any proof that the discharge does not constitute an imminent and substantial endangerment to the public health safety or welfare or to the environment

(2) Notwithstanding any other provision of this part upon receipt of evidence that a person is discharging or causing to be discharged into the atmosphere directly or indirectly an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health safety or welfare or to the environment and it appears to be prejudicial to the interests of the people of the state to delay action the attorney general may bring suit on behalf of the state in the appropriate circuit court to immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment or both

(3) An order issued by the department under subsection (1) is effective upon issuance and shall remain in effect for a period of not more than 7 days unless the attorney general brings a civil action to restrain the alleged endangerment pursuant to subsection (2) or section 5530 before the expiration of that period If the attorney general brings such an action within the 7 day period the order issued by the department shall remain in effect for an additional 7 days or such other period as is authorized by the court in which the action is brought

(4) Prior to taking an action under subsection (1) the department shall attempt to notify the emergency management coordinator for the county in which the source is located who is appointed pursuant to the emergency management act Act No 390 of the Public Acts of 1976 being sections 30 401 to 30 420 of the Michigan Compiled Laws

Sec 5519 (1) By March 15 of each year through March 15 1994 the owner or operator of a major emitting facility shall submit information regarding the facility's emissions to the department pursuant to the emission inventory system established in rules promulgated under this part

(2) If the owner or operator of a major emitting facility has not submitted the information required under subsection (1) by April 15 the department shall use the previous year's emission data for purposes of the emission inventory system and shall assess the owner or operator a penalty The penalty shall be 5% of what the owner's or operator's bill for that major emitting facility would be under section 5520 using the previous year's emission data for each month the information is late up to a maximum penalty of 25% of this amount A penalty assessed under this section shall be collected at the time emission fees are collected under section 5520

(3) Emissions data that the department receives after April 15 of each year shall be entered into the emission inventory system when the data are quality assured

Sec 5520 (1) For state fiscal years ending September 30 1993 and September 30 1994 the owner or operator of a major emitting facility shall pay to the department an emission fee of \$3 00 for each ton of particulates sulfur dioxides

volatile organic compounds and oxides of nitrogen that the facility emits up to 4 000 tons maximum for each pollutant listed in this subsection. This fee shall be based upon actual emissions as determined by the most recent calendar year for which quality assured data from the emission inventory system as provided in rules promulgated under this part are available. The department shall forward money collected pursuant to this subsection to the state treasurer for deposit into the clean air act implementation account within the fund.

(2) In addition to the emission fee provided in subsection (1) for state fiscal years ending September 30 1993 and September 30 1994 the owner or operator of a major emitting facility shall pay to the department an emission fee of \$3 00 for each ton of particulates sulfur dioxides volatile organic compounds and oxides of nitrogen that the facility emits up to 4 000 tons maximum for each pollutant listed in this subsection. This fee shall be based upon actual emissions as determined by the most recent calendar year for which quality assured data from the emission inventory system as provided in rules promulgated under this part are available. The department shall forward money collected pursuant to this subsection to the state treasurer for deposit into the permit review and urban airshed study account within the fund.

(3) The department shall provide the owner or operator of each major emitting facility a bill for the amount of the emission fees the facility owes under this section and any penalty assessed under section 5519. The bill shall be for emissions during the most recent calendar year for which quality assured data from the emission inventory system are available. The owner or operator of the major emitting facility shall pay the amount due within 45 days of the date of the bill. If the owner or operator of the major emitting facility fails to submit the amount due within this time period the department shall assess the owner or operator a penalty of 5% of the amount of unpaid emission fees for each month that the payment is overdue up to a maximum penalty of 25% of the total emission fees owed.

(4) The attorney general may bring an action for the collection of the fees imposed under this section and any penalty assessed under this section or section 5519.

Sec 5521 (1) The emissions control fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

(3) Upon the expenditure or appropriation of funds raised through fees in this part for any purpose other than those specifically listed in this part authorization to collect fees under this part is suspended until such time as the funds expended or appropriated for purposes other than those listed in this part are returned to the emissions control fund.

(4) The state treasurer shall establish within the fund a clean air act implementation account and a permit review and urban airshed study account.

(5) For the state fiscal years ending September 30 1993 and September 30 1994 the department shall expend money from the fund upon appropriation only for the following purposes:

(a) Money in the clean air act implementation account shall be used for 1 or more of the following:

(i) Developing and implementing requirements of Public Law 101 549 104 Stat 2399 commonly referred to as the clean air act amendments of 1990.

(ii) Emissions and ambient air monitoring.

(iii) Audits and inspections of source operated monitoring programs.

(iv) Preparing generally applicable rules to implement requirements of Public Law 101 549 104 Stat 2399 commonly referred to as the clean air act amendments of 1990.

(v) Modeling analyses or demonstrations.

(vi) Preparing inventories and tracking emissions.

(b) Money in the permit review and urban airshed study account shall be used for both of the following:

(i) Not more than \$545 000 00 to provide grants for local air pollution programs that collect data for the urban airshed model.

(ii) To process permit applications pursuant to this part until such time that all permit applications received by the department are being processed in a timely manner. When permit applications under this part are being processed in a timely manner money in the permit review and urban airshed study account that is not allocated for grants under subparagraph (i) shall be used for the purposes described in subdivision (a) unless the department recommends and the appropriations committees of the senate and house of representatives approve continued use of this money or a portion of this money to process permit applications.

(6) Beginning October 1 1994 and thereafter money shall be expended from the fund upon appropriation only for the following purposes as they relate to implementing the operating permit program required by title V:

(a) Preparing generally applicable rules or guidance regarding the operating permit program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit permit revision or permit renewal the development of an applicable requirement as part of the processing of a permit or permit revision or renewal

(c) General administrative costs of running the operating permit program including the supporting and tracking of permit applications compliance certification and related data entry

(d) Implementing and enforcing the terms of any operating permit not including any court costs or other costs associated with an enforcement action

(e) Emissions and ambient monitoring

(f) Modeling analysis or demonstration

(g) Preparing inventories and tracking emissions

(h) Providing direct and indirect support to facilities under the small business clean air assistance program created in part 57

Sec 5522 (1) For the state fiscal year beginning October 1 1994 and continuing until September 30 1998 the owner or operator of each fee subject facility shall pay air quality fees as required and calculated under this section The department may levy and collect an annual air quality fee from the owner or operator of each fee subject facility in this state The legislature intends that the fees required under this section meet the minimum requirements of the clean air act and that this expressly stated fee system serve as a limitation on the amount of fees imposed under this part on the owners or operators of fee subject facilities in this state

(2) The annual air quality fee shall be calculated for each fee subject facility according to the following procedure

(a) For category I facilities the annual air quality fee shall be the sum of a facility charge and an emissions charge as specified in subdivision (e) The facility charge shall be \$2 500 00

(b) For category II facilities the annual air quality fee shall be the sum of a facility charge and an emissions charge as specified in subdivision (e) The facility charge shall be \$1 000 00

(c) For category III facilities the annual air quality fee shall be \$200 00

(d) For municipal electric generating facilities subject to category I which emit less than 18 000 tons but more than 600 tons of fee subject air pollutants the annual air quality fee shall be an operating permit facility charge of \$10 000 00 only

(e) The emissions charge for category I and category II facilities equals the product of the actual tons of fee subject air pollutants emitted and the emission charge rate A pollutant that qualifies as a fee subject air pollutant under more than 1 class shall be charged only once The charge shall be calculated as follows

(i) The emissions tonnage shall be calculated for the calendar year 2 years preceding the year of the billing The actual tons of fee subject air pollutants emitted is the sum of all fee subject air pollutants emitted at the fee subject facility except that for the purposes of the emissions charge calculation the actual tons charged shall not exceed either of the following

(A) 4 000 tons

(B) 1 000 tons per pollutant if the sum of all fee subject air pollutants except carbon monoxide emitted at the fee subject facility is less than 4 000 tons

(ii) The emission charge rate shall be \$25 00 per ton of fee subject air pollutants

(3) The auditor general shall conduct a biennial audit of the federally mandated operating permit program required in title V The audit shall include the auditor general's recommendation regarding the sufficiency of the fees required under subsection (2) to meet the minimum requirements of the clean air act

(4) After January 1 but before January 15 of each year beginning in 1995 the department shall notify the owner or operator of each fee subject facility of its assessed annual air quality fee Payment is due within 90 calendar days of the mailing date of the air quality fee notification If an assessed fee is challenged as authorized in subsection (6) payment is due within 90 calendar days of the mailing date of the air quality fee notification or within 30 days of receipt of a revised fee or statement supporting the original fee whichever is later The department shall deposit all fees collected under this section to the credit of the emissions control fund created in section 5521

(5) If the owner or operator of a fee subject facility fails to submit the amount due within the time period specified in subsection (4) the department shall assess the owner or operator a penalty of 5% of the amount of the unpaid fee for each month that the payment is overdue up to a maximum penalty of 25% of the total fee owed

(6) If the owner or operator of a fee subject facility desires to challenge its assessed fee the owner or operator shall submit the challenge in writing to the department within 30 calendar days of the mailing date of the air quality fee notification described in subsection (4) A challenge shall identify the facility and state the grounds upon which the challenge is based Within 30 calendar days of receipt of the challenge the department shall determine the validity of the challenge and provide the owner with notification of a revised fee or a statement setting forth the reason or reasons why the fee was not revised Payment of the challenged or revised fee is due within the time frame described in

subsection (4) If the owner or operator of a facility desires to further challenge its assessed fee the owner or operator of the facility has an opportunity for a contested case hearing as provided for 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

(7) If requested by the department by March 15 of each year beginning in 1995 or within 45 days of a request by the department whichever is later the owner or operator of each fee subject facility shall submit information regarding the facility's previous year's emissions to the department The information shall be sufficient for the department to calculate the facility's emissions for that year and meet the requirements of subpart Q of 40 C F R part 51

(8) By July 1 of each year beginning in 1995 the department shall provide the owner or operator of each fee subject facility required to pay an emission charge pursuant to this section with a copy of the department's calculation of the facility emissions for the previous year Within 60 days of this notification the owner or operator of the facility may provide corrections to the department The department shall make a final determination of the emissions by December 15 of that year If the owner or operator disagrees with the determination of the department the owner or operator may request a contested case hearing before the commission of natural resources as provided for under the administrative procedures act of 1969 Act No 306 of the Public Acts of 1969

(9) For each state department to which funds are appropriated from the emissions control fund the director of that state department shall prepare and submit to the governor and the legislature an annual report that details the activities funded by the emissions control fund for his or her department This report shall include at a minimum all of the following as it relates to each particular department

(a) The number of full time equated positions performing air quality enforcement compliance or permitting activities and the number of hours worked on title V activities in relation to hours worked on other matters

(b) The total number of new source review and operating permit applications received by the department including those received but not processed or issued

(c) A breakdown of the new source review and operating permits issued based on amount of emissions as follows

(i) Less than 1 ton per year

(ii) Between 1 and 10 tons per year

(iii) Between 10 and 50 tons per year

(iv) Greater than 50 tons per year

(d) The total number of new source review and operating permits issued over the course of the year

(e) The total number of new source review and operating permits issued per permit reviewer

(f) The total number of new source review and operating permits carried over from the previous year

(g) The total number of new source review and operating permits at the start of the year that are carried over from preceding years plus the number received by the department in the current year minus the number issued

(h) The total number of new source review and operating permits denied

(i) The ratio of the number of new source review and operating permits rejected to the number issued

(j) The number of letters of violation sent

(k) The amount of penalties collected from all consent orders and judgments

(l) For each enforcement action that includes payment of a penalty a description of what corrective actions were required by the enforcement action

(m) The average amount of time to take final action on a new source review or operating permit from the time the department first receives the application to when it issues the permit for each category listed in subdivision (c)

(n) A list of state implementation plan development accomplishments

(o) The number of inspections done on sources required to obtain a permit under section 5506 and the number of inspections of other sources

(p) The number of complaints received by the department for sources required to obtain a permit under section 5506 the number of complaints investigated and the number of complaints not investigated

(q) The number of compliance reports and certifications reviewed for sources required to obtain a permit under section 5506

(r) The number of contested case hearings civil actions and criminal investigations and prosecutions initiated and completed and the number of voluntary consent orders administrative penalty orders and emergency orders entered or issued for sources required to obtain a permit under section 5506

(s) The amount of criminal fines and civil fines collected from all administrative and judicial orders and judgments

(10) By May 13 1995 the department shall convene a task force made up of representatives of fee subject facilities environmental groups the general public and any state department to which funds are appropriated from the emissions control fund By November 13 1995 the task force shall consult with the auditor general and submit to the legislature

an interim report on the same information required in the report due on July 1 2000 Not later than July 1 2000 the task force shall provide to the legislature a final report on the adequacy of the fee revenues and appropriateness of program activities and shall recommend changes to this section as appropriate to match fee revenues to program costs

(11) The attorney general may bring an action for the collection of the fees imposed under this section and any penalty assessed under section 5519

Sec 5523 (1) A county in which a city with a population of 750 000 or more is located may apply for a delegation from the department to issue permits and administer and enforce the applicable provisions of this part rules promulgated under this part the clean air act and the state implementation plan After a public hearing the department shall grant the delegation if the county demonstrates both of the following

(a) That the county has a program that complies with the applicable requirements of this part the rules promulgated under this part the clean air act and the state implementation plan

(b) That the county has and will continue to have the capacity to carry out the applicable provisions of this part rules promulgated under this part the clean air act and the state implementation plan

(2) A delegation under this section shall be for a term of not more than 5 years and not less than 2 years and may be renewed by the department One hundred eighty days prior to the expiration of the term of delegation the county may submit an application to the department for renewal of their delegation of authority The department shall hold a public hearing and following the public hearing make its decision on a renewal of delegation at least 90 days prior to the expiration of the term of the delegation The department may deny the renewal of a delegation of authority only upon a finding that the county is materially in violation of applicable provisions of this part rules promulgated under this part the clean air act the state implementation plan or provisions of the delegation agreed to between the department and the county The county may appeal a finding under subsection (1) or this subsection to a court of competent jurisdiction

(3) A county delegated authority under this section annually shall submit a report to the department that demonstrates all of the following

(a) That the county has the capacity to implement the permitting program under title V the applicable requirements of this part rules promulgated under this part and the clean air act

(b) That the county program complies with the applicable provisions of this part the rules promulgated under this part and the clean air act

(c) That the county program contains provisions for public notice and public participation consistent with this part the rules promulgated under this part and title V where applicable

(d) That the fees collected pursuant to section 5522 have been expended in accordance with section 5521(5)

(4) In addition to the report of the county under subsection (3) the auditor general of the state shall annually submit to the governor the legislature and the department an independent report regarding whether a county meets the criteria provided in subsection (3) and a review of the fiscal integrity of a county delegated authority under this section The auditor general's report shall also determine the county's pro rata share of the state's support services for title V programs that are attributable to and payable by a county

(5) Within 60 days after a county delegated authority under this section submits its annual report as required under subsection (3) the department shall notify the county in writing whether the report of the county meets the requirements of this section or states with particularity the deficiencies in that report or any findings in the auditor general's report that render the county in noncompliance with the requirements of subsection (3) The county shall have 90 days to correct any stated deficiencies If the department finds that the deficiencies have not been corrected by the county the department shall notify the county in writing within 30 days of the submission of the county's corrections and may terminate a county's delegation The county shall have 21 days from receipt of the decision of termination in which to appeal the department's decision to a court of competent jurisdiction If the department fails to notify the county within 60 days the report shall be considered satisfactory for the purposes of this subsection

(6) Notwithstanding any other statutory provision rule or ordinance a county delegated authority under this section to administer and enforce this part shall issue permits and implement its responsibilities only in accordance with its delegation this part rules promulgated under this part the clean air act and the applicable provisions of the state implementation plan Permits issued by a county that is delegated authority under this section have the same force and effect as permits issued by the department and if a county issues a permit pursuant to this section no other state or county permit is required pursuant to this part

(7) Upon receipt of a permit application prior to taking final action to issue a permit or entering into a consent order the county shall transmit to the department a copy of each administratively complete permit application application for a permit modification or renewal proposed permit or proposed consent order The county shall transmit to the department a copy of each permit issued by the county and consent order entered within 30 days of issuance of the permit or entry of the consent order

(8) Notwithstanding a delegation under this part the department retains the authority to bring any appropriate enforcement action under sections 5515 5516 5518 5526 5527 5528 5529 5530 5531 and 5532 as authorized under this part and the rules promulgated under this part to enforce this part and the rules promulgated under this part The department may bring any appropriate action to enforce a permit issued or a consent order entered into by a county to which authority is delegated

(9) Notwithstanding any other provision of this part in a county that has been delegated authority under this section that county shall impose and collect fees in the manner prescribed in section 5522 on all fee subject facilities subject to this part and located within the corporate boundaries and subject to the delegated program of the county The department shall not levy or collect an annual air quality fee from the owner or operator of a fee subject facility who pays fees pursuant to this section A county that is delegated authority under this section shall not assess a fee for a program or service other than as provided for in this part or title V or assess a fee covered by this part or title V greater than the fees set forth in section 5522 A county that is delegated authority under this section shall pay to the state the pro rata share of the state's support services for title V programs attributable to the county

(10) Fees imposed and collected by a county with delegated authority under this section shall be paid to the county treasury

(11) The county treasurer of a county delegated authority under this section shall create a clean air implementation account in the county treasury and the county treasurer shall deposit all fees received pursuant to the delegation authorized under this section in the account The fees shall be expended only in accordance with section 5521(5) the rules promulgated under this part and the clean air act

Sec 5524 (1) The provisions of this section including subsection (2) shall apply to any fugitive dust source at all mining operations standard industrial classification major groups 10 through 14 manufacturing operations standard industrial classification major groups 20 through 39 railroad transportation standard industrial classification major group 40 motor freight transportation and warehousing standard industrial classification major group 42 electric services standard industrial classification group 491 sanitary services standard industrial classification group 495 and steam supply standard industrial classification group 496 which are located in areas listed in table 36 of R 336 1371 of the Michigan administrative code

(2) Except as provided in subsection (8) a person responsible for any fugitive dust source regulated under this section shall not cause or allow the emission of fugitive dust from any road lot or storage pile including any material handling activity at a storage pile that has an opacity greater than 5% as determined by reference test method 9d Except as otherwise provided in subsection (8) or this section a person shall not cause or allow the emission of fugitive dust from any other fugitive dust source that has an opacity greater than 20% as determined by test method 9d The provisions of this subsection shall not apply to storage pile material handling activities when wind speeds are in excess of 25 miles per hour (40.2 kilometers per hour)

(3) In addition to the requirements of subsection (2) and except as provided in subdivisions (e) (f) and (g) a person shall control fugitive dust emissions in a manner that results in compliance with all of the following provisions

(a) Potential fugitive dust sources shall be maintained and operated so as to comply with all of the following applicable provisions

(i) All storage piles of materials where the total uncontrolled emissions of fugitive dust from all such piles at a facility is in excess of 50 tons per year and where such piles are located within a facility with potential particulate emissions from all sources including fugitive dust sources and all other sources exceeding 100 tons per year shall be protected by a cover or enclosure or sprayed with water or a surfactant solution or treated by an equivalent method in accordance with the operating program required by subsection (4)

(ii) All conveyor loading operations to storage piles specified in subparagraph (i) shall utilize spray systems telescopic chutes stone ladders or other equivalent methods in accordance with the operating program required by subsection (4) Batch loading operations to storage piles specified in subparagraph (i) shall utilize spray systems limited drop heights enclosures or other equivalent methods in accordance with the operating program required by subsection (4) Unloading operations from storage piles specified in subparagraph (i) shall utilize rake reclaimers bucket wheel reclaimers under pile conveying pneumatic conveying with baghouse water sprays gravity feed plow reclaimer front end loaders with limited drop heights or other equivalent methods in accordance with the operating program required by subsection (4)

(iii) All traffic pattern access areas surrounding storage piles specified in subparagraph (i) and all traffic pattern roads and parking facilities shall be paved or treated with water oils or chemical dust suppressants All paved areas including traffic pattern access areas surrounding storage piles specified in subparagraph (i) shall be cleaned in accordance with the operating program required by subsection (4) All areas treated with water oils or chemical dust suppressants shall have the treatment applied in accordance with the operating program required by subsection (4)

(iv) All unloading and transporting operations of materials collected by pollution control equipment shall be enclosed or shall utilize spraying pelletizing screw conveying or other equivalent methods

(v) Crushers grinding mills screening operations bucket elevators conveyor transfer points conveyor bagging operations storage bins and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution utilize choke feeding or be treated by an equivalent method in accordance with an operating program required under subsection (4) This subparagraph shall not apply to high lines at steel mills

(b) If particulate collection equipment is operated pursuant to this section emissions from such equipment shall not exceed 0.03 grains per dry standard cubic foot (0.07 grams per cubic meter)

(c) A person shall not cause or allow the operation of a vehicle for the transporting of bulk materials with a silt content of more than 1% without employing 1 or more of the following control methods

(i) The use of completely enclosed trucks tarps or other covers for bulk materials with a silt content of 20% or more by weight

(ii) The use of tarps chemical dust suppressants or water in sufficient quantity to maintain the surface in a wet condition for bulk materials with a silt content of more than 5% but less than 20%

(iii) Loading trucks so that no part of the load making contact with any sideboard side panel or rear part of the load comes within 6 inches of the top part of the enclosure for bulk materials with a silt content of more than 1% but not more than 5%

(d) All vehicles for transporting bulk materials off site shall be maintained in such a way as to prevent leakage or spillage and shall comply with the requirements of section 720 of the Michigan vehicle code Act No. 300 of the Public Acts of 1949 being section 257.720 of the Michigan Compiled Laws and with R 28.1457 of the Michigan administrative code

(e) The provisions of subdivisions (c) and (d) do not apply to vehicles with less than a 2 ton capacity that are used to transport sand gravel stones peat or topsoil

(f) The provisions of subdivision (c)(i) and (ii) do not apply to fly ash which has been thoroughly wetted and has the property of forming a stable crust upon drying

(g) The provisions of subdivision (c) do not apply to the transportation of iron or steel slag if the vehicles do not leave the facility and the slag has a temperature of 200 degrees fahrenheit or greater

(4) All fugitive dust sources subject to the provisions of this section shall be operated in compliance with both the provisions of an operating program that shall be prepared by the owner or operator of the source and submitted to the department and with applicable provisions of this section Such operating program shall be designed to significantly reduce the fugitive dust emissions to the lowest level that a particular source is capable of achieving by the application of control technology that is reasonably available considering technological and economic feasibility The operating program shall be implemented with the approval of the department

(5) The operating program required by subsection (4) is subject to review and approval or disapproval by the department and shall be considered approved if not acted on by the department within 90 days of submittal All programs approved by the department shall become a part of a legally enforceable order or as part of an approved permit to install or operate At a minimum the operating program shall include all of the following

(a) The name and address of the facility

(b) The name and address of the owner or operator responsible for implementation of the operating program

(c) A map or diagram of the facility showing all of the following

(i) Approximate locations of storage piles

(ii) Conveyor loading operations

(iii) All traffic patterns within the facility

(d) The location of unloading and transporting operations with pollution control equipment

(e) A detailed description of the best management practices utilized to achieve compliance with this section including an engineering specification of particulate collection equipment application systems for water oil chemicals and dust suppressants utilized and equivalent methods utilized

(f) A test procedure including record keeping for testing all waste or recycled oils used for fugitive dust control for toxic contaminants

(g) The frequency of application application rates and dilution rates if applicable of dust suppressants by location of materials

(h) The frequency of cleaning paved traffic pattern roads and parking facilities

(i) Other information as may be necessary to facilitate the department's review of the operating program

(6) Except for fugitive dust sources operating programs approved by the department pursuant to R 336.1373 of the Michigan administrative code between April 23 1985 and May 12 1987 the owner or operator of a source shall submit the operating program required by subsection (4) to the department by August 12 1987

(7) The operating program required by subsection (4) shall be amended by the owner or operator so that the operating program is current and reflects any significant change in the fugitive dust source or fugitive dust emissions. An amendment to an operating program shall be consistent with the requirements of this section and shall be submitted to the department for its review and approval or disapproval.

(8) Upon request by the owner or operator of a fugitive dust source, the department may establish alternate provisions to those specified in this section if all of the following conditions are met:

(a) The fugitive dust emitting process, operation, or activity is subject to either of the following:

(i) The opacity limits of subsection (2);

(ii) The spray requirements of subsection (3)(a)(i) to (v);

(b) An alternate provision shall not be established by the department unless the department is reasonably convinced of all of the following:

(i) That a fugitive dust emitting process, operation, or activity subject to the alternate provisions is in compliance or on a legally enforceable schedule of compliance with the other rules of the department;

(ii) That compliance with the provisions of this section is not technically or economically reasonable;

(iii) That reasonable measures to reduce fugitive emissions as required by this section have been implemented in accordance with or will be implemented in accordance with a schedule approved by the department.

(9) Any alternate provisions approved by the department pursuant to subsection (8) shall be submitted to the United States environmental protection agency as an amendment to the state implementation plan.

Sec 5525 As used in section 5524

(a) Control equipment or pollution control equipment has the meaning ascribed to control equipment in R 336 1103 of the Michigan administrative code.

(b) Fine product means materials which will pass through a 20 mesh screen or those particles with aerodynamic diameters of 830 microns or less.

(c) Fugitive dust has the meaning ascribed to it in R 336 1106 of the Michigan administrative code.

(d) Fugitive dust source means any fugitive dust emitting process, operation, or activity regulated under section 5524.

(e) Opacity has the meaning ascribed to it in R 336 1115 of the Michigan administrative code.

(f) Particulate means any air contaminant existing as a finely divided liquid or solid other than uncombined water as measured by a reference test specified in subsection (5) of R 336 2004 of the Michigan administrative code or by an equivalent or alternative method.

(g) Potential particulate emissions means those emissions of particulate matter expected to occur without control equipment unless such control equipment is aside from air pollution control requirements vital to the production of the normal product of the source or to its normal operation. Annual potential particulate emissions shall be based on the maximum annual rated capacity of the source unless the source is subject to enforceable permit conditions or enforceable orders which limit the operating rate or the hours of operation or both. Enforceable agreements or permit conditions on the type or amount of materials combusted or processed shall be used in determining the potential particulate emission rate of a source.

(h) Process or process equipment has the meaning ascribed to it in R 336 1116 of the Michigan administrative code.

(i) Silt content means that portion by weight of a particulate material which will pass through a number 200 (75 micron) wire sieve as determined by the American society of testing material test C 136 76.

(j) Test method 9D means the method by which visible emissions of fugitive dust shall be determined according to test method 9 as set forth in appendix A reference methods in 40 CFR part 60 with the following modifications:

(i) The data reduction provisions of section 2.5 of method 9 shall be based on an average of 12 consecutive readings recorded at 15 second intervals.

(ii) For roadways and parking lots, opacity observations shall be made from a position such that the observer's line of vision is approximately perpendicular to the plume direction and approximately 4 feet directly above the surface of the road or parking area from which the emissions are being generated. The observer shall not look continuously at the plume but instead shall observe the plume momentarily at 15 second intervals at the point of maximum plume density. Consecutive readings must be suspended for any 15 second period if a vehicle is in the observer's line of sight. If this occurs, a "V" shall be used in lieu of a numerical value and a footnote shall be made to indicate that "V" signifies that the observer's view was obstructed by a vehicle. Readings shall continue at the next 15 second period and they shall be considered consecutive to the reading immediately preceding the 15 second period denoted by a "V". Consecutive readings also shall be suspended for any 15 second period if a vehicle passes through the area traveling in the opposite

direction and creates a plume that is intermixed with the plume being read. If this occurs, an "I" shall be used in lieu of a numerical value, and a footnote shall be made to indicate that "I" signifies that the readings were terminated due to interference from intermixed plumes. Readings shall continue when, in the judgment of the observer, the plume created by the vehicle traveling in the opposite direction no longer interferes with the plume originally being read, and they shall be considered consecutive to the reading immediately preceding the 15 second period denoted by an "I". Intermixing of plumes from vehicles traveling in the same direction represents the road conditions, and reading shall continue in the prescribed manner. A reading encompassing an unusual condition (such as a broken bag of cement on the pavement) cannot be used to represent the entire surface condition involved. In such cases, another set of readings encompassing the average surface condition must be conducted. For all other fugitive dust sources except roadways and parking lots, opacity observations shall be made from a position that provides the observer a clear view of the source and the fugitive dust with the sun behind the observer. A position at least 15 feet from the source is recommended. To the extent possible, the line of sight should be approximately perpendicular to the flow of fugitive dust and to the longer axis of the emissions. Opacity observations shall be made for the point of highest opacity within the fugitive dust. Since the highest opacity usually occurs immediately above or downwind of the source, the observer should normally concentrate on the area or areas of the plume close to the source.

Sec 5526 (1) The department may, upon the presentation of credentials and other documents as may be required by law, and upon stating the authority and purpose of the investigation, enter and inspect any property at reasonable times for the purpose of investigating either an actual or suspected source of air pollution or ascertaining compliance or noncompliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. If in connection with an investigation or inspection, samples of air contaminants are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing the air pollution. In implementing this subsection, the department or its authorized representative may do any of the following:

- (a) Have access to and copy, at reasonable times, any records that are required to be maintained pursuant to this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

- (b) Inspect, at reasonable times, any facility, equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

- (c) Sample or monitor, at reasonable times, substances or parameters for the purpose of determining compliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. The department may enter into a contract with a person to sample and monitor as authorized under this subdivision.

(2) If the department, or an authorized representative of the department, is refused entry or access to records and samples under subsection (1) for the purposes of utilizing this section, the attorney general, on behalf of the state, may do either of the following:

- (a) Petition the court of appropriate jurisdiction for a warrant authorizing entry or access to records and samples pursuant to this section.

- (b) Commence a civil action to compel compliance with a request for entry and access to records and samples pursuant to this section, to authorize entry and access to records and samples provided for in this section, and to enjoin interference with the utilization of this section.

(3) As used in this section, "authorized representative" means any of the following:

- (a) A full- or part-time employee of the department of natural resources or other state department or agency to which the department delegates certain duties under this section.

- (b) A county to which authority is delegated under section 5523.

- (c) For the purpose of utilizing the powers conferred in subsection (1)(c), a contractor retained by the state or a county to which authority is delegated under section 5523.

Sec 5527 (1) As used in this section, "emergency" means a situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, war, strike, riot, catastrophe, or other condition as to which negligence on the part of the person was not the proximate cause, which requires immediate corrective action to restore normal operation and that causes the source to exceed a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, due to unavoidable increases in emissions attributable to the emergency. An emergency does not include acts of noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in an operating permit issued pursuant to section 5506 if the affirmative defense of

emergency is demonstrated through properly signed contemporaneous operating logs or other relevant evidence that establish all of the following

- (a) An emergency occurred and that the permit holder can identify the cause or causes of the emergency
 - (b) The permitted source was properly operated at the time of the emergency
 - (c) During the emergency the permit holder took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit
 - (d) The permit holder submitted notice of the emergency to the department within 2 working days of the time when an emission limitation was exceeded due to the emergency. This notice must contain a description of the emergency any steps taken to mitigate emissions and corrective actions taken
- (3) In any enforcement proceeding the permit holder seeking to establish the occurrence of an emergency has the burden of proof

Sec 5528 (1) If the department believes that a violation of this part or a rule promulgated under this part exists or a violation of the terms of a permit issued under this part exists the department shall provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit issued under this part. In addition each consent order shall contain a compliance schedule that provides for reasonable progress toward full compliance by a designated date

(2) If the department believes that a violation of an order issued under this part exists the department may provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit or order issued under this part. In addition each consent order shall contain a compliance schedule that provides for reasonable progress toward full compliance by a designated date

(3) The department shall provide public notice and an opportunity for public comment on the terms and conditions of a consent order. Upon the request of any person the department shall provide a copy of the proposed consent order

Sec 5529 (1) The department may assess an administrative fine of up to \$10 000 00 for each instance of violation and if the violation continues for each day of continued noncompliance if the department on the basis of available information finds that the person has violated or is in violation of this part or a rule promulgated under this part has failed to obtain a permit required under this part violates an order under this part or has failed to comply with the terms of a permit issued under this part. If a single event constitutes an instance of violation of any combination of this part a rule promulgated under this part or a permit issued or order entered under this part the amount of the administrative fine for that single event shall not exceed \$10 000 00 for that violation. The assessment of an administrative fine may be either a part of a compliance order or a separate order issued by the department

(2) The authority of the department under this section is limited to matters where the total administrative fine sought does not exceed \$100 000 00 and the first alleged date of violation occurred within 12 months prior to initiation of the administrative action. Except as may otherwise be provided by applicable law the department shall not condition the issuance of a permit on the payment of an administrative fine assessed pursuant to this section

(3) Within 28 days of being assessed an administrative fine from the department a person may file a petition with the department for review of this fine. Review of the fine shall be conducted pursuant to the contested case procedures of the administrative procedures act of 1969 Act No 306 of the Public Acts of 1969 being sections 24 271 to 24 287 of the Michigan Compiled Laws. If issued as part of a consent order issued pursuant to section 5528 only the amount of the administrative fine and the alleged violation on which the fine is based are subject to the contested case procedures of Act No 306 of the Public Acts of 1969

Sec 5530 (1) The attorney general may commence a civil action against a person for appropriate relief including injunctive relief and a civil fine as provided in subsection (2) for any of the following

- (a) Violating this part or a rule promulgated under this part
- (b) Failure to obtain a permit under this part
- (c) Failure to comply with the terms of a permit or an order issued under this part
- (d) Failure to pay an air quality fee or comply with a filing requirement under this part
- (e) Failure to comply with the inspection entry and monitoring requirements of this part
- (f) A violation described in section 5518(2)

(2) In addition to any other relief authorized under this section the court may impose a civil fine of not more than \$10 000 00 for each instance of violation and if the violation continues for each day of continued violation

(3) In addition to other relief authorized under this section the attorney general may at the request of the department file an action in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state

(4) In issuing a final order in an action brought pursuant to this section the court may award costs of litigation including but not limited to reasonable attorney and expert witness fees to the prevailing or substantially prevailing party if the court determines that such an award is appropriate

(5) A civil action brought under this section may be brought in the county in which the defendant is located resides or is doing business or in the circuit court for the county of Ingham or in the county in which the registered office of a defendant corporation is located or in the county where the violation occurred

(6) General defenses and affirmative defenses that may otherwise apply under state law may apply in an action brought under this section as determined to be appropriate by a court of competent jurisdiction

(7) Fines imposed under this section shall be assessed for each instance of violation and if the violation is continuous shall be assessable up to the maximum amount for each day of violation

Sec 5531 (1) A person who knowingly violates any requirement or prohibition of an applicable requirement of this part or a rule promulgated under this part or who fails to obtain or comply with a permit or comply with a final order or order of determination issued under this part is guilty of a misdemeanor punishable by a fine of not more than \$10 000 00 per day for each violation

(2) A person who knowingly makes a false material statement representation or certification in or omits material information from or knowingly alters conceals or fails to file any notice application record report plan or other document required to be submitted pursuant to this part or a rule promulgated under this part or who knowingly fails to notify or report information required to be submitted under this part or a rule promulgated under this part or who knowingly falsifies tampers with renders inaccurate or knowingly fails to install any monitoring device or method required under this part or a rule promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 1 year and a fine of not more than \$10 000 00 per day for each violation

(3) A person who knowingly fails to pay any air quality fee owed under this part is guilty of a misdemeanor punishable by a fine of not more than \$10 000 00

(4) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C F R part 68 section 68 130 (January 19 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act 84 Stat 1685 42 U S C 7412 or both contrary to applicable federal state or local requirements or contrary to a permit issued under this part and because of the quantities or concentrations of the substance released knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10 000 00 or both

(5) A person who knowingly releases or causes the release into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C F R part 68 section 68 130 (January 19 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act 84 Stat 1685 42 U S C 7412 or both contrary to applicable federal state or local requirements or contrary to a permit issued under this part and who knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury and the release results in death or serious bodily injury to any person is guilty of a felony punishable by imprisonment for not more than 6 years or a fine of not more than \$25 000 00 or both

(6) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C F R part 68 section 68 130 (January 19 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act 84 Stat 1685 42 U S C 7412 or both contrary to applicable federal state or local requirements or contrary to a permit issued under this part and who intended at that time to place another person in imminent danger of death or serious bodily injury and whose actions do result in death or cause serious bodily injury to any person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$250 000 00 or both

(7) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury as required under subsections (4) (5) and (6) the defendant is responsible only for actual awareness or actual belief possessed and knowledge possessed by a person other than the defendant but not by the defendant may not be attributed to the defendant However in proving a defendant's possession of actual knowledge circumstantial evidence may be used including evidence that the defendant took affirmative steps to be shielded from relevant information

(8) Fines imposed under this section shall be assessed for each instance of violation and if the violation is continuous shall be assessable up to the maximum amount for each day of violation

(9) A defendant may establish an affirmative defense to a prosecution under this section by showing by a preponderance of the evidence that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of any of the following

(a) An occupation a business or a profession

(b) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person had been made aware of the risks involved prior to giving consent

(10) All general defenses affirmative defenses and bars to prosecution that may otherwise apply with respect to state criminal offenses may apply under this section and shall be determined by the courts of this state having jurisdiction according to the principles of common law as they may be interpreted in the light of reason and experience Concepts of justification and excuse applicable under this section may be developed by the courts in the light of reason and experience

(11) Fines shall not be imposed pursuant to this section for a violation that was caused by an act of God war strike riot catastrophe or other condition to which negligence or willful misconduct on the part of the person was not the proximate cause

(12) As used in this section

(a) Serious bodily injury means bodily injury that involves a substantial risk of death unconsciousness extreme physical pain protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member organ or mental faculty

(b) Specific chemical means a hazardous air pollutant listed in section 112(b)(1) of Part A of title I of the clean air act 84 Stat 1685 42 U S C 7412 except for the following compounds

(i) Antimony compounds

(ii) Arsenic compounds (inorganic including arsine)

(iii) Beryllium compounds

(iv) Cadmium compounds

(v) Chromium compounds

(vi) Cobalt compounds

(vii) Coke oven emissions

(viii) Cyanide compounds

(ix) Glycol ethers

(x) Lead compounds

(xi) Manganese compounds

(xii) Mercury compounds

(xiii) Fine mineral fibers

(xiv) Nickel compounds

(xv) Polycyclic organic matter

(xvi) Radionuclides (including radon)

(xvii) Selenium compounds

Sec 5532 (1) A civil or criminal fine assessed sought or agreed upon under this part shall be appropriate to the violation

(2) In determining the amount of any fine levied under this part all of the following factors shall be considered

(a) The size of the business

(b) The economic impact of the penalty on the business

(c) The violator's full compliance history and good faith efforts to comply

(d) The duration of the violation as established by any credible evidence including evidence other than the applicable test method

(e) Payment by the violator of penalties previously assessed for the same violation

(f) The economic benefit of noncompliance

(g) The seriousness of the violation

(h) Such other factors as justice may require

Sec 5533 The department may pay an award of up to \$10 000 00 to an individual who provides information resulting in the assessment of a civil fine by a court in an action brought by the attorney general pursuant to section 5530 or leading to the arrest and conviction of a person under section 5531 An officer or employee of the United States state of Michigan an authorized representative of the department as defined in section 5526(3) or any other state or local government who furnishes information described in this section in the performance of an official duty is ineligible for payment under this section In addition an employee of the department of natural resources a designee of the department of natural resources or a person employed by the department of attorney general is ineligible to receive an award under this section regardless of whether the reported information came to his or her attention while functioning in an official capacity or as a private citizen A person may not receive an award under this section for a violation of this part made by that person alone or in conjunction with others An award shall not be made under this section until rules are promulgated by the department prescribing the criteria for making awards

Sec 5534 The penalties or fines which shall be imposed pursuant to this part upon persons violating any rule shall not be construed as to include any violation that was caused by an act of God war strike riot catastrophe or other condition as to which negligence or willful misconduct on the part of such person was not the proximate cause

Sec 5535 Notwithstanding any other provision of this part the department may suspend the enforcement of the whole or any part of any rule as it applies to any person who shows that the enforcement of the rule would be inequitable or unreasonable as to that person or the department may suspend the enforcement of the rule for any reason considered by it to be sufficient to show that the enforcement of the rule would be an unreasonable hardship upon the person Upon any suspension of the whole or any part of the rule the department shall grant to the person a variance from that rule The department shall not suspend enforcement or grant a variance under this section that would violate the clean air act

Sec 5536 In determining under what conditions and to what extent a variance from a rule or regulation that would not violate the clean air act may be granted the department shall give due recognition to the progress which the person requesting the variance has made in eliminating or preventing air pollution The department shall consider the reasonableness of granting a variance conditioned upon the person effecting a partial control of the particular air pollution or a progressive control of the air pollution over a period of time that it considers reasonable under all the circumstances or the department may prescribe other and different reasonable requirements with which the person receiving the variance shall comply

Sec 5537 The department shall grant a variance from any rule to and suspend the enforcement of the rule as it applies to any person who shows in the case of the person and of the source process or process equipment that the person operates that his or her compliance with the rule or regulation and that the acquisition installation operation and maintenance of a source or process or process equipment required or necessary to accomplish the compliance would constitute an undue hardship on the person and would be out of proportion to the benefits to be obtained by compliance A variance shall not be granted under this section if the person applying for the variance is causing air pollution that is injurious to the public health or if the granting of the variance would violate the clean air act Any variance granted shall not be construed as relieving the person who receives it from any liability imposed by other law for the maintenance of a nuisance

Sec 5538 Any variance granted pursuant to sections 5535 5536 and 5537 shall be granted for a period of time that does not exceed 1 year as is specified by the department at the time of granting it but any variance may be continued from year to year Any variance granted by the department may be granted on the condition that the person receiving it shall report to the department periodically as the department specifies as to the progress which the person has made toward compliance with the rule of the department

Sec 5539 The department may revoke or modify any order permitting a variance by written order after a public hearing held upon not less than 10 days notice

Sec 5540 It is the purpose of this part to provide additional and cumulative remedies to prevent and abate air pollution This part does not abridge or alter rights of action or remedies now or hereafter existing This part or anything done by virtue of this part shall not be construed as estopping persons from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution

Sec 5541 This part does not repeal any of the laws relating to air pollution which are not by this part expressly repealed This part is ancillary to and supplements the laws now in force except as they may be in direct conflict with this part The final order or determination of the department shall not be used as evidence of presumptive air pollution in any suit filed by any person other than the department

Sec 5542 (1) Nothing in this part or in any rule promulgated under this part invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this part or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this part

(2) When a political subdivision or enforcing official of a political subdivision fails to enforce properly the provisions of the political subdivision's ordinances, laws, or regulations that afford equal protection to the public as provided in this part, the department, after consultation with the local official or governing body of the political subdivision, may take such appropriate action as may be necessary for enforcement of the applicable provisions of this part.

(3) The department shall counsel and advise local units of government on the administration of this part. The department shall cooperate in the enforcement of this part with local officials upon request.

PART 57 SMALL BUSINESS CLEAN AIR ASSISTANCE

Sec 5701 As used in this part

(a) Clean air act means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q and the regulations promulgated under that act.

(b) Office means the office of the small business clean air ombudsman.

(c) Ombudsman means the small business clean air ombudsman.

(d) Program means the small business clean air assistance program.

(e) Small business means a business that is independently owned and operated and that is not dominant in its field as defined in 13 C.F.R. 121 and, unless adjusted as authorized under this section or section 5702, is a stationary source that meets all of the following requirements:

(i) Is owned or operated by a person that employs 100 or fewer individuals.

(ii) Is a small business concern as defined in the small business act, Public Law 85-536, 72 Stat. 384.

(iii) Is not a major stationary source as defined in Titles I and III of the clean air act or is a major stationary source as defined in Titles I and III of the clean air act because of its location in a nonattainment area.

(iv) Emits less than 50 tons per year of any air contaminant or air pollutant regulated pursuant to part 55 or the clean air act.

(v) Emits less than 75 tons per year of all air contaminants or air pollutants regulated pursuant to part 55 or the clean air act.

Sec 5702 (1) Upon petition by a source, the department may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source that does not meet the criteria of subparagraph (iii), (iv), or (v) of section 5701(e) but which does not emit more than 100 tons per year of all air contaminants and air pollutants regulated pursuant to part 55 or the clean air act.

(2) The department, in consultation with the administrator of the United States environmental protection agency and the administrator of the United States small business administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition any category or subcategory of sources that the state determines to have sufficient technical and financial capabilities to meet the requirements of the clean air act and part 55 without the application of this part.

Sec 5703 (1) The office of the small business clean air ombudsman is created within the department of commerce. The office shall exercise its powers and duties independently of any state department or entity.

(2) The principal executive officer of the office is the small business clean air ombudsman, who shall be appointed by the governor.

Sec 5704 The office of the ombudsman is responsible for assessing and ensuring that the goals of the program are being met and, in addition, shall coordinate or do all of the following:

(a) Conduct independent evaluations of all aspects of the program.

(b) Review and provide comments and recommendations to the United States environmental protection agency and state and local air pollution control authorities regarding the development and implementation of requirements that impact small businesses.

(c) Facilitate and promote the participation of small businesses in the development of rules that impact small businesses.

(d) Assist in providing reports to the governor and legislature and the public regarding the applicability of the requirements of this part part 55 and the clean air act to small business

(e) Aid in the dissemination of information including but not limited to air pollution requirements and control technologies to small businesses and other interested parties

(f) Participate in or sponsor meetings and conferences with state and local regulatory officials industry groups and small business representatives

(g) Aid in investigating and resolving complaints and disputes from small businesses against the state or local air pollution control authorities or both

(h) Periodically review the work and services provided by the program with trade associations and representatives of small business

(i) Refer small businesses to the appropriate specialist in the program where they may obtain information and assistance on affordable alternative technologies process changes and products and operational methods to help reduce air pollution and accidental releases

(j) Arrange for and assist in the preparation of guideline documents by the program and ensure that the language is readily understandable by laypersons

(k) Work with trade associations and small businesses to bring about voluntary compliance with the clean air act and part 55

(l) Work with regional and state offices of the small business administration the United States department of commerce and state department of commerce and other federal and state agencies that may have programs to financially assist small businesses in need of funds to comply with environmental requirements

(m) Work with private sector financial institutions to assist small businesses in locating sources of funds to comply with state and local air pollution control requirements

(n) Conduct studies to evaluate the impacts of the clean air act and part 55 on the state s economy local economies and small businesses

(o) Work with other states to establish a network for sharing information on small businesses and their efforts to comply with the clean air act and the pertinent air pollution act for their state

(p) Make recommendations to the department and the legislature concerning the reduction of any fee required under the clean air act or part 55 to take into account the financial resources of small businesses

Sec 5705 The program is created in the department of commerce The program shall develop adequate mechanisms for all of the following

(a) Developing collecting and coordinating information on compliance methods and technologies for small businesses

(b) Encouraging lawful cooperation among small businesses and other persons to further compliance with the clean air act and part 55

(c) Assisting small business with information regarding pollution prevention and accidental release detection and prevention including but not limited to providing information concerning alternative technologies process changes and products and methods of operation that help reduce air pollution

(d) Establishing a compliance assistance program that assists small businesses in determining applicable requirements for compliance and the procedures for obtaining permits efficiently in a timely manner under the clean air act or part 55 or both

(e) Providing mechanisms and access to information so that small businesses receive notification of their rights under the clean air act and part 55 in a manner and form that assures reasonably adequate time for small businesses to evaluate their compliance methods or applicable proposed or final rules or standards under the clean air act and part 55

(f) Informing small businesses of their obligations under the clean air act and part 55 including mechanisms for referring small businesses to qualified auditors or to the state if the state elects to provide audits to determine compliance with the clean air act and part 55 To the extent permissible by state and federal law audits shall be separate from the formal inspection and compliance program

(g) Providing information on how to obtain consideration from the department on requests from small businesses for modifications of any work practice technological method of compliance or the schedule of milestones for reductions of emissions preceding an applicable compliance date

Sec 5706 Upon request the ombudsman shall be given access to all information records and documents in the possession of the commission and the department that the ombudsman considers necessary to fulfill the responsibilities of the office other than information described in section 13 of the freedom of information act Act No 442 of the Public

Acts of 1976 being section 15 243 of the Michigan Compiled Laws The commission and the department shall also assist the ombudsman in fulfilling his or her responsibilities under this part

Sec 5707 Information obtained by the office or the program from small businesses that utilize their services shall be held in confidence by those employed by the office or the program to the extent authorized under the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws including but not limited to those provisions pertaining to exemptions from disclosure for trade secrets and commercial and financial information

Sec 5708 (1) The small business clean air compliance advisory panel is created within the program

(2) The advisory panel shall be broadly representative of the regulated small business community and shall include women members and members who are minorities The advisory panel shall consist of the following members

(a) Two members appointed by the governor to represent the general public and who are not owners or representatives of owners of small business stationary sources

(b) One member appointed by the republican leader of the senate who is an owner or a representative of owners of small business stationary sources

(c) One member appointed by the democratic leader of the senate who is an owner or a representative of owners of small business stationary sources

(d) One member appointed by the republican leader of the house of representatives who is an owner or a representative of owners of small business stationary sources

(e) One member appointed by the democratic leader of the house of representatives who is an owner or a representative of owners of small business stationary sources

(f) One member appointed by the department

(3) Members of the advisory panel shall serve for terms of 4 years or until a successor is appointed whichever is later However of the members first appointed the members appointed by the governor shall serve for 3 years the members appointed by the senate shall serve for 1 year and the members appointed by the house of representatives and the member appointed by the department shall serve for 2 years

(4) If a vacancy occurs on the advisory panel the governor the department or the appropriate legislative leader who made the appointment shall make an appointment for the unexpired term in the same manner as the original appointment

(5) The first meeting of the advisory panel shall be called within 90 days of the appointment of all advisory panel members At the first meeting the advisory panel shall elect from among its members a chairperson and other officers as it considers necessary or appropriate

(6) A majority of the members of the advisory panel constitutes a quorum for the transaction of business at a meeting of the advisory panel A majority of the members present and serving are required for official action of the advisory panel

(7) Members of the advisory panel shall serve without compensation However members of the advisory panel may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the advisory panel

(8) The advisory panel shall do all of the following

(a) Consult with the ombudsman and the head of the program to plan the work of the panel including the frequency of meetings agenda items and reports to be issued by the panel

(b) Determine whether the program should utilize private contractors hired by the program or utilize expertise within the program or both to meet the requirements of this part that pertain to providing technical assistance to small businesses

(c) Prepare advisory reports concerning all of the following

(i) The effectiveness of the office and program

(ii) The difficulties encountered and degree and severity of enforcement of part 55

(iii) The costs of operating the office and the program

(iv) The average costs of different categories of small businesses in complying with the air quality enforcement program of this state

(d) Periodically report to the administrator of the United States environmental protection agency regarding compliance by the program with the broad intent of all of the following acts as may be applicable

(i) Chapter 35 of title 44 of the United States Code 44 U S C 3501 to 3520 relating to paperwork reduction

(ii) Sections 601 to 612 of title 5 of the United States Code 5 U S C 601 to 612 relating to regulatory flexibility

(m) Section 504 of title 5 of the United States Code 5 U S C 504 and section 2412 of title 28 of the United States Code 28 U S C 2412 relating to equal access to justice

(e) Review information prepared by the program for small businesses to assure that the information is understandable to laypersons

(f) Utilize the program to act as staff to develop and disseminate the work product of the advisory panel

(9) The advisory panel shall provide copies of advisory reports prepared by the advisory panel to the United States environmental protection agency the department the legislature and the department of commerce In addition the reports shall be made available to any person upon request

PART 59 AIR POLLUTION CONTROL FACILITY TAX EXEMPTION

PART 61 EMISSIONS FROM VESSELS

PART 63 MOTOR VEHICLES EMISSIONS INSPECTION AND MAINTENANCE

PART 65 MOTOR VEHICLE TESTING

PART 67 MOTOR FUELS QUALITY

CHAPTER 2 NONPOINT SOURCE POLLUTION CONTROL

PART 81 GENERAL NONPOINT SOURCE POLLUTION CONTROL

PART 83 PESTICIDE CONTROL

Sec 8301 For the purposes of this part the words and phrases defined in sections 8302 to 8306 have the meanings ascribed to them in those sections

Sec 8302 (1) Active ingredient means an ingredient that will prevent destroy repel or mitigate pests or that will act as a plant regulator defoliant or desiccant or otherwise alter the behavior of plants or products

(2) Activity plan means a plan for the mitigation of groundwater contamination at a specific location including a time frame for implementation

(3) Adulterated applies to a pesticide if its strength or purity is less than or significantly greater than the professed standard or quality as expressed on its labeling or under which it is sold if a substance was substituted wholly or in part for a pesticide or if a valuable constituent of the pesticide was wholly or in part abstracted

(4) Agricultural commodity means a plant or part of a plant or an animal or animal product produced primarily for sale consumption propagation or other use by human beings or animals

(5) Animal means all vertebrate and invertebrate species including but not limited to human beings and other mammals birds fish and shellfish

(6) Aquifer means a geologic formation a group of formations or a part of a formation capable of yielding a significant amount of groundwater to wells or springs

(7) Aquifer sensitivity means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of pesticides into that aquifer

(8) Avicide means a substance or mixture of substances for preventing destroying repelling or mitigating pest birds

(9) Building manager means the person who is designated as being responsible for the building s pest management program and to whom any reporting and notification shall be made pursuant to this part or rules promulgated under this part

(10) Certified applicator means a person authorized under this part to use and supervise the use of a restricted use pesticide

(11) Commercial applicator means a person who is not a private agricultural applicator whether that person is a private agricultural applicator with respect to some uses or not who is required to be a registered or certified applicator under this part or who uses or supervises the use of a restricted use pesticide or who holds himself or herself out to the public as being in the business of applying pesticides

(12) Commercial building means any building or portion of a building that is not a private residence where a business is located and that is frequented by the public

(13) Confirmed contaminant means a contaminant that has been detected in at least 2 groundwater samples collected from the same groundwater sampling point at an interval of greater than 14 days

(14) Contaminant means any pesticide originated chemical radionuclide ion synthetic organic compound microorganism or waste that does not occur naturally in groundwater or that naturally occurs at a lower concentration than detected

(15) Contamination means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activity

Sec 8303 (1) Defoliant means a substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission

(2) Department means the department of agriculture

(3) Desiccant means a substance or mixture of substances intended for artificially accelerating the drying of plant tissue

(4) Device means an instrument or contrivance other than a firearm which is intended for trapping destroying repelling or mitigating a pest but does not include equipment used for the application of pesticides when sold separately

(5) Direct supervision means that a certified applicator is supervising the application of a pesticide and is physically present at the time and place the pesticide is being applied However direct supervision by a private agricultural applicator who is supervising the application of a restricted use pesticide for an agricultural purpose means either that a certified applicator shall be in the same field or at the same location with that applicator as he or she applies the restricted use pesticide or that the private agricultural applicator supervises at all times the applicator and directly supervises representative aspects of each initial application process on an agricultural commodity or agricultural structure including the calibration mixing application operator safety and disposal aspects of the process

(6) Director means the director of the department of agriculture or his or her authorized representative

(7) Distribute means to offer for sale hold for sale sell barter ship deliver for shipment or receive and having so received deliver or offer to deliver pesticides in this state

(8) Envelope monitoring means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer

(9) Environment includes water air land and all plants and human beings and other animals living therein and the interrelationships that exist among them

(10) EPA means the United States environmental protection agency

(11) FIFRA means the federal insecticide fungicide and rodenticide act chapter 125 86 Stat 973 7 U S C 136 to 136i and 136j to 136y

(12) Fungi means all nonchlorophyll bearing thallophytes that is all nonchlorophyll bearing plants of a lower order than mosses and liverworts as for example rusts smuts mildews molds yeasts and bacteria except those in or on other animals and except those in or on processed foods beverages or pharmaceuticals

(13) General use pesticide means a pesticide that is not classified as a restricted use pesticide

(14) Groundwater means underground water within the zone of saturation

(15) Groundwater protection rule means a rule promulgated under this part that defines a minimum operational standard for structures activities and procedures that may have or may contribute to the contamination of groundwater and that defines the scope of a groundwater protection rule the region of implementation of a groundwater protection rule and implementation period for those rules As used in this subsection

(a) Structures activities and procedures includes but is not limited to mixing loading and rinse pads application equipment application timing application rates crop rotation and pest control thresholds

(b) The scope of a groundwater protection rule may define a particular pesticide structure activity or procedure or may define pesticides containing specific ingredients

(c) The region of implementation of a groundwater protection rule may include specific soil types or aquifer sensitivity regions or any other geographic boundary

(16) Groundwater resource protection level means a maximum contaminant level health advisory level or if the EPA has not established a maximum contaminant level or a health advisory level a level established by the director of public health using risk assessment protocol established by rule under this part

(17) Groundwater resource response level means 20% of the groundwater resource protection level In cases where 20% of the groundwater resource protection level is less than the method detection limit the method detection limit shall serve as the groundwater resource response level

Sec 8304 (1) Inert ingredient means an ingredient that is not an active ingredient

(2) Ingredient statement means

(a) A statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide

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

(3) Insect means any of the numerous small invertebrate animals generally having the body more or less obviously segmented for the most part belonging to the class insecta comprising 6 legged usually winged forms as for example beetles bugs bees and flies and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs as for example spiders mites ticks centipedes and wood lice

(4) Insecticide means a substance or mixture of substances intended for preventing destroying repelling or mitigating an insect

(5) Label means the written printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers

(6) Labeling means the label and all other written printed or graphic matter accompanying the pesticide or device or to which reference is made on the label or in literature accompanying the pesticide or device and all applicable modifications or supplements to official publications of the EPA the United States departments of agriculture and interior the United States departments of education and health and human services state experiment stations state agricultural colleges and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides

(7) Maximum contaminant level means that term as it is defined in title XIV of the public health service act chapter 373 88 Stat 1660 42 U S C 300f to 300j 3 300j 4 to 300j 9 and 300j 11 to 300j 25 and regulations promulgated under that act

(8) Method detection limit means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte

(9) Minor use means the use of a pesticide on a crop animal or site where any of the following exist

(a) The total United States acreage for the crop or site is less than 300 000 acres

(b) The acreage expected to be treated nationally as a result of that use is less than 300 000 acres annually

(c) The use does not provide sufficient economic incentive to support the initial registration or continuing registration of the use

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

(11) Molluscicide means a substance or mixture of substances intended for preventing destroying repelling or mitigating a mollusk

Sec 8305 (1) Nematode means invertebrate animals of the phylum nemathelminthes and class nematoda which are unsegmented roundworms with elongated fusiform or sac like bodies covered with cuticle that inhabit soil water plants or plant parts A nematode may also be called a nema or eelworm

(2) Person when referring to a certified or registered applicator means individuals only

(3) Pest means an insect rodent nematode fungus weed and other forms of terrestrial or aquatic plant or animal life or virus bacteria or other microorganism except viruses fungi bacteria nematodes or other microorganisms in or on living animals or any other organism that the director declares to be a pest under section 8322

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

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

(6) Plant regulator means a substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce of plants Plant regulator does not include substances to the extent that they are intended as plant nutrients trace elements nutritional chemicals plant inoculants and soil amendments

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

(8) Private agricultural purpose means the production of an agricultural commodity on property owned or rented by that person or his or her employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the property of another person

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

(10) Public building means a building that is owned or operated by a federal state or local government including public universities

Sec 8306 (1) Registered applicator means a person who is not a certified applicator and who is 1 or more of the following

(a) Authorized to apply general and restricted use pesticides for a commercial purpose as provided in this part and in the rules promulgated under this part

(b) Applies pesticides as a scheduled and required work assignment in the course of his or her employment on the property of another person for any purpose

(c) Applies pesticides for a private agricultural purpose

(2) Ready to use pesticide means a pesticide that is applied directly from its original container consistent with label directions such as an aerosol insecticide or rodent bait box and that does not require mixing or loading prior to application

(3) Registrant means a person who has registered a pesticide pursuant to this part

(4) Restricted use pesticide means a pesticide formulation classified for restricted use by the EPA or the director

(5) Restricted use pesticide dealer means a person engaged in distributing selling or offering for sale restricted use pesticides to the ultimate user

(6) Rodenticide means a substance or mixture of substances intended for preventing destroying repelling or mitigating rodents or any other vertebrate animal

(7) State management plan means a plan for the protection of groundwater as required by the EPA's labeling requirements for pesticides and devices 40 C F R part 156

(8) School means public and private schools grades kindergarten through the twelfth grade

(9) Supervise means the act or process of a certified applicator in directing the application of a pesticide by a competent person who is under his or her instruction and control and for whose actions the certified applicator is responsible even though the certified applicator is not physically present at the time and place the pesticide is applied

(10) Unreasonable adverse effect on the environment means any unreasonable risk to human beings or the environment taking into account the economic social and environmental costs and benefits of the use of a pesticide

(11) Use of a pesticide means the loading mixing applying storing transporting and disposing of a pesticide

(12) Vendor means a person who sells or distributes pesticides

(13) Weed means a plant which grows where it is not wanted

Sec 8307 (1) Every pesticide that is distributed sold exposed or offered for sale in this state shall be registered with the director pursuant to this part Registration shall be on forms provided by the director and shall be renewed annually before July 1 The director shall not register a pesticide under this part unless the registrant has paid all groundwater protection fees required under part 87 Registration is not required if a pesticide is shipped from 1 plant or warehouse to another plant or warehouse operated by the same person and used solely at that plant or warehouse as a constituent part to make a pesticide that is registered under this part or if the pesticide is distributed pursuant to an experimental permit

(2) An applicant for registration of a pesticide shall submit to the director a complete copy of the labeling accompanying the pesticide and shall file on a form provided by the director information that includes all of the following

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label if other than the applicant

(b) The full product name of the pesticide

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

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

(3) To register a pesticide for special local needs pursuant to section 24(c) of FIFRA 7 U.S.C. 136v or the regulations promulgated under that section the director shall require the information set forth under subsection (2). A pesticide may be registered for special local needs if the director determines that all of the following conditions are met:

- (a) Its composition warrants the proposed claims for it
- (b) Its labeling and other material required to be submitted comply with the labeling requirements of FIFRA or regulations promulgated under that act
- (c) It will perform its intended functions without unreasonable adverse effects on the environment
- (d) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment
- (e) The classification for general or restricted use is in conformity with section 3(d) of FIFRA

(4) Pesticides containing active or inert ingredients that have been confirmed in groundwater at a level above their groundwater resource response level and pesticides for which a state management plan is required shall be registered as restricted use pesticides. The director by rule shall establish additional criteria for designating a pesticide a restricted use pesticide due to groundwater concerns.

(5) The director shall require the applicant to submit a complete formula of the pesticide proposed for registration including the active and inert ingredients when necessary to execute the director's duties under this part. The director may not use for his or her own advantage or reveal other than to his or her authorized representative the EPA, the department of natural resources, the department of public health, a court of the state in response to a subpoena, a licensed physician, or in an emergency to a pharmacist or other persons qualified to administer antidotes any information relative to formulas of products, trade secrets, or other information obtained under authority of this part.

(6) A registration approved by the director and in effect on June 30 for which the July 1 renewal application is made and the annual registration fee paid shall continue in full force and effect until the director notifies the applicant that the registration is renewed or denied.

(7) Decisions on pesticide registration shall continue to be made cooperatively by the departments of agriculture, natural resources, and public health in accordance with a memorandum of agreement entered into by the departments.

(8) If a specific pesticide active ingredient for which a groundwater protection rule has been promulgated has been confirmed in groundwater at 3 or more sites at levels exceeding the groundwater resource protection level, the director may cancel the registration of pesticides containing that specific pesticide ingredient. In determining the need to cancel pesticide registrations due to groundwater concerns, the director shall consider the degree to which the registrant or registrants are willing to address groundwater concerns associated with their product or products and the potential effectiveness of additional restrictions, prohibitions, or groundwater protection rule modifications.

(9) A registrant who intends to discontinue a pesticide registration shall do either of the following:

(a) Terminate further distribution within the state and continue to register the pesticide annually for 2 successive years.

(b) Initiate a recall of the pesticide from distribution in the state within 60 days from the date of notification to the director of intent to discontinue registration.

(10) Upon the director's request, a person that has registered a pesticide in this state shall submit to the director information necessary to determine the pesticide's mobility in the environment and its potential to contaminate groundwater. This information may include any of the following:

- (a) Water solubility
- (b) Vapor pressure
- (c) Octanol water partition coefficient
- (d) Soil absorption coefficient
- (e) Henry's law constant
- (f) Dissipation studies including hydrolysis, photolysis, and aerobic and anaerobic soil metabolism
- (g) Product formulation
- (h) Other information considered necessary by the director

(11) Information requested under subsection (10) shall be consistent with product registration information required under FIFRA or criteria for designating a pesticide as a restricted use pesticide due to groundwater concerns as promulgated by rule under subsection (4). The director shall consider impacts on minor use pesticide registrations when requesting information.

(12) As used in this section:

- (a) Aerobic soil metabolism means the rate at which a chemical degrades in soil in the presence of oxygen.

- (b) Anaerobic soil metabolism means the rate at which a chemical degrades in soil in the absence of oxygen
- (c) Henry's law constant means the ratio of the partial pressure of a compound in air to the concentration of the compound in water at a given temperature
- (d) Hydrolysis means a chemical reaction in which a water combines with and splits the original chemical creating degradation products
- (e) Octanol water partition coefficient means the ratio of a chemical's concentration in the water saturated octanol phase to the chemical's concentration in the octanol saturated water phase
- (f) Photolysis means a chemical reaction in which light or radiant energy serves to split the original compound creating degradation products
- (g) Soil absorption coefficient means the ratio of absorbed chemical per unit weight of soil or organic carbon to the aqueous solute concentration
- (h) Vapor pressure means the pressure exerted by the vapor of a substance when it is under equilibrium conditions
- (i) Water solubility means the maximum amount of a material that can be dissolved in water to give a stable solution

Sec 8308 The director may do all of the following

- (a) Issue an experimental permit to a person applying for that permit if the director determines that the permit is necessary for the applicant to accumulate information necessary to register a pesticide
- (b) Prescribe terms, conditions, and the period of time the pesticide may be used under the experimental permit which shall be under the supervision of the director
- (c) Revoke an experimental permit when its terms or conditions are violated or its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment

Sec 8309 The director may refuse to register or may cancel or suspend registration of a pesticide if 1 or more of the following circumstances exist

- (a) A pesticide does not warrant the proposed claims for it or the pesticide and its labeling and other material required to be submitted do not comply with this part or the rules promulgated under this part. The applicant shall be notified of the manner in which the pesticide labeling or other material required to be submitted fails to comply with this part. If upon receipt of the notice the applicant does not make the required changes within 30 days the director may refuse to register the pesticide
- (b) A registered pesticide or a pesticide proposed for registration under this part is in violation of this part or rules promulgated under this part
- (c) Based on substantial scientific evidence use of a pesticide causes or is likely to cause if the pesticide is registered an unreasonable adverse effect
- (d) Based on substantial scientific evidence use of a pesticide causes or is likely to cause if the pesticide is registered an unreasonable serious chronic hazard to human health or long term environmental damage which cannot be controlled by designating the pesticide as a restricted use pesticide by limiting the uses for which a pesticide may be used or registered or by other changes to the registration or pesticide label

Sec 8310 (1) A person who is a restricted use pesticide dealer shall obtain an annual license for each business location. The license shall expire on December 31. The annual license fee of \$50.00 shall accompany the application for license together with other pertinent information the director may require. The license fee shall be credited to the general fund of the state.

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

(3) A restricted use pesticide dealer shall forward to the director as required by rule a record of all sales of restricted use pesticides on forms provided by the director. Duplicate copies of the records shall be kept on file by the restricted use pesticide dealer subject to inspection by an authorized agent of the director for 2 years after the date of sale. The information contained in the individual reports filed with the director by licensees pursuant to this section shall upon request be supplied in summary form to other state agencies except that the information regarding a pesticide for which a patent is in force may not be made available to the public if in the discretion of the director release of that information would tend to have a significant adverse effect on the competitive position of the dealer, distributor, or manufacturer. The summary shall include the name and address of the restricted use pesticide dealer, the name and address of the purchaser, the name of the pesticide sold, and in an emergency the quantity sold.

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

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

(6) A restricted use pesticide dealer shall maintain and submit records of all sales and the intended county of application for all pesticides sold to private applicators the use of which pesticides is restricted due to groundwater concerns

(7) Information collected in subsection (6) is confidential business information and is not subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15-231 to 15-246 of the Michigan Compiled Laws

Sec. 8311 (1) A private agricultural applicator or commercial applicator shall not use a restricted use pesticide without first complying with the certification and other requirements of this part and the rules promulgated under this part. Certification requirements for commercial applicators shall include completion of a written examination prescribed by the director. Certification requirements for private agricultural applicators shall provide optional methods of certification to include 1 of the following:

(a) Self study and examination

(b) Classroom training and examination

(c) An oral fact finding interview administered by an authorized representative of the director when a person is unable to demonstrate competence by examination or classroom training

(2) At the time of sale, private applicators shall provide identification of the intended county of application of a restricted use pesticide

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

(4) A commercial applicator shall keep for 3 years from the date of application a record of the pesticide registration number, product name, the formulated amount applied, and application location for all restricted use pesticides used by the commercial applicator. A summary of this information indicating the pesticide registration number, product name, and total formulated amount of pesticide applied to each county during the previous calendar year shall be transmitted to the director before March 1. This summary shall be submitted on forms provided by or approved by the director. Information collected under this subsection is confidential business information and is not subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15-231 to 15-246 of the Michigan Compiled Laws

(5) A certified applicator shall supervise the application of a general use pesticide by a noncertified applicator under his or her instruction and control even if the certified applicator is not physically present. A certified applicator shall directly supervise the application of a restricted use pesticide if prescribed by the label, this part, or rules promulgated under this part

(6) A certified applicator and a commercial applicator are subject to the requirements, prohibitions, and penalties of this part for an application of pesticides by the certified applicator or the commercial applicator and for an application of pesticides by a person directly or indirectly supervised by the certified applicator or the commercial applicator

(7) Each person shall follow recommended and accepted good practices in the use of pesticides, including but not limited to, use of a pesticide in a manner consistent with its labeling

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

Sec. 8312 (1) Satisfactory completion of certification requirements prescribed by the director and categorized according to the various types of pesticide applications prescribed by rule and consistent with the regulations of the EPA is a prerequisite for certification

(2) Application for a private agricultural applicator certificate or a commercial applicator certificate shall be on a form provided by the director and shall contain information regarding the applicant's qualifications and proposed operations, the type of equipment to be used by the applicant, and other information considered to be pertinent by the director

(3) An application for a private agricultural applicator certificate or a commercial applicator certificate shall be accompanied by the appropriate fee as provided in section 8317

(4) If an applicant complies with the certification requirements, the director shall issue a certificate that signifies that the applicant is a certified private agricultural applicator or a certified commercial applicator

(5) A private agricultural applicator certificate or a commercial applicator certificate may restrict an applicant to the use of a certain type of equipment or pesticide if the director finds that the applicant is qualified to use only that type of equipment or pesticide

(6) The director may refuse to issue a private agricultural applicator certificate or a commercial applicator certificate or renewal of a certificate if an applicant demonstrates an insufficient knowledge of any item called for in the application or has unsatisfied judgments against him or her or if the equipment to be used by the applicant is unsafe or inadequate to accomplish the proper application of the pesticides to be used

(7) If an applicant is not issued a private agricultural applicator certificate or a commercial applicator certificate under this section the director shall inform the applicant in writing of the reasons why the license was not issued

(8) The director may at any time deny revoke or suspend a private agricultural applicator certificate or a commercial applicator certificate for a violation of this part or a violation of an order issued under this part or upon conviction under section 14 of FIFRA 7 U S C 136l or upon conviction under a state pesticide law of a reciprocating state in accordance with section 8320

Sec 8313 (1) A commercial applicator who advertises in any form or who holds himself or herself out to the public as being in the business of applying either general use or restricted use pesticides shall obtain a commercial applicator license for each place of business and shall comply with the requirements of this section before engaging in business

(2) A commercial applicator required to be licensed by subsection (1) shall be certified under section 8312 and shall have at least 1 of the following in order to qualify for a license under this section

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

(b) A baccalaureate degree from a recognized college or university in a discipline that provides education regarding pests and the control of pests and 1 year of service as an employee of 1 or more commercial applicators or a person with comparable experience as determined by the director during which period the employee receives training and obtains experience in the application of pesticides under the supervision of a commercial applicator

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

(3) An application for a commercial applicator license shall be on a form provided by the director and shall contain information regarding the applicant's qualifications and proposed operations the type of equipment to be used by the applicant and other information considered pertinent by the director

(4) An application for a commercial applicator license shall be accompanied by the appropriate fee as provided in section 8317(2)

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

(6) A commercial applicator license may restrict the applicant to use a certain type of equipment or pesticide if the director finds that the applicant is qualified to use only that type

(7) The director may refuse to issue or renew a commercial applicator license if the applicant demonstrates an insufficient knowledge of an item called for in the application has unsatisfied judgments against him or her or if the equipment to be used by the applicant is unsafe or inadequate to accomplish the proper application of the pesticides to be used

(8) If an applicant is not issued a commercial applicator license under this section the director shall inform the applicant in writing of the reasons why the license was not issued

(9) The director may at any time deny revoke or suspend a commercial applicator license for a violation of this part or a violation of an order issued under this part or upon conviction under this part FIFRA or a state pesticide law of a reciprocating state in accordance with section 8320

Sec 8314 (1) Commencing 3 months after promulgation of the rules required under former section 19 of Act No 171 of the Public Acts of 1976 currently section 8325 it is a violation of this part for a person to apply any pesticide for a commercial purpose or to apply any pesticide in the course of his or her employment for any purpose other than a private agricultural purpose unless that person is either a certified applicator or a registered applicator

(2) A person who is not subject to the licensing requirement in section 8313 may apply a general use ready to use pesticide without being a certified applicator or a registered applicator

(3) To be eligible to be a registered applicator an applicant shall do all of the following

(a) Complete a training program that has been approved by the director and is conducted by a trainer who has the minimum qualifications established by rule Registration requirements for applicators who apply pesticides only for

private agricultural purposes may provide optional methods of training and testing as provided in section 8311(1). The training program shall be designed to facilitate and encourage persons who apply pesticides for private agricultural purposes to become registered applicators.

(b) Pass a test that is approved by the director and is administered by the director's designee.

(c) Possess either a valid temporary registration certificate issued by the director's designee under subsection (3) or a valid registration card issued by the director.

(4) If an applicant successfully completes an approved training program and passes a test that is administered by the director's designee as a requirement of that training program, a trainer shall issue a temporary registration to an applicant. A temporary registration is only valid from the time it is issued until the applicant receives a registration card from the director. An applicant may receive a valid registration card upon payment of the fee provided for in section 8317(3) and when the director's designee submits to the director a program completion form that is signed and dated by the trainer and by the applicant stating that the required training program has been provided and received and indicating that the applicant has passed the required test. The program completion form shall be promptly submitted as soon as the director's designee issues a temporary registration.

(5) A registered applicator may apply a pesticide that is not a restricted use pesticide under the supervision of a certified applicator and may apply a restricted use pesticide when under the direct supervision of a certified applicator. In addition, during a registered applicator's initial 3-year registration, a registered applicator may apply categories of restricted use pesticides while not directly supervised after the registered applicator has applied that category of restricted use pesticide under direct supervision for the number of hours required by the director unless prohibited by a label.

(6) A registered applicator who applies general use pesticides only for a private agricultural purpose or is not employed by a commercial applicator and who applies general use pesticides as a scheduled and required work assignment in the course of his or her employment is exempt from the provisions of this part requiring supervision by a certified applicator when that registered applicator applies general use pesticides.

(7) The employer of a registered applicator shall maintain a record of the hours and location of directly supervised hours of application of a restricted use pesticide by each registered applicator for the duration of the restricted applicator's employment and for 3 years following the termination of that person's employment. In addition, when a registered applicator has applied a category of restricted use pesticides while directly supervised for the length of time required by the director, the employer of the applicator may notify the director. Upon notification, the director shall forward a sticker or symbol to the employer that shall be attached to the registered applicator's registration card.

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

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

(10) The director may at any time deny, revoke, or suspend a certification or registration for a violation of this part or a violation of an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state in accordance with section 8320.

(11) The director shall develop and provide the documents and forms necessary to implement this section.

Sec 8315 (1) A private agricultural applicator or a commercial applicator, in addition to complying with the other requirements of this part, shall meet 1 or more of the following requirements before engaging in the aerial application of pesticides:

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

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

(c) Successfully complete an aerial applicator training program recognized by the director as sufficient to assure the protection of the public health, safety, and welfare and the environment.

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

(a) Demonstrate to the director the applicator's personal participation in a self-regulating application flight efficiency clinic sponsored or recognized by the Michigan cooperative extension service and approved by the department with an aircraft that the applicant operates.

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

Sec 8316 (1) At the beginning of each school year, school administrators shall notify parents and guardians of children attending that school of the right to be informed prior to any application of a pesticide at that school.

(2) The notice described in subsection (1) shall contain information obtained from the person applying the pesticide which includes a statement that a pesticide will be applied, the approximate location of the application, and the date of the application.

Sec 8317 (1) Except as otherwise provided in this subsection, a fee of \$50.00 shall accompany the application for a certificate for a certified commercial applicator. A fee of \$10.00 shall accompany an application for a private agricultural applicator and an application for a registered applicator who applies pesticides only for a private agricultural purpose. A certificate shall be valid until revoked or for a period of time of not less than 3 years to be established by rule by the director. The director shall consider changes in technology or use patterns in those categories of pesticide applications engaged in by the applicant as the criteria for requiring renewal. The certificate may be renewed if the applicant qualifies and pays the certification fee.

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

(3) Except as otherwise provided in this section, a fee of \$25.00 shall accompany the application for the registration of an applicator and the renewal of the applicator's registration. The registration shall expire 3 years after the date on which it is issued.

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

Sec 8318 (1) A pesticide control fund is established in the state treasury. The pesticide control fund shall be expended only as provided in this section.

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

(3) The revenue in the pesticide control fund shall be expended to administer and enforce this part, to process applications received under this section, and to develop and improve training programs to ensure the safe application of pesticides.

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

Sec 8319 The certification and registration of applicators and licensing requirements do not apply to any of the following:

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

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

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

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

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

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

Sec 8320 The director may enter into reciprocal agreements with other states or federal agencies for the purpose of accepting certification or registration required for pesticide applicators, if those states or federal agencies have an approved program to certify or register applicators, and if the requirements for certification or registration by those states or federal agencies equal or exceed the certification or registration requirements of this state.

Sec 8321 (1) A certificate or license issued by the director does not exonerate the holder from responsibility for damage resulting from misuse of pesticides, such as, but not limited to, overdosing, drifting, or misapplication.

(2) A person claiming damages from a pesticide application shall file a claim to, and on a reporting form provided by the director. This report shall be filed within 60 days after the date of the alleged damaging application or first observation of damage by the claimant. If a growing crop is alleged to have been damaged, the report shall be filed before 25% of the crop is harvested. The director shall, within 7 days after receipt of the report, notify the applicator and the owner or lessee of the property or other persons who may be charged with the responsibility of the damages claimed, and furnish them copies of any statements that are requested. The director or his or her representative will inspect damages if the director determines that the complaint has sufficient merit. The director shall make all

information pertaining to the complaint available to the person claiming damage and to the person who is alleged to have caused the damage

(3) The claimant shall permit the director the applicator and their representatives such as a bondsman or insurer to observe within reasonable hours the property or nontarget organism alleged to have been damaged and to collect samples for further examination in order that damage may be determined

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

Sec 8322 (1) The director may do all of the following

(a) Declare as a pest any form of plant or animal life except viruses nematodes bacteria or other microorganisms on or in living human beings or other animals that is injurious to health or the environment

(b) Determine the toxicity of pesticides to human beings The director shall use the data in support of registration and classification as a guide in this determination

(c) Determine pesticides and quantities of substances contained in pesticides that are injurious to the environment The director shall use the EPA regulations as a guide in this determination

(d) Enter into cooperative agreements with agencies of the federal government or any other agency of this state or an agency of another state for the purpose of implementing this part and securing uniformity of rules

(e) Enter upon any public or private premises or other place including vehicles of transport where pesticides or devices are being used or held for distribution or sale for the purposes of inspecting and obtaining samples of pesticides or devices or to inspect equipment or methods of application

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

(2) In addition to any other authority provided by this part the director by administrative order may classify a pesticide as a restricted use pesticide in accordance with any 1 of the restrictive criteria in 40 C F R 152 170 (May 4 1988)

(3) Prior to classifying a pesticide as a restricted use pesticide under subsection (2) the director shall issue a preliminary administrative order and provide for a 30 day period for public comment and review pertaining to the preliminary order Prior to issuing the final administrative order the director shall review and consider any public comments received during the 30 day period An administrative order classifying a pesticide as a restricted use pesticide shall cite each of the provisions of subsection (2) that justify that classification

(4) The department shall develop a program on pesticide container recycling and disposal to be approved by the commission of agriculture The program shall be limited to licensed pesticide dealers and other persons seeking approval from the department for participation in the program

Sec 8323 (1) Upon confirming contamination of groundwater by a pesticide pursuant to part 87 at a single location the director shall do all of the following

(a) Assist in the coordination of local activities designed to prevent further contamination of groundwater

(b) Conduct envelope monitoring

(c) Perform an evaluation of activities that may have contributed to the contamination

(d) Make a determination as to the degree to which groundwater stewardship practices were being utilized

(e) Make a determination as to the potential source or sources of the contamination

(2) If confirmed concentrations of pesticides exceed the groundwater resource response level or a confirmed contaminant has migrated into groundwater off of the property the director shall require a person whose action or negligence was potentially responsible for the contamination to develop an activity plan A person required to develop an activity plan shall develop and submit the activity plan to the director within 90 days after receiving notice from the director Upon receipt of an activity plan the director shall approve or reject the plan within 90 days If rejected the director shall provide a description of reasons for rejection Upon receipt of a rejection the person shall within 90 days develop an acceptable activity plan

(3) If the activities on a contamination site are determined by the director to be in accordance with all applicable components of the groundwater stewardship practices and groundwater protection rules activities that are not responsible for or potentially responsible for the contamination incident may continue

(4) If activities on a contamination site are determined by the director not to be in accordance with this part the director may issue an order to cease or modify activities on the site involving pesticide use A person aggrieved by an order issued under this section may request a hearing pursuant to 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

Sec 8324 (1) The director shall promulgate a groundwater protection rule that defines the scope and region of implementation of the rule if any of the following occur

(a) A pesticide has been confirmed in groundwater at levels exceeding its groundwater resource response level in at least 3 distinct locations as a result of similar activities as determined under section 8323(1) and the director determines that voluntary adoption of the groundwater stewardship practices pursuant to part 87 has not been effective in preventing groundwater contaminant concentrations from exceeding the groundwater resource response level

(b) The EPA proposes to suspend or cancel registration of the pesticide prohibits or limits the pesticide's sale or use in the state or otherwise initiates action against the pesticide because of groundwater concerns

(2) The director may promulgate a groundwater protection rule for a specific pesticide if the pesticide contains an active ingredient with a method detection limit greater than its groundwater resource response level

(3) In determining the need for and scope of a groundwater protection rule the director shall consider the type of contaminant or contaminants and the extent to which any of the following apply

(a) The source or sources of the contaminant or contaminants can be identified

(b) An identified source or sources are associated with a specific activity or activities

(c) Local response to the contamination is adequate to protect groundwater

(d) There are state label restrictions as allowed under sections 18 and 24 of FIFRA chapter 125 86 Stat 995 and 997 7 U S C 136p and 136v that could adequately address the problem

(e) Restricted use classification could adequately address the problem

(f) The use value and vulnerability of the resource and whether the groundwater is a currently or reasonably expected source of drinking water

(g) The technical and economic feasibility of any mandated practices on persons in the region

(h) The overall productivity and economic viability of the state's agriculture

(4) In determining the region of implementation for a groundwater protection rule the director shall consider both of the following

(a) The reliability and geographical distribution of groundwater sample test data

(b) The extent to which local aquifer sensitivity conditions can be considered characteristics of a larger region

(5) The director may approve alternative operations to those defined in a groundwater protection rule if they can be shown to provide the equivalent level of groundwater protection

Sec 8325 (1) The director shall promulgate rules for implementing this part including but not limited to rules providing for the following

(a) The collection examination and reporting the results of examination of samples of pesticides or devices

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

(c) The designation of restricted use pesticides for the state or for specified areas within the state The director may include in the rule the time and conditions of sale distribution and use of restricted use pesticides

(d) The certification and licensing of applicators and the licensing of restricted use pesticide dealers

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

(f) Good practice in the use of pesticides

(g) Notification or posting or both designed to inform persons entering certain public and private buildings or areas where the application of a pesticide other than a general use ready to use pesticide has occurred

(h) Use of a pesticide in a manner consistent with its labeling including adequate supervision of noncertified applicators if appropriate

(i) Prenotification by the building manager upon request for affected persons regarding the application of a pesticide at daycare centers and schools

(j) Responsibility of a building manager to post signs provided to him or her by the commercial applicator

(k) Designation of posted school bus stops as sensitive areas

(l) The establishing of a schedule of civil fines for violation of local ordinances as described in section 8328(3)

(2) By December 27 1989 the director shall submit rules to the joint committee on administrative rules pertaining to all of the following

(a) The development of a training program for applicators who apply pesticides for private agricultural purposes on the use of appropriate procedures for the application of pesticides safety procedures for pesticide application clothing and protective equipment for pesticide application the detection of common symptoms of pesticide poisoning the means of obtaining emergency medical treatment hazards posed by pesticides to workers the public health and the environment specific categories of pesticides and the requirements of applicable laws rules and labeling

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

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

(3) By June 27 1990 the director shall submit rules to the joint committee on administrative rules pertaining to the protection of agriculture employees who hand harvest agricultural commodities regarding all of the following

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

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

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

(d) Notification of agricultural workers of poison treatment facilities

(4) If the EPA at any time adopts and publishes agricultural worker protection standards the federal standards shall supersede rules promulgated under subsection (3)

(5) By December 27 1989 the director shall submit rules to the joint committee on administrative rules These rules shall include all of the following

(a) Minimum standards of competency and experience or expertise for trainers of certified and registered applicators

(b) The development of a training program for applicators on the use of appropriate procedures for the application of pesticides safety procedures for pesticide application clothing and protective equipment for pesticide application the detection of common symptoms of pesticide poisoning the means of obtaining emergency medical treatment hazards posed by pesticides to workers the public health and the environment specific categories of pesticides and the requirements of applicable laws rules and labeling

(c) The number of directly supervised application hours required before a registered applicator may apply each category of restricted use pesticide without direct supervision

Sec 8326 (1) A pesticide advisory committee is created within the department The committee shall be composed of the following members

(a) The director

(b) The director of the department of natural resources

(c) A representative of the department of natural resources selected by the director of the department of natural resources who has expertise regarding water quality programs

(d) The director of public health

(e) The director of the Michigan cooperative extension service

(2) The director shall appoint additional members to the committee 1 each representing the following

(a) The Michigan pest control association

(b) Licensed outdoor commercial applicators

(c) Producers of agricultural commodities

(d) Licensed aerial applicators

(e) Nongovernmental organizations for environmental preservation

(f) Farm employees

(g) Those in the medical or health science profession experienced in the toxicology of pesticides

(h) Agricultural chemical industry

(i) Nongovernmental organizations representing human health interests

(3) The members of the committee may designate an authorized representative or substitute to represent them on the committee Of the members first appointed by the director 3 shall serve for 1 year 3 for 2 years and 2 for 3 years Thereafter an appointment shall be for 3 years The director shall remove any member who is absent either personally or through a designated representative or substitute for 4 or more consecutive meetings Vacancies shall be filled for the balance of an unexpired term The committee shall meet on the call of the director who shall serve as chairperson The director shall call a meeting of the committee upon the request of 2 or more members A majority of the members of the committee constitutes a quorum

(4) The pesticide advisory committee shall consult with and advise the director in the administration of this part and shall have the following responsibilities

(a) To analyze and summarize information pertaining to pesticide use including but not limited to the number and types of pesticide use violations and the underlying cause and circumstances involving pesticide misuse and to develop a profile of violators of this part

(b) To evaluate potential contamination related to the size and disposal of pesticide containers for home agricultural industrial and commercial use and make recommendations to the legislature

(c) To utilize available information pertaining to the misuse of pesticides to determine whether the training programs offered by the director are effective in curtailing misuses

(d) To review all training requirements for applicators and persons licensed under this part including the specific review of the components of each area tested under this part and to make recommendations to the director regarding training and testing Notwithstanding the responsibilities of the committee under this subdivision the specific test questions prepared to implement the requirements of this part shall remain confidential

(e) To annually publish a report to be submitted to the governor the legislature and the director The report shall include all of the following

(i) A review of the recommendations of the committee

(ii) Recommendations regarding amendatory language for this part

(iii) Recommendations regarding resources necessary to adequately implement this part

(iv) A summary of the annual enforcement actions taken under this part

(5) All meetings of the committee shall be conducted pursuant to the open meetings act Act No 267 of the Public Acts of 1976 being sections 15 261 to 15 275 of the Michigan Compiled Laws

Sec 8327 (1) When the director believes that an applicator is using or intending to use a pesticide in an unsafe or inadequate manner or in a manner inconsistent with its labeling the director shall order the applicator to cease the use of or refrain from the intended use of the pesticide The order may be either oral or written and shall inform the applicator of the reason for the order

(2) Upon receipt of the order the applicator shall immediately comply with the order Failure to comply constitutes cause for revocation of the applicator's license or certification and subjects the applicator to the penalty imposed under section 8332

(3) The director shall rescind the order immediately upon being satisfied after inspection that the order has been complied with The inspection shall be conducted as soon as possible at the oral or written request of the applicator The rescinding order of the director may be oral and the applicator may rely on that oral rescinding order However an oral order shall be followed by a written rescinding order

(4) If sampling or examination of a pesticide or device discloses that it fails to comply with this part or the rules promulgated under this part then the pesticide or device is in violation of this part

Sec 8328 (1) Except as otherwise provided in this section it is the express legislative intent that this part preempt any local ordinance regulation or resolution that purports to duplicate extend or revise in any manner the provisions of this part Except as otherwise provided for in this section a local unit of government shall not enact maintain or enforce an ordinance regulation or resolution that contradicts or conflicts in any manner with this part

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department then that local unit of government may pass an ordinance that is identical to this part and rules promulgated under this part except as prohibited in subsection (7) The local unit of government's enforcement response for a violation of the ordinance that involves the use of a pesticide is limited to issuing a cease and desist order as prescribed in section 8327

(3) A local unit of government may enact an ordinance identical to this part and rules promulgated under this part regarding the posting and notification of the application of a pesticide Subject to subsection (8) enforcement of such an ordinance may occur without prior authorization from the department and without a contract with the department for the enforcement of this part and rules promulgated under this part The local unit of government shall immediately notify the department upon enactment of such an ordinance and shall immediately notify the department of any citations for a violation of that ordinance Violations of an ordinance enacted under this subsection are limited to a civil infraction of not more than \$500 00

(4) A local unit of government may enact an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and which regulates the distribution sale storage handling use application transportation or disposal of pesticides under either or both of the following circumstances

(a) Unreasonable adverse effects on the environment or public health will exist within the local unit of government The determination that unreasonable adverse effects on the environment or public health will exist shall take into consideration specific populations whose health may be adversely affected within that local unit of government

(b) The local unit of government has determined that the use of a pesticide within that unit of government has resulted or will result in the violation of other existing state laws or federal laws

(5) An ordinance enacted pursuant to subsections (2) (3) and (4) shall not conflict with existing state laws or federal laws. An ordinance enacted pursuant to subsection (4) shall not be enforced by a local unit of government until approved by the commission of agriculture. If the commission of agriculture denies an ordinance enacted pursuant to subsection (4) the commission of agriculture shall provide a detailed explanation of the basis of the denial within 60 days.

(6) Upon identification of unreasonable adverse effects on the environment or public health by a local unit of government as evidenced by a resolution submitted to the department, the department shall hold a local public meeting within 60 days after the submission of the resolution to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the use of pesticides. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(7) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated pursuant to this part. The department shall have sole authority to assess fees, register and certify pesticide applicators, license commercial applicators and restricted use pesticide dealer firms, register pesticide products, cancel or suspend pesticide registrations, and regulate and enforce all provisions of this part pertaining to the application and use of a pesticide to an agricultural commodity or for the purpose of producing an agricultural commodity.

(8) For any ordinance enacted pursuant to this section, the local unit of government shall provide that persons enforcing the ordinance comply with the training and enforcement requirements as determined by the director. A local unit of government shall reimburse the department for actual costs incurred in training local government personnel.

Sec. 8329 (1) When the director has reasonable cause to believe a pesticide or device is being distributed, stored, transported, offered for sale, or used in violation of this part or the rules promulgated under this part, the director may issue a written order to the owner or custodian of the pesticide or device to stop the prohibited conduct. After receipt of such an order, a person shall not sell, use, or remove the pesticide or device described in the order except in accordance with the order.

(2) A pesticide or device that is being transported, was transported and remains unsold, or is in original unbroken packages, is sold or offered for sale in this state, or is imported from a foreign country, in violation of this part or the rules promulgated under this part, is liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if:

(a) In the case of a pesticide, any of the following circumstances exist:

(i) It is adulterated or misbranded;

(ii) It is not registered pursuant to this part;

(iii) Its labeling fails to bear the information required by FIFRA or by regulations promulgated under FIFRA;

(iv) It is not colored or discolored and coloring or discoloring is required under FIFRA;

(v) Any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

(b) In the case of a device, it is misbranded;

(c) In the case of a pesticide or device, when used in accordance with the requirements imposed under this part and as directed by the labeling, it nevertheless causes unreasonable adverse effects on the environment. However, when a plant regulator, defoliant, or desiccant is used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts of plants are not considered to be injurious if those effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

(3) If the pesticide or device is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court directs, and if the pesticide or device is sold, the proceeds less the court costs shall be credited to the general fund. However, the pesticide or device shall not be sold contrary to this part or the laws of the jurisdiction in which it is sold. However, upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to this part or the laws of the jurisdiction in which it is sold, the court may direct that the pesticide or device be delivered to the owner. The proceedings of condemnation cases shall conform as nearly as possible to proceedings in admiralty, except that either party may demand trial by jury of an issue of fact joined in a case, and the proceedings shall be brought by and in the name of the people of the state.

(4) If a decree of condemnation is entered against a pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

Sec 8330 (1) A pesticide that is transported sold exposed or offered for sale in this state shall be in the registrant's or manufacturer's unbroken immediate container and shall have attached to it a label conforming to the labeling requirements as prescribed under section 8307 or the rules promulgated under this part. However the unbroken container requirement of this subsection does not apply to an applicator who is transporting a pesticide between the place of storage and the area of application.

(2) A pesticide container shall be free from damage that might render the pesticide unsafe.

(3) A pesticide that is required by rule to be colored or discolored shall not be distributed sold exposed or offered for sale unless the pesticide is colored or discolored as prescribed.

(4) A pesticide shall be handled stored displayed or transported in such a manner that it will not endanger human beings and their environment or endanger food feed or other products that may be stored displayed or transported with the pesticide.

(5) A person shall not detach alter deface or destroy in whole or in part any label or labeling provided for in this part or rules promulgated under this part or add a substance to or take a substance from a pesticide in a manner that may defeat the purpose of this part or FIFRA.

(6) A vendor of pesticides shall keep on file subject to inspection by an authorized agent of the director for a period of 1 year all invoices freight bills truckers receipts waybills and similar shipping data pertaining to pesticides that would establish date and origin of the shipments.

Sec 8331 A person shall not give false information in a matter pertaining to this part or resist impede or hinder the director or his or her authorized representatives in the discharge of their duties.

Sec 8332 A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to 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.

Sec 8333 (1) The director upon finding after notice and an opportunity for a hearing that a person has violated any provision of this part except sections 8311(2) and 8312 may impose an administrative fine of not more than \$1 000 00 for each violation.

(2) If the director finds that a violation occurred despite the exercise of due care or did not result in significant harm to human health or the environment the director may issue a warning instead of imposing an administrative fine.

(3) The director shall advise the attorney general of the failure of a person to pay an administrative fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(4) A registrant commercial applicator registered applicator restricted use pesticide dealer or distributor who knowingly violates this part or a rule promulgated under this part is guilty of a misdemeanor and shall be fined not more than \$5 000 00 for each offense. A registrant commercial applicator registered applicator restricted use pesticide dealer or distributor who knowingly and with malicious intent violates this part or a rule promulgated under this part is guilty of a misdemeanor and shall be fined not more than \$25 000 00 for each offense. A private agricultural applicator or any other person who knowingly violates this part or a rule promulgated under this part is guilty of a misdemeanor and shall be fined not more than \$1 000 00 for each offense. The court may allow the department to recover reasonable costs and attorney fees incurred in a prosecution resulting in a conviction for a violation committed knowingly and with malicious intent under this subsection.

(5) The director may bring an action to enjoin the violation or threatened violation of this part or a rule promulgated under this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(6) The attorney general may file a civil action in which the court may impose on any person who violates this part or a rule promulgated under this part a civil fine of not more than \$5 000 00 for each violation.

(7) In defense of an action filed under this section in addition to any other lawful defense a person may present evidence as an affirmative defense that at the time of the alleged violation he or she was in compliance with label directions and with this part and rules promulgated under this part.

(8) A civil cause of action does not arise for injuries to any person or property if a private agricultural applicator or a registered applicator who stores handles or applies pesticides only for a private agricultural purpose was not grossly negligent and stored handled or applied pesticides in compliance with this part rules promulgated under this part and the pesticide labeling.

(9) Applicable provisions of the revised judicature act of 1961 Act No 236 of the Public Acts of 1961 being sections 600 101 to 600 9947 of the Michigan Compiled Laws apply to civil actions filed pursuant to this part.

Sec 8334 The penalties provided for violations of this part do not apply to any of the following:

(a) A carrier while lawfully engaged in transporting a pesticide within this state if the carrier upon request permits the director to copy all records showing the transactions in and movement of the pesticide or devices.

(b) Public officials of this state and the federal government while engaged in the performance of their official duties in administering the state or federal pesticide laws or regulations

(c) A person who ships a substance or mixture of substances being tested in which the only purpose is to determine its toxicity or other properties and from the use of which the user does not expect to receive any pest control benefit

(d) The shipment or movement of an unregistered or canceled pesticide for the specific purposes of disposal or storage

Sec 8335 A court shall not allow the recovery of damages from an administrative action taken or an order stopping the sale or use or requiring seizure if the court finds that there was probable cause for the action or order

Sec 8336 (1) This part does not terminate or in any way modify any liability civil or criminal which is in existence on June 25 1976

(2) For the purposes of determining any penalty or liability in respect to an act or omission occurring before June 25 1976 former Act No 297 of the Public Acts of 1949 and former Act No 233 of the Public Acts of 1959 shall apply

PART 85 FERTILIZERS

PART 87 GROUNDWATER AND FRESHWATER PROTECTION

Sec 8701 For purposes of this part the words and phrases defined in sections 8702 to 8705 have the meanings ascribed to them in those sections

Sec 8702 (1) Activity plan means a plan for the mitigation of groundwater contamination at a specific location including a time frame for implementation

(2) Agronomic rate means either of the following

(a) For pesticides the application of pesticide contaminated materials in such a manner as not to exceed legal labeled rates

(b) For fertilizers the application of fertilizer contaminated materials at rates not to exceed those recommended by the Michigan state university cooperative extension service taking all available sources of nutrients into account

(3) Analyte or analytes means the material or materials that an analysis is designed to detect either qualitatively or quantitatively

(4) Confirmation mechanism means a scientific process for the verification of detection of analytes in groundwater utilizing at least 2 separate water samples collected at time intervals of greater than 14 days from the same groundwater sampling point and analyzed by peer reviewed and authenticated laboratory methodologies

(5) Contaminant means any pesticide or fertilizer originated chemical radionuclide ion synthetic organic compound microorganism or waste that does not occur naturally in groundwater or that naturally occurs at a lower concentration than detected

(6) Contamination means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activity

(7) Demonstration project means a project designed to illustrate the implementation and impact of alternate pesticide and fertilizer management practices

(8) Department means the department of agriculture

(9) Director means the director of the department or his or her designee

Sec 8703 (1) Envelope monitoring means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer

(2) Fertilizer means a fertilizer as defined in the fertilizer act of 1975

(3) Fertilizer act of 1975 means the fertilizer act of 1975 Act No 198 of the Public Acts of 1975 being sections 286 751 to 286 767 of the Michigan Compiled Laws

(4) Fund means the freshwater protection fund created in section 8716

(5) General screening means monitoring of groundwater for the purpose of determining the presence and concentration of analytes

(6) Groundwater means underground water within the zone of saturation

(7) Groundwater advisory council means the groundwater advisory council established in section 8708

(8) Groundwater impact potential means the potential for contamination of groundwater as a result of pesticide or nitrogen fertilizer use

(9) Groundwater protection rule means a groundwater protection rule promulgated under part 83 or the fertilizer act of 1975 or both

(10) Groundwater resource protection level means a maximum contaminant level health advisory level or if the United States environmental protection agency has not established a maximum contaminant level or a health advisory level a level established by the director of public health using a risk assessment protocol established by rule under this part

(11) Groundwater resource response level means 20% of the groundwater resource protection level In cases where 20% of the groundwater resource protection level is less than the method detection limit the method detection limit shall serve as the groundwater resource response level

(12) Groundwater stewardship practices means any of a set of voluntary practices adopted by the commission of agriculture pursuant to section 8707 and designed to protect groundwater from contamination by pesticides and fertilizers

(13) Maximum contaminant level means that term as it is defined in title XIV of the public health service act chapter 373 88 Stat 1660 and regulations promulgated under that act

(14) Method detection limit means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte

(15) Monitoring means sampling and analysis to determine the levels of pesticides or their breakdown products fertilizers or their residues or other analytes as determined by the director

Sec 8704 (1) Nitrogen fertilizer means a fertilizer that contains nitrogen as a component

(2) On site evaluation system means a specific set of criteria used to voluntarily evaluate a person's property with regard to determination of potential sources of contamination

(3) Pesticide means that term as it is defined in part 83

Sec 8705 (1) Registrant means a person who is subject to the registration requirements of part 83

(2) Restricted use pesticide means that term as it is defined in part 83

(3) Specialty pesticide means a disinfectant sanitizer germicide biocide or other pesticide labeled solely for use directly on humans or pets or other pesticides labeled solely for use in areas associated with the household or home life including garden and ornamental uses or on institutional or industrial premises but excludes pesticides labeled for use on rights of way or other outdoor wide area treatments

(4) State management plan means a plan for the protection of groundwater as required by the United States environmental protection agency's labeling requirements for pesticides and devices pursuant to 40 C F R part 156

(5) Stewardship plan means a set of practices activities or procedures developed and implemented pursuant to this part to provide operations that are in accord with groundwater stewardship practices

(6) Technical assistance means direct on site assistance provided to individuals that is designed to improve implementation of groundwater stewardship practices or groundwater protection rules

(7) Use means the loading mixing applying storing transporting or disposing of a pesticide or fertilizer

Sec 8706 The intent of this part is to reduce risks to the environment and public health by preventing groundwater contamination from pesticides and fertilizers

Sec 8707 (1) The director in conjunction with the Michigan state university cooperative extension service and the agricultural experiment station in cooperation with the United State department of agriculture soil and conservation service and the agricultural stabilization and conservation service the department of natural resources and other professional and industry organizations shall develop groundwater stewardship practices for approval by the commissioner of agriculture and upon approval shall promote their implementation

(2) The director in conjunction with Michigan state university the department of natural resources and other persons the director considers appropriate shall develop a voluntary on site evaluation system for pesticide or nitrogen fertilizer use The on site evaluation system shall be designed to do all of the following

(a) Provide persons with the ability to voluntarily determine the relative groundwater impact potential posed by their use of pesticides and nitrogen fertilizers

(b) Provide persons with the ability to determine the degree to which operations are in accord with groundwater stewardship practices and applicable groundwater protection rules

- (c) Prioritize operational changes at the site level intended to protect groundwater
 - (d) Guide persons to appropriate technical and educational materials
- (3) The director in conjunction with the groundwater advisory council shall review and evaluate the effectiveness of groundwater stewardship practices adopted under subsection (1)

Sec 8708 (1) The director shall establish a groundwater advisory council composed of all of the following

- (a) The director of the department of agriculture
- (b) The director of the department of natural resources
- (c) The director of public health
- (d) The director of the Michigan state university cooperative extension service
- (e) The director of the Michigan state university agricultural experimentation station
- (f) Representatives of all of the following as appointed by the director
 - (i) The United States department of agriculture stabilization and conservation service
 - (ii) The United States department of agriculture soil conservation service
 - (iii) The United States geological survey
 - (iv) Soil and water conservation districts
 - (v) Agricultural producers
 - (vi) Nongovernmental environmental organizations
 - (vii) Regulated agricultural industries
 - (viii) Right of way applicators
 - (ix) Other persons as determined by the director

(2) The groundwater advisory council shall advise the director on but not limited to the following

- (a) Groundwater stewardship practices
- (b) On site evaluation system
- (c) Groundwater protection rules established under part 83
- (d) Water quality and environmental monitoring
- (e) Stewardship program activities
- (f) Interagency coordination of groundwater programs

(g) Prioritizing the activities of the groundwater stewardship teams based on detections of pesticides in groundwater nitrogen concentrations in groundwater groundwater impact potential estimation or other factors as determined by the director

Sec 8709 (1) The director shall establish regional groundwater stewardship teams composed of departmental educational and technical assistance personnel and other persons as determined necessary by the director for implementation of programs developed under this part

(2) The groundwater stewardship teams are responsible for implementation of programs developed under this part including but not limited to the provision of all of the following

- (a) Educational opportunities including direct educational assistance and consulting programs demonstration projects educational programs and tours workshops and conferences
- (b) Technical assistance for persons making changes consistent with groundwater stewardship practices or groundwater protection rules on site evaluation of practices that may impact groundwater the development and implementation of stewardship plans and the development and implementation of activity plans
- (c) Private well sampling grants in aid for persons in the stewardship program emergency response and land application of pesticide and fertilizer contaminated materials

Sec 8710 (1) The director in consultation with the groundwater advisory council shall establish a groundwater stewardship program designed to promote the protection of groundwater through education technical assistance and grants A person who has completed an on site evaluation with technical assistance personnel is eligible to participate in the groundwater stewardship program Participants in the groundwater stewardship program shall develop and implement a stewardship plan approved by the director

(2) The department may provide grants to persons participating in the groundwater stewardship program in accordance with procedures established by the department Grants shall be available for making changes consistent

with groundwater stewardship practices groundwater protection rules and the removal of potential sources of contamination and other purposes considered suitable by the director

(3) Liability for groundwater contamination shall not be imposed on a person in the groundwater stewardship program under this part unless he or she was grossly negligent or in violation of state or federal law or failed to comply with the provisions of the applicable groundwater stewardship program or plan Nothing in this part shall modify or limit any obligation responsibility or liability imposed by any other provision of state law

(4) Technical assistance programs and grants provided under this section are limited to availability of funds collected pursuant to this part

Sec 8711 (1) Pesticides containing ingredients that have been confirmed in groundwater at a level above their groundwater resource response level or pesticides for which a state management plan is required shall be registered as restricted use pesticides pursuant to part 83 The director by rule promulgated pursuant to part 83 shall establish criteria for designating a pesticide a restricted use pesticide due to groundwater concerns

(2) The director of the department of public health shall establish groundwater resource protection levels and promulgate groundwater resource protection levels for all pesticides that do not have a federally established maximum contaminant level or a health advisory level and for which monitoring occurs

Sec 8712 (1) The director shall establish and implement a program to track restricted use pesticides to their county of application

(2) The director may require additional information for more refined tracking in specific areas determined through groundwater impact potential estimation to be highly vulnerable to groundwater contamination for those pesticides in which the United States environmental protection agency has required a state management plan

(3) Information collected in subsection (2) is confidential business information and is not subject to the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

Sec 8713 (1) The director in conjunction with the department of natural resources and the department of public health shall develop and establish priorities procedures and protocols for the implementation of a groundwater monitoring program to do all of the following

(a) Provide general screening of groundwater

(b) Determine the relative risk of groundwater contamination at different locations

(c) Perform envelope monitoring

(2) The director shall in a timely manner notify affected well owners of their monitoring results from the monitoring conducted pursuant to this section including the method detection limits and associated water resource protection levels

(3) The monitoring program conducted pursuant to this section may provide for modifications of sampling density and analytes to reflect regional groundwater impact potential

(4) The monitoring conducted pursuant to this section shall be conducted utilizing generally accepted scientific practices

(5) The department shall establish a method detection limit goal for monitoring conducted pursuant to this section set at 10% of a compound's groundwater resource response level

(6) Agencies conducting monitoring for pesticides or fertilizers pursuant to this section shall notify the director on forms provided by or in a format approved by the director of the location procedure and concentration of all pesticide detections or nitrate concentrations in excess of 10 parts per million Information received by the director shall be evaluated based upon accepted protocols and procedures established under this part

(7) The director shall establish by rule laboratory confirmation mechanisms used under this part

(8) The director shall establish by rule risk assessment protocols for the development of groundwater resource protection levels

Sec 8714 (1) Upon confirmation of an adverse impact on groundwater the director may upon reasonable notice require a person to furnish any information that the person may have relating to the identification nature and quantity of pesticides and fertilizers that are or have been used on a particular site and to current or past production practices that may have impacted groundwater quality This information shall be treated as confidential business information and is not subject to the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

(2) The director may upon written request authorize persons to land apply materials contaminated with pesticides or fertilizers at agronomic rates This authorization shall prescribe appropriate operational control activities to protect

the application location and shall identify both the location of remediation and the location or locations where such a land application will take place

Sec 8715 (1) In addition to the fees provided for in part 83 a registrant shall pay an annual groundwater protection fee for each product to be registered The specialty pesticide groundwater protection fee is \$100 00 per product Groundwater protection fees for all other pesticides are 0 75% of the wholesale value of the previous registration year's product sales for use in this state with a \$150 00 minimum groundwater protection fee The minimum groundwater protection fee is due in the office of the director before July 1 Sales based groundwater protection fees greater than the \$150 00 minimum are due in the office of the director before October 1 of the following registration years

(2) An additional late fee of \$100 00 shall be paid by the registrant for each pesticide if the pesticide registration is a renewal registration and the minimum groundwater protection fee is received by the department after June 30

(3) A person required to pay a specialty fertilizer or soil conditioner registration fee under the fertilizer act of 1975 Act No 198 of the Public Acts of 1975 being sections 286 751 to 286 767 of the Michigan Compiled Laws shall pay an additional \$100 00 groundwater protection fee for each brand and product name of each grade registered

(4) All fertilizer manufacturers or distributors licensed under the fertilizer act of 1975 except specialty fertilizer and soil conditioner registrants shall pay an additional groundwater protection fee of 1 1/2 cents per percent of nitrogen in the fertilizer for each ton of fertilizer sold

(5) The fees collected under this part including any interest or dividends earned shall be transmitted to the state treasurer who shall credit the money received to the fund

(6) This section is repealed November 22 2000

(7) Upon the expenditure or appropriation of money raised in this section for any purpose other than those specifically listed in this part authorization to collect fees in this section shall be suspended until such time as the money expended or appropriated for purposes other than those listed in this part are returned to the fund

Sec 8716 (1) The freshwater protection fund is created within the state treasury

(2) The state treasurer may receive money or other assets from any source for deposit into the fund including general fund general purpose appropriations gifts grants bequests and if provided by law revenue from the sale of Michigan freshwater protection bonds or the Michigan freshwater protection checkoff on state income and single business tax returns The director shall annually seek matching general fund general purpose appropriations in amounts equal to the groundwater protection fees deposited into the fund pursuant to this part The state treasurer shall direct the investment of the fund The state treasurer shall credit to the fund interest and earnings from fund investments

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

(4) The department shall expend money from the fund upon appropriation only for 1 or more of the following purposes

(a) Direct assistance

(b) Indirect assistance

(c) Emergency response and removal of potential sources of groundwater contamination Expenditures pursuant to this subdivision shall not exceed \$15 000 00 per location

(d) Administrative costs Expenditures pursuant to this subdivision shall not exceed 20% of the annual appropriations from the fund

(5) The department shall establish criteria and procedures for approving proposed expenditures from the fund

(6) Notwithstanding section 8715 if at the close of any fiscal year the amount of money in the fund exceeds \$3 500 000 00 the department shall not collect a groundwater protection fee for the following year After the groundwater protection fees have been suspended under this subsection the fees shall only be reinstated if at the close of any succeeding fiscal year the amount of money in the fund is less than \$1 000 000 00

(7) The department of treasury shall before November 1 of each year notify the department of the balance in the fund at the close of the preceding fiscal year

(8) As used in this section

(a) Administrative costs includes but is not limited to costs incurred during any of the following

(i) Groundwater monitoring for pesticides and fertilizers

(ii) Development and enforcement of groundwater protection rules

(iii) Coordination of programs under this part with the United States environmental protection agency and other state programs with groundwater and pesticide management responsibilities

(iv) Management of pesticide sales information

(b) Direct assistance includes but is not limited to programs that will provide for any of the following

- (i) Provision of alternate noncommunity water supplies
- (ii) Closure of wells that may impact groundwater such as abandoned improperly constructed or drainage wells
- (iii) The environmentally sound disposal or recycling of specialty pesticide containers
- (iv) The environmentally sound disposal or recycling of nonspecialty pesticide containers
- (v) Specialty and nonspecialty pesticide pickup programs for pesticides not currently registered for use
- (vi) Programs devoted to integrated pest and crop management that strive to encourage the judicious use of pesticides and fertilizers through targeted applications as part of a systems approach to pest control and related crop management decisions
- (vii) Incentive and cost share programs for persons in the groundwater stewardship program for implementation of groundwater stewardship practices or groundwater protection rules
- (viii) Incentive and cost share programs for persons who notify the director of potential sources of groundwater contamination on their property
- (ix) Monitoring of private well water for pesticides and fertilizers
- (x) Removal of soils and waters contaminated by pesticides and fertilizers and the land application of those materials at agronomic rates
- (xi) Groundwater stewardship program grants pursuant to section 8710
- (xii) Other programs established pursuant to this part
- (c) Indirect assistance includes but is not limited to programs that will provide for any of the following
 - (i) Public education and demonstration programs on specialty pesticide container recycling and environmentally sound disposal methods
 - (ii) Educational programs for pesticide and fertilizer end users
 - (iii) Technical assistance programs for pesticide and fertilizer end users
 - (iv) The promotion and implementation of on site evaluation systems and groundwater stewardship practices
 - (v) Research programs for determination of the impacts of alternate pesticide and fertilizer management practices
 - (vi) Research program for determination of aquifer sensitivity and vulnerability to contamination by pesticides and fertilizers

Sec 8717 The department may promulgate rules as it considers necessary or advisable to implement this part

PART 89 LITTERING

Sec 8901 As used in this part

- (a) Litter means all rubbish refuse waste material garbage offal paper glass cans bottles trash debris or other foreign substances
- (b) Public or private property or water includes but is not limited to any of the following
 - (i) The right of way of a road or highway a body of water or watercourse or the shore or beach of the body of water or watercourse including the ice above the water
 - (ii) A park playground building refuge or conservation or recreation area
 - (iii) Residential or farm properties or timberlands
- (c) Vehicle means every motor vehicle registered under the Michigan vehicle code Act No 300 of the Public Acts of 1949 being sections 257 1 to 257 923 of the Michigan Compiled Laws
- (d) Vessel means a vessel registered under the marine safety act Act No 303 of the Public Acts of 1967 being sections 281 1001 to 281 1199 of the Michigan Compiled Laws

Sec 8902 (1) A person shall not knowingly without the consent of the public authority having supervision of public property or the owner of private property dump deposit place throw or leave or cause or permit the dumping depositing placing throwing or leaving of litter on public or private property or water other than property designated and set aside for such purposes

(2) A person who removes a vehicle that is wrecked or damaged in an accident on a highway road or street shall remove all glass and other injurious substances dropped on the highway road or street as a result of the accident

Sec 8903 (1) A person shall not knowingly cause litter or any object to fall or to be thrown into the path of or to hit a vehicle traveling upon a highway

(2) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$500 00 or both

Sec 8904 (1) A person who violates this part is guilty of a misdemeanor and shall be fined not less than \$100 00 or more than \$500 00 and the costs of prosecution or imprisonment for not more than 90 days or both Additionally the court shall impose under the supervision of the court community service in the form of litter gathering labor including but not limited to litter connected with the particular violation

(2) Except as provided in subsection (4) involving litter from a leased vehicle or leased vessel in a proceeding for a violation of this part involving litter from a motor vehicle or vessel proof that the particular vehicle or vessel described in the citation complaint or warrant was used in the violation together with proof that the defendant named in the citation complaint or warrant was the registered owner of the vehicle or vessel at the time of the violation constitutes in evidence a presumption that the registered owner of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation

(3) The driver of a vehicle or vessel is presumed to be responsible for litter that is thrown dropped dumped deposited placed or left from the vehicle or vessel on public or private property or water

(4) In a proceeding for a violation of this part involving litter from a leased motor vehicle or leased vessel proof that the particular vehicle or vessel described in the citation complaint or warrant was used in the violation together with proof that the defendant named in the citation complaint or warrant was the lessee of the vehicle or vessel at the time of the violation constitutes in evidence a presumption that the lessee of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation

Sec 8905 (1) A person who violates this part where the violation involves litter that is produced at a health facility or agency as defined in section 20106 of the public health code Act No 368 of the Public Acts of 1978 being section 333 20106 of the Michigan Compiled Laws or at a laboratory described in section 20507 of Act No 368 of the Public Acts of 1978 being section 333 20507 of the Michigan Compiled Laws is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$1 000 00 or both

(2) Except as provided in subsection (3) a person who violates this part where the violation involves litter that is infectious waste pathological waste or sharps is guilty of a felony punishable by imprisonment for not more than 2 years or by a fine of not more than \$5 000 00 or both

(3) For a second or subsequent violation under subsection (2) the person shall be punished by imprisonment for not less than 1 year or more than 5 years and a fine of not more than \$10 000 00

(4) As used in this section

(a) Infectious waste means waste that contains varying amounts of microorganisms that have a potential for causing serious illness

(b) Pathological waste means body organs tissues parts and fluids removed during surgery or autopsy whether or not they are infectious

(c) Sharps means discarded hypodermic needles syringes and scalpel blades whether or not they are infectious

Sec 8906 All public authorities having supervision of public property of this state or any political subdivision of this state may post notice signs and otherwise publicize the requirements of this part All public authorities having supervision of public property in this state may establish and maintain receptacles for the deposit of litter on the property and publicize the location of those receptacles

Sec 8907 This part does not affect or in any way limit the powers of municipalities to enact and enforce ordinances for the control and elimination of litter

SOIL CONSERVATION EROSION AND SEDIMENTATION CONTROL

PART 91 SOIL EROSION AND SEDIMENTATION CONTROL

PART 93 SOIL CONSERVATION DISTRICTS

WATERCRAFT POLLUTION

PART 95 WATERCRAFT POLLUTION CONTROL

Sec 9501 As used in this part

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

(b) Discharge means spilling leaking pumping pouring emitting emptying or dumping

(c) Docking facility means a public private or commercial marina yacht club dock or wharf used for mooring serving or otherwise handling watercraft

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

(e) Marine sanitation device means equipment designed for installation on board a watercraft or installed on board a watercraft to receive retain treat or discharge sewage

(f) Oil means oil of any kind or in any form including petroleum fuel oil sludge and oil refuse

(g) Police officer means a police officer as defined in section 42 of the Michigan vehicle code Act No 300 of the Public Acts of 1949 being section 257 42 of the Michigan Compiled Laws and a conservation officer

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

(i) Sewage means human body wastes treated or untreated

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

(k) Waters of this state means waters within the territorial limits of this state including the waters of the Great Lakes that are under the jurisdiction of this state

Sec 9502 (1) A person shall not place throw deposit discharge or cause to be discharged into or onto the waters of this state any litter sewage oil or other liquid or solid materials that render the water unsightly noxious or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment of the water for recreational purposes

(2) A person shall not discharge dump throw or deposit garbage litter sewage or oil from a recreational domestic or foreign watercraft used for pleasure or for the purpose of carrying passengers cargo or otherwise engaged in commerce on the waters of this state

Sec 9503 (1) Except as otherwise provided in this section a person shall not moor or operate a watercraft or permit the mooring or operation of his or her watercraft on the waters of this state if the watercraft has a marine sanitation device unless the marine sanitation device is equipped with 1 or more of the following pollution control devices

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

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

(2) Except as otherwise provided in this section a person shall not moor or operate a watercraft on the waters of this state if the watercraft has a marine sanitation device that is equipped with any type of bypass connection pump or other means of directly or indirectly discharging sewage into the waters of this state unless the bypass connection pump or other device has been rendered incapable of directly or indirectly discharging sewage into the waters of this state This subsection does not prohibit a properly installed discharge line used to empty a holding tank or retention device at an onshore sewage pump out station or prohibit the use of a portable marine sanitation device A bypass connection pump or other device shall be rendered incapable of directly or indirectly discharging sewage into the waters of this state by 1 of the following methods

(a) Removing a section of the pipe or tubing that allows discharge of sewage into the waters of this state placing a cap over the pipe or tubing that remains attached to the marine sanitation device and placing a seal approved by the department over the cap in a manner that precludes reattaching the pipe or tubing without breaking the seal To comply with the requirements of this subsection the seal must be unbroken at the time an inspection occurs

(b) Closing a valve that will prevent all discharge of sewage into the waters of the state and placing a seal approved by the department over the valve handle in a manner that precludes reopening the valve without breaking the seal To comply with the requirements of this subsection the seal must be unbroken at the time an inspection occurs

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

(4) If the department conducts an inspection to determine whether a watercraft is in compliance with this section and finds that the watercraft is in compliance the department shall place a sticker on the watercraft that lists the date that the watercraft was inspected The department shall not inspect a watercraft for compliance with this section more than once per year except upon probable cause

Sec 9504 (1) Except as otherwise provided in this section all docking facilities shall provide pump out facilities approved by the department of public health for marine sanitation device holding tanks on the watercraft All pump out facility plans and installations shall be approved by the department of public health or its authorized representative

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

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

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

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

Sec 9505 (1) A person shall not discharge or permit the discharge of oil from a watercraft or a docking facility into or onto the waters of this state.

(2) The owner or operator of a watercraft who, whether directly or through any person concerned in the operation, navigation, or management of the watercraft, discharges, permits, or causes or contributes to the discharge of oil into or onto the waters of this state or adjoining shorelines or beaches shall immediately remove the oil from the waters, shorelines, or beaches. If the state removes the oil that was discharged from the watercraft, the owner or operator or both are liable to the state for the full amount of the costs reasonably incurred for its removal. The state may bring action against the owner or operator or both to recover such costs in any court of competent jurisdiction.

Sec 9506 All watercraft moored, operated, or located upon the waters of this state are subject to inspection by the department or any peace, conservation, or police officer for the purpose of determining if the watercraft is equipped in compliance with the requirements of this part. The department may inspect marinas and other waterside facilities used by watercraft for launching, docking, or mooring purposes to determine if they are equipped with trash receptacles, sewage disposal equipment, or both. Commercial docks and wharfs designed for receiving and loading cargo or freight or both from commercial watercraft shall furnish facilities, if determined necessary as prescribed by the department, to accommodate discharge of sewage from heads and galleys and for deposit of litter, garbage, trash, or bilge waters from the watercraft that utilize the docks or wharfs.

Sec 9507 The state fully reserves to itself the exclusive right to establish requirements with reference to the disposal or discharge of sewage, litter, and oil from all watercraft. In order to assure statewide uniformity, the regulation by any political subdivision of the state of waste disposal from watercraft is prohibited.

Sec 9508 (1) The department may promulgate rules that are necessary or convenient to implement this part.

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

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

Sec 9510 A person who violates this part or the rules promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 92 days or a fine of not more than \$500.00 or both.

CHAPTER 3 WASTE MANAGEMENT

PART 111 HAZARDOUS WASTE MANAGEMENT

Sec 11101 For the purposes of this part, the words and phrases defined in sections 11102 to 11104 have the meanings ascribed to them in those sections.

Sec 11102 (1) Board means a site review board created in section 11117.

(2) Contaminant means any of the following:

(a) Hazardous waste as defined in R 299.9203 of the Michigan administrative code.

(b) Any hazardous waste or hazardous constituent listed in appendix VIII of part 261 or appendix IX of part 264 of title 40 of the code of federal regulations.

(3) Corrective action means an action determined by the department to be necessary to protect the public health, safety, or welfare or the environment and includes, but is not limited to, investigation, evaluation, cleanup, removal, remediation, monitoring, containment, isolation, treatment, storage, management, temporary relocation of people, and

provision of alternative water supplies or any corrective action allowed under title II of the solid waste disposal act or regulations promulgated pursuant to that act

(4) Designated facility means a hazardous waste treatment storage or disposal facility that has received a permit or has interim status under the solid waste disposal act or has a permit from a state authorized under section 3006 of subtitle C of the solid waste disposal act 42 U S C 6926 and which if located in this state has an operating license issued under this part has a legally binding agreement with the department that authorizes operation or is subject to the requirements of section 11123(5)

(5) Disposal means the discharge deposit injection dumping spilling leaking or placing of a hazardous waste into or on land or water in a manner that the hazardous waste or a constituent of the hazardous waste may enter the environment be emitted into the air or be discharged into water including groundwater

(6) Disposal facility means a facility or a part of a facility where managed hazardous waste as defined by rule is intentionally placed into or on any land or water and at which hazardous waste will remain after closure

(7) Failure mode assessment means an analysis of the potential major methods by which safe handling of hazardous wastes may fail at a treatment storage or disposal facility

Sec 11103 (1) Generation means the act or process of producing hazardous waste

(2) Generator means any person by site whose act or process produces hazardous waste as identified or listed pursuant to section 11128 or whose act first causes a hazardous waste to become subject to regulation under this part

(3) Hazardous waste means waste or a combination of waste and other discarded material including solid liquid semisolid or contained gaseous material that because of its quantity quality concentration or physical chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness or may pose a substantial present or potential hazard to human health or the environment if improperly treated stored transported disposed of or otherwise managed Hazardous waste does not include material that is solid or dissolved material in domestic sewage discharge solid or dissolved material in an irrigation return flow discharge industrial discharge that is a point source subject to permits under section 402 of title IV of the federal water pollution control act chapter 758 86 Stat 880 33 U S C 1342 or is a source special nuclear or by product material as defined by the atomic energy act of 1954 chapter 1073 68 Stat 919

(4) Hazardous waste management means the systematic control of the collection source separation storage transportation processing treatment recovery recycling and disposal of hazardous waste

(5) Landfill means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile a land treatment facility a surface impoundment an injection well a salt dome formation a salt bed formation or an underground mine or cave

(6) Land treatment facility means a treatment facility or part of a treatment facility at which hazardous waste is applied onto or incorporated into the soil surface If waste will remain after closure a facility described in this subsection is a disposal facility

(7) Limited storage facility means a storage facility that meets all of the following conditions

(a) Has a maximum storage capacity that does not exceed 25 000 gallons of hazardous waste

(b) Storage occurs only in tanks or containers

(c) Has not more than 200 containers on site that have a capacity of 55 gallons or less

(d) Does not store hazardous waste on site for more than 90 days

(e) Does not receive hazardous waste from a treatment storage or disposal facility

(8) Manifest means a form approved by the department used for identifying the quantity composition origin routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal treatment or storage

(9) Manifest system means the system used for identifying the quantity composition origin routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal treatment or storage

(10) Mechanism means a letter of credit a financial test that demonstrates the financial strength of the company owning a treatment storage or disposal facility or a parent company guaranteeing financial assurance for a subsidiary or an insurance policy that will provide funds for closure or postclosure care of a treatment storage or disposal facility

(11) Municipal solid waste incinerator means an incinerator that is owned or operated by any person and that meets all of the following requirements

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings hotels motels and other residential sources or burns this household waste together with solid waste from commercial institutional municipal county or industrial sources that if disposed of would not be required to be placed in a disposal facility licensed under this part

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to assure that the incinerator receives and burns only waste referred to in subdivision (a)

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

(d) The incinerator is not an industrial furnace as defined in 40 C.F.R. 260.10

(12) Municipal solid waste incinerator ash means the substances remaining after combustion in a municipal solid waste incinerator

(13) Municipality means a city, village, township, or Indian tribe

(14) On site means on the same or geographically contiguous property that may be divided by a public or private right of way if the entrance and exit between the pieces of property are at a crossroads intersection and access is by crossing rather than going along the right of way. On site property includes noncontiguous pieces of property owned by the same person but connected by a right of way that the owner controls and to which the public does not have access.

Sec 11104 (1) Operator means the person responsible for the overall operation of a disposal, treatment, or storage facility with approval of the department either by contract or license.

(2) Solid waste means that term as it is defined in part 115.

(3) Storage means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(4) Storage facility means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to storage. A generator who accumulates managed hazardous waste, as defined by rule, on site in containers or tanks for less than 91 days or a period of time prescribed by rule is not a storage facility.

(5) Surface impoundment or impoundment means a treatment, storage, or disposal facility or part of a treatment, storage, or disposal facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with human-made materials, that is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and that is not an injection well. Surface impoundments include, but are not limited to, holding, storage, settling, and aeration pits, ponds, and lagoons.

(6) The solid waste disposal act means title II of Public Law 89-272, 42 U.S.C. 6901, 6902 to 6907, 6911, 6912 to 6914a, 6915 to 6916, 6921 to 6931, 6933 to 6939b, 6941, 6942 to 6949a, 6951 to 6956, 6961 to 6964, 6971 to 6979a, 6981 to 6987, 6991 to 6991i, and 6992 to 6992k.

(7) Transporter means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

(8) Treatment means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize the waste, to recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(9) Treatment facility means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to treatment.

(10) Updated plan means the updated state hazardous waste management plan prepared under section 11110.

(11) Vehicle means each separate conveyance used in the transportation of hazardous waste that is 1 of the following:

(a) A rail car as defined in 49 C.F.R. 171.8.

(b) A semi-trailer, truck, or trailer as defined in the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(c) A truck tractor as defined in Act No. 300 of the Public Acts of 1949, only if the hazardous waste is actually transported in the cab of the vehicle.

Sec 11105 A person shall not generate, dispose, store, treat, or transport hazardous waste in this state without complying with the requirements of this part.

Sec 11106 The generation, transportation, treatment, storage, disposal, reuse, and recycling of municipal solid waste incinerator ash is regulated under part 115 and not under this part.

Sec 11107 The department and the board, in the conduct of their duties as prescribed under this part, shall assist in encouraging, developing, and implementing methods of hazardous waste management that are environmentally sound, that maximize the utilization of valuable resources, and that encourage resource conservation, including source

separation recycling and waste reduction and that are consistent with the plan to be provided by the department of public health pursuant to section 12103(d) of the public health code Act No 368 of the Public Acts of 1978 being section 333 12103 of the Michigan Compiled Laws In addition the director the department and the board in the conduct of their duties as prescribed by this part shall assist in implementing the policy of this state to minimize the placement of untreated hazardous waste in disposal facilities

Sec 11108 (1) Except as otherwise provided in this section each owner or operator of a landfill shall pay to the department a fee assessed on hazardous waste disposed of in a landfill The fee shall be based on the quantity of waste specified on the manifest or monthly operating report and shall be \$10 00 per ton \$10 00 per cubic yard or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee The fee for fractional quantities of hazardous waste shall be proportional If the waste is required to be listed on a manifest and the owner or operator of the landfill determines that the waste quantity figure on the manifest is not accurate the owner or operator shall correct the waste quantity figure on all manifest copies accompanying the shipment note the reason for the changes in the discrepancy indication space on the manifest and assess the fee in accordance with the corrected waste quantity figure Payment shall be made within 30 days after the close of each quarter The landfill owner or operator shall assess off site generators the fee The fee for hazardous waste that is generated and disposed of on the site of a landfill owner or operator shall be paid by that owner or operator

(2) Except as otherwise provided in this section each owner or operator of a solidification facility licensed pursuant to section 11123 shall pay to the department a fee assessed on hazardous waste received at the solidification facility The fee shall be based on the quantity of waste specified on the manifest or monthly operating report and shall be \$10 00 per ton \$10 00 per cubic yard 4 cents per gallon or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee The fee for fractional quantities of hazardous waste shall be proportional If the waste is required to be listed on a manifest and the owner or operator of the solidification facility determines that the waste quantity figure on the manifest is not accurate the owner or operator shall correct the waste quantity figure on all manifest copies accompanying the shipment note the reason for the change in the discrepancy indication space on the manifest and assess the fee in accordance with the corrected waste quantity figure Payment shall be made within 30 days after the close of each quarter The solidification facility owner or operator shall assess off site generators the fee The fee for hazardous waste that is generated and solidified on the site of a solidification owner or operator shall be paid by that owner or operator

(3) The following hazardous waste is exempt from the fees provided for in this section

(a) Ash that results from the incineration of hazardous waste or the incineration of solid waste as defined in part 115

(b) Hazardous waste exempted by rule because of its character or the treatment it has received

(c) Hazardous waste that is removed from a site of environmental contamination that is included in a list submitted to the legislature pursuant to section 20105 or hazardous waste that is removed as part of a site cleanup activity at the expense of the state or federal government

(d) Solidified hazardous waste produced by a solidification facility licensed pursuant to section 11123 and destined for land disposal

(e) Hazardous waste generated pursuant to a 1 time closure or site cleanup activity in this state if the closure or cleanup activity has been authorized in writing by the department Hazardous waste resulting from the cleanup of inadvertent releases which occur after March 30 1988 is not exempt from the fee

(f) Primary and secondary wastewater treatment solids from a wastewater treatment plant that includes an aggressive biological treatment facility as defined in section 3005(j)(12)(B) of subtitle C of the solid waste disposal act 42 U S C 6925

(g) Emission control dust or sludge from the primary production of steel in electric furnaces

(4) An owner or operator of a landfill or solidification facility shall assess or pay the fee described in this section unless a written signed certification is provided by the generator indicating that the waste is exempt from the fee If the waste that is exempt from the fee is required to be listed on a manifest the certification shall contain the manifest number of the shipment and the specific fee exemption for which the waste qualifies If the waste that is exempt from the fee is not required to be listed on a manifest the certification shall provide the volume of exempt waste the waste code or waste codes of the exempt waste the date of disposal or solidification and the specific fee exemption for which the waste qualifies The owner or operator of the landfill or solidification facility shall retain this certification for 4 years from the date of receipt

(5) The department or a health department certified pursuant to section 11145 shall evaluate the accuracy of generator fee exemption certifications and shall take enforcement action against a generator who files a false certificate In addition the department shall take enforcement action to collect fees that are not paid as required by this section

(6) The landfill owner or operator and the solidification facility owner or operator shall forward fee revenue due to the department with a completed form that is provided or approved by the department The owner or operator shall certify that all information provided in the form is accurate The form shall include the following information

(a) The volume of waste subject to a fee

(b) The name of each generator who was assessed a fee the generator's identification number manifest numbers waste volumes and the amount of the fee assessed

(7) A generator who documents to the department on a form provided by the department a reduction in the amount of hazardous waste generated as a result of a process change or documents a reduction in the amount of hazardous waste that is being disposed of in a landfill either directly or following solidification at a solidification facility as a result of a process change or the generator's increased use of source separation input substitution process reformulation recycling treatment or an exchange of hazardous waste that results in a utilization of that waste is eligible for a refund from the state. The refund shall be in the amount of \$10.00 per ton \$10.00 per cubic yard 4 cents per gallon or 1/2 cent per pound of waste reduced or managed through an alternative to landfill disposal. A generator is not eligible to receive a refund for that portion of a reduction in the amount of hazardous waste generated that is attributable to a decrease in the generator's level of production of the products that resulted in the generation of the hazardous waste.

(8) Commencing in 1990 and in each following year a generator seeking a refund shall calculate the refund due by comparing waste generation treatment and disposal activity in the calendar year immediately preceding the date of filing with waste generation treatment and disposal activity in the calendar year 2 years prior to the date of filing.

(9) To be eligible for a refund a generator shall file a request with the department by June 30 of the year following the year for which the refund is being claimed.

(10) A refund shall not exceed the total fees paid by the generator to the landfill operator or owner and the solidification facility operator or owner.

(11) A form submitted by the generator as provided for in subsection (7) shall be certified by the generator or the generator's authorized agent.

(12) The department shall maintain information regarding the landfill disposal fees received and refunds provided pursuant to this section.

(13) The fees collected pursuant to this section shall be forwarded to the state treasurer and deposited in the general fund to be appropriated to pay refunds to generators under this section and to fund programs created under part 143 and part 145.

Sec 11110 (1) Not later than January 1, 1990, the department shall prepare an updated state hazardous waste management plan.

(2) The updated plan shall

(a) Update the state hazardous waste management plan adopted by the commission on January 15, 1982.

(b) Be based upon location of generators health and safety economics of transporting type of waste and existing treatment storage or disposal facilities.

(c) Include information generated by the department of commerce and the department on hazardous waste capacity needs in the state.

(d) Include information provided by the office of waste reduction created in part 143.

(e) Plan for the availability of hazardous waste treatment or disposal facilities that have adequate capacity for the destruction treatment or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state during the 20-year period after October 1, 1988, as is described in section 104(c)(9)(A) of title I of the Comprehensive Environmental Response Compensation and Liability Act of 1980, Public Law 96-510, 42 U.S.C. 9604.

(f) Plan for a reasonable geographic distribution of treatment storage and disposal facilities to meet existing and future needs including proposing criteria for determining acceptable locations for these facilities. The criteria shall include a consideration of a location's geology geography demography waste generation patterns along with environmental factors public health factors and other relevant characteristics as determined by the committee.

(g) Emphasize a shift away from the practice of landfilling hazardous waste and toward the in-plant reduction of hazardous waste and the recycling and treatment of hazardous waste.

(h) Include necessary legislative administrative and economic mechanisms and a timetable to carry out the plan.

(3) The department shall instruct the office of waste reduction created in part 143 to complete studies as considered necessary for the completion of the updated plan. The studies may include

(a) An inventory and evaluation of the sources of hazardous waste generation within this state or from other states including the types quantities and chemical and physical characteristics of the hazardous waste.

(b) An inventory and evaluation of current hazardous waste management minimization or reduction practices and costs including treatment disposal on-site recycling reclamation and other forms of source reduction within this state.

(c) A projection or determination of future hazardous waste management needs based on an evaluation of existing capacities treatment or disposal capabilities manufacturing activity limitations and constraints. Projection of needs.

shall consider the types and sizes of treatment storage or disposal facilities general locations within the state management control systems and an identified need for a state owned treatment storage or disposal facility

(d) An investigation and analysis of methods incentives or technologies for source reduction reuse recycling or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste

(e) An investigation and analysis of methods and incentives to encourage interstate and international cooperation in the management of hazardous waste

(f) An estimate of the public and private cost of treating storing or disposing of hazardous waste

(g) An investigation and analysis of alternate methods for treatment and disposal of hazardous waste

(4) If the department finds in preparing the updated plan that there is a need for additional treatment or disposal facilities in the state then the department shall identify incentives the state could offer that would encourage the construction and operation of additional treatment or disposal facilities in the state that are consistent with the updated plan The department shall propose criteria which could be used in evaluating applicants for the incentives

(5) Upon completion of the updated plan the department shall publish a notice in a number of newspapers having major circulation within the state as determined by the department and shall issue a statewide news release announcing the availability of the updated plan for inspection or purchase at cost by interested persons The announcement shall indicate where and how the updated plan may be obtained or reviewed and shall indicate that not less than 6 public hearings shall be conducted at varying locations in the state before formal adoption The first public hearing shall not be held until 60 days have elapsed from the date of the notice announcing the availability of the updated plan The remaining public hearings shall be held within 120 days after the first public hearing at approximately equal time intervals

(6) After the public hearings the department shall prepare a written summary of the comments received provide comments on the major concerns raised make amendments to the updated plan and determine whether the updated plan should be adopted

Sec 11111 (1) The department with the advice of the director of public health shall adopt or reject the updated plan within 60 days

(2) If the department rejects the updated plan it shall indicate its reason for rejection and return the updated plan for further work

(3) The department shall make the necessary changes and reconsider the updated plan within 30 days after receipt of the rejection

Sec 11112 The department shall make a final decision on the updated plan within 120 days after the department first receives the updated plan If the department fails to formally adopt or reject the updated plan within 120 days the updated plan is considered adopted

Sec 11114 Not more than 180 days after the final adoption of the updated plan the department shall submit to the legislature proposed rules to implement the updated plan created in section 11110

Sec 11115 After the updated plan is adopted the department shall not issue a permit or license under this part for a treatment storage or disposal facility until the department has made a determination that the action is consistent with the updated plan This section does not apply to a treatment storage or disposal facility granted a construction permit or a license under this part before the final adoption of the updated plan However such a facility shall be consistent with the state hazardous waste management plan adopted by the commission on January 15 1982

Sec 11115a (1) The owner or operator or both of a facility specified in this subsection is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a contaminant from any waste management unit at the facility regardless of when the contaminant may have been placed in or released from the waste management unit This requirement applies to a facility for which the owner or operator or both is applying for or has been issued a license under this part

(2) If the department on the basis of any information determines that there is or has been a release of a contaminant from any waste management unit at the facility the department may order or may enter a consent order with an owner or operator or both of a facility specified in subsection (1) requiring corrective action at the facility A license permit or order issued or entered pursuant to this subsection shall contain all of the following

(a) Schedules of compliance for corrective action if corrective action cannot be completed before the issuance of the license permit or order

(b) Assurances of financial responsibility for completing the corrective action

(c) Requirements that corrective action be taken beyond the facility boundary if the release of a contaminant has or may have migrated or otherwise has or may have been emitted beyond the facility boundary unless the owner or

operator of the facility demonstrates to the satisfaction of the department that despite the owner's or operator's best efforts the owner or operator was unable to obtain the necessary permission to undertake this corrective action

(3) Beginning on June 4, 1992, the owner or operator or both of a facility specified in this subsection and not in subsection (1) is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a hazardous waste from the facility regardless of when the hazardous waste may have been placed in or released from the facility. This requirement applies to a facility for which the owner or operator or both is or was subject to the interim status requirements defined in the solid waste disposal act except for those facilities that have received formal written approval of the withdrawal of their United States environmental protection agency part A hazardous waste permit application from the department or the United States environmental protection agency

(4) If the department on the basis of any information determines that there is or has been a release of a hazardous waste the department may order or may enter a consent order with an owner or operator or both of a facility specified in subsection (3) requiring corrective action at the facility. An order issued or entered pursuant to this subsection shall contain both of the following

(a) Schedules of compliance for corrective action

(b) Assurances of financial responsibility for completing the corrective action

Sec 11116 (1) A treatment storage or disposal facility in existence on January 1, 1980 or a treatment storage or disposal facility in existence on November 19, 1980 for which approval of construction has been received under part 55 is not subject to a review of the board and does not require a construction permit under this part except for an expansion enlargement or alteration of the treatment storage or disposal facility beyond its original authorized design capacity or beyond the area specified in the operating license original construction permit or other authorization. This subsection does not abridge or alter the effect of a local ordinance permit requirement or other requirement on the construction of a treatment storage or disposal facility described in this subsection

(2) The expansion enlargement or alteration of a treatment storage or disposal facility in existence on January 1, 1980 constitutes a new proposal for which a construction permit is required

Sec 11117 (1) A site review board shall be established to review and recommend to the department whether the department should grant or deny final approval for each site construction permit application that is referred to the board by the department. If more than 1 construction permit application for interrelated facilities on a single site within the same municipality are submitted by the same applicant reviewed concurrently by the department and referred to the board by the department a single board shall be established to review the site applications concurrently but shall grant or deny final approval for each application individually. A board shall consist of 9 voting members and a nonvoting chairperson to be appointed as provided in subsection (2)

(2) The following 9 members and 1 nonvoting chairperson shall serve on every board established to review a site construction permit application

(a) Seven members shall be members appointed by the governor with the advice and consent of the senate. The 7 members on each board shall include a geologist a chemical engineer and a toxicologist each of whom are on the faculty of an institution of higher education within the state a representative from a manufacturing industry 2 representatives of the public and a representative of a municipality. Subject to the other requirements of this subdivision the governor may appoint more than 1 geologist chemical engineer toxicologist representative from a manufacturing industry and representative of a municipality and more than 2 representatives of the public. However only 1 geologist chemical engineer toxicologist representative from a manufacturing industry and representative of a municipality and only 2 representatives of the public as randomly designated by the department shall serve on a particular board. The member who represents municipalities shall be associated with a municipality or municipal association that is or represents the same type of municipality in which a facility is proposed to be located. A member representing a municipality or the public shall not serve on a site review board that is evaluating an application for a facility located within a county or municipality that directly employs the member or in which the member resides. A vacancy shall be filled for the unexpired portion of the period in the same manner as the original appointments. All members appointed by the governor including a chairperson appointed pursuant to subdivision (c) shall be appointed to serve on site review boards for a period of 3 years and may be appointed for additional 3 year periods. In addition a member may serve beyond the expiration of the member's 3 year period of service for so long a period of time as is necessary to complete action on construction permit applications pending at the expiration of the member's 3 year period of service

(b) One member shall be appointed by the governing body of the municipality in which the treatment storage or disposal facility is primarily proposed to be located to serve on the board that is established to consider a particular construction permit application. One member shall be appointed by the county board of commissioners in which the treatment storage or disposal facility is proposed to be located and shall be a resident of the county where the facility is proposed to be located. The members serving pursuant to this subdivision shall serve until the particular construction permit application subject to their review is approved or until the application is rejected and is no longer subject to review

(c) An attorney shall be appointed by the governor with the advice and consent of the senate to serve as a nonvoting chairperson on each board established to review a site construction permit. The chairperson shall have experience in conducting formal meetings where sworn testimony is received. Subject to the other requirements of this subdivision, the governor may appoint more than 1 chairperson. However, only 1 chairperson designated by the department shall serve on a particular board.

(3) The department shall notify the local governing body of the municipality and county government of a construction permit application filed with the department.

(4) Five of the 9 voting members of the board constitute a quorum for the transaction of business of the board and the concurrence of 5 voting members of the board constitutes a legal action of the board. All meetings of the board shall be conducted pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(5) The department shall make staff available to assist a board in carrying out its responsibilities.

(6) A site review board that is established before December 28, 1987 shall proceed and fulfill its duties pursuant to the applicable law in effect when the site review board was established.

Sec. 11118 (1) Except as otherwise provided in section 11122, a person shall not establish a treatment, storage, or disposal facility without a construction permit from the department. A person proposing the establishment of a treatment, storage, or disposal facility subject to the construction permit requirement of this part, but not including a limited storage facility, shall make application for a construction permit to the department on a form provided by the department.

(2) If an amendment to this part or to the rules promulgated under this part subjects activities lawfully being conducted at a treatment, storage, or disposal facility at the time the amendment takes effect to the operating license requirements of this part solely because of the amendment, the activities carried out at the facility prior to the effective date of the amendment are not subject to the construction permit requirements of this part, except for an expansion of the facility with respect to such activities beyond its original authorized design capacity or beyond the area specified in an original permit, license, or other authorization or an alteration of the method of hazardous waste treatment or disposal.

(3) The application for a construction permit shall contain the name and residence of the applicant, the location of the proposed treatment, storage, or disposal facility, and other information specified in this section by rule or by federal regulation issued under the solid waste disposal act. The application shall be accompanied by a construction permit application fee. The fee shall be calculated as provided in subsection (10) or may be based on the actual cost of the construction permit review according to procedures established by rule. Construction permit application fees shall be deposited in the general fund of the state. The application shall include a copy of the actual published notice as described in subsection (9) and a determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated pursuant to this part, an environmental assessment, an engineering plan, and the procedures for closure and postclosure monitoring. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of the state, and also shall contain an environmental failure mode assessment.

(4) Except as otherwise provided in this subsection, the construction permit application shall include a disclosure statement that includes all of the following:

(a) The full name and business address of all of the following:

(i) The applicant;

(ii) The 5 persons holding the largest shares of the equity in or debt liability of the proposed facility. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock;

(iii) The operator, if known;

(iv) If known, the 3 employees of the operator who will have the most responsibility for the day-to-day operation of the facility;

(v) Any other business entity included within the definition of person that any person required to be listed in subparagraphs (i) to (iv) has at any time had 25% or more of the equity in or debt liability of. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(b) All convictions for criminal violations of any environmental statute enacted by a federal, state, Canadian, or Canadian provincial agency for each person required to be listed under this subsection. If debt liability is held by a chartered lending institution, information required in this subsection and subsection (4)(c) and (d) is not required from that institution.

(c) A listing of all environmental permits or licenses issued by a federal, state, Canadian, or Canadian provincial agency held by each person required to be listed under this subsection that were permanently revoked because of noncompliance.

(d) A listing of all activities at property owned or operated by each person required to be listed under this subsection that resulted in a threat or potential threat to the environment and for which public funds were used to finance an activity to mitigate the threat or potential threat to the environment except if the public funds expended to facilitate the mitigation of environmental contamination were voluntarily and expeditiously recovered from the applicant or other listed person without litigation

(5) If any information required to be included in the disclosure statement changes or is supplemented after the filing of the statement the applicant permittee or licensee shall provide that information to the department in writing within 30 days of the change or addition

(6) Notwithstanding any other provision of law the department may deny an application for a construction permit if there are any listings pursuant to subsection (4)(b) (c) or (d) as originally disclosed or as supplemented

(7) A person may indicate an interest in being placed on a department organized mailing list to be kept informed of any rules plans construction permit applications contested case hearings public hearings or other information or procedures relating to the administration of this part A charge may be required by the department to cover the cost of the materials

(8) There is created within the state treasury a revolving fund When a site construction permit application is referred to a site review board by the department the applicant shall pay a \$25 000 00 fee to be placed in this fund The \$25 000 00 fee shall be in addition to the application fee required under subsection (3) This fund shall cover the expenses of the site review board members the chairperson a mediator and any other expenses necessary to the deliberations of the board The department shall administer the fund and authorize expenditures The department shall maintain records to support any expenses charged to the fund If expenses payable from the fund exceed the \$25 000 00 fee paid by the applicant the additional expenses shall be paid from money appropriated by the legislature to the revolving fund created in this subsection Any unexpended portion of an applicant's \$25 000 00 fee that is not expended to pay the expenses listed in this subsection shall be reimbursed to the applicant after the site review board process is concluded

(9) An application for a site construction permit shall not be complete unless it includes a copy of a newspaper notice which the applicant published at least 30 days prior to submittal of the application in a newspaper having major circulation in the municipality and the immediate vicinity of the proposed treatment storage or disposal facility The required published notice shall contain a map indicating the location of the proposed treatment storage or disposal facility and information on the nature and size of the proposed facility In addition the notice shall contain all of the following information provided by the department

(a) A description of the application review process

(b) The location where the complete application package may be reviewed

(c) An explanation of how copies of the complete application package may be obtained

(10) An applicant for a construction permit for a treatment storage or disposal facility shall calculate the applicable construction permit application fee required under subsection (3) by totaling the following for each construction permit application

(a) For a landfill surface impoundment land treatment or waste pile facility	\$9 000 00
(b) For an incinerator or treatment facility other than a treatment facility in subdivision (a)	\$7 200 00
(c) For a storage facility other than storage that is associated with treatment or disposal activities that may be regulated under a single permit	\$ 500 00

(d) For the permitted site size of a landfill surface impoundment land treatment or waste pile facility except waste piles meeting the requirements of 40 C F R 264 250(c) the following

(i) Less than 5 acres	\$ 100 00
(ii) 5 to 19 acres	\$ 170 00
(iii) 20 to 79 acres	\$ 240 00
(iv) 80 acres or more	\$ 320 00

(e) For the permitted site size of a treatment or storage facility other than a facility listed in subdivision (d) the following

(i) Less than 5 acres	\$ 50 00
(ii) 5 to 19 acres	\$ 100 00
(iii) 20 to 79 acres	\$ 100 00
(iv) 80 acres or more	\$ 100 00

(f) For the projected waste volume per day for a landfill surface impoundment land treatment or waste pile facility except waste piles meeting the requirements of 40 C F R 264 250(c) the following

(i) Less than 50 cubic yards or 10 000 gallons	\$ 60 00
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(u) 50 to 100 cubic yards or 10 000 to 20 000 gallons	\$ 80 00
(uu) 101 to 700 cubic yards or 20 001 to 140 000 gallons	\$ 100 00
(vv) More than 700 cubic yards or more than 140 000 gallons	\$ 130 00
(g) For the projected waste volume per day for a treatment or storage facility other than a facility listed in subdivision (f) the following	
(i) Less than 50 cubic yards or 10 000 gallons	\$ 50 00
(u) 50 to 100 cubic yards or 10 000 to 20 000 gallons	\$ 100 00
(uu) 101 to 700 cubic yards or 20 001 to 140 000 gallons	\$ 100 00
(vv) More than 700 cubic yards or more than 140 000 gallons	\$ 150 00
(h) For the hydrogeological characteristics of a landfill surface impoundment land treatment or waste pile facility except waste piles meeting the requirements of 40 C F R 264.250(c) the following	
(i) Natural clay	\$ 40 00
(u) Natural sand	\$ 60 00
(uu) Compacted clay	\$ 70 00
(vv) Artificially lined (other materials)	\$ 100 00
(v) Any combination of the above	\$ 100 00
(i) For the hydrogeological characteristics of surface water in a treatment or storage facility other than a facility listed in subdivision (h)	
	\$ 75 00

Sec 11119 (1) Upon receipt of a construction permit application that complies with the requirements of section 11118 the department shall

(a) Immediately notify the permanent board members and the municipality and county in which the treatment storage or disposal facility is located or proposed to be located a local soil erosion and sedimentation control agency appointed pursuant to the soil erosion and sedimentation control act of 1972 Act No 347 of the Public Acts of 1972 being sections 282.101 to 282.125 of the Michigan Compiled Laws each division within the department that has responsibility in land air or water management a regional planning agency established by executive directive of the governor and other appropriate agencies The notice shall describe the procedure by which the permit may be approved or denied

(b) Review the plans of the proposed treatment storage or disposal facility to determine if the proposed operation complies with this part and the rules promulgated under this part The review shall be made within the department The review shall include but need not be limited to a review of air quality water quality waste management hydrogeology and the applicant's disclosure statement A written and signed review by each person within the department reviewing the permit and plans shall be received and recorded before a construction permit is referred to the site review board or is denied by the department If the site review plan review and the application meet the requirements of this part and the rules promulgated under this part the department shall refer the application to the site review board for review An expansion of a treatment storage or disposal facility beyond the original authorized design capacity or beyond the area specified in the original permit license or other authorization or an alteration of the method of hazardous waste treatment or disposal constitutes a new proposal for which a new construction permit is required

(c) Coordinate and review all permits that the applicant is required to obtain from the department in order to construct the proposed treatment storage or disposal facility

(d) Hold a public hearing within 60 days after receipt of a complete construction permit application

(2) The department shall refer an application to the site review board or shall notify the applicant of the intent to deny the construction permit application within 120 days after the department receives an application meeting the requirements of section 11118

(3) If the department refers an application to the site review board prior to the first board meeting the department shall provide each board member with a copy of the application a staff report including a summary of public comments a responsiveness summary and a draft construction permit

(4) If the department does not refer an application to the site review board or does not notify the applicant of the intent to deny the construction permit application within 120 days the construction permit application shall be submitted to the board for action

(5) If the department intends to deny the application the department shall commence a public participation process that is equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act Upon completion of the public participation process the department shall review all the comments made during that process and shall refer the application to the site review board or deny the application If

the department refers the construction permit application to the board the department shall proceed as described in section 11120

Sec 11120 (1) The department shall notify those members appointed by the governor who will serve on the board within 75 days after receipt of a construction permit application if the department has not notified the applicant of the intent to deny the application or at the time the department refers an application to the board or at the time an application is automatically referred to the board pursuant to section 11119(4) whichever is earlier At that time the department also shall notify the county and the municipality in which the proposed treatment storage or disposal facility is to be located and request the appointment of the members of the board as provided in section 11117(2)(b) The notification shall include a notice of intent to issue all departmental permits required for the construction pending recommendations of the board and approval by the department Within 45 days after the notification the county and the municipality shall select the members to serve on the board The board shall be created at that time and notification of the creation of the board shall be made to the chairperson

(2) Within 30 days after creation of a board the board shall meet to review and establish a timetable for the consideration of an application for a proposed treatment storage or disposal facility

(3) The board shall do all of the following

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site at its first meeting The public notice shall do both of the following

(i) Contain a map indicating the location of the proposed treatment storage or disposal facility a description of the proposed action and the location where the application for a construction permit may be reviewed and where copies may be obtained

(ii) Identify the time place and location for the public hearing held to receive public comment and input on the application for a construction permit

(b) Hold a public hearing within 45 days of the first board meeting

(c) Publish the notice not less than 30 days before the date of the public hearing

(4) Comment and input on the proposed treatment storage or disposal facility may be presented orally or in writing at the public hearing and shall continue to be accepted in writing by the board for 15 days after the public hearing date

(5) After the public hearing comment period has been closed the board shall list the issues that are to be addressed through a negotiation process and list the issues to be evaluated by the board through its deliberations

(6) A negotiation process shall take place between the applicant and the affected parties who shall be identified by the board A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be considered an affected party If requested by any affected party or the applicant the board shall appoint a mediator to assist during negotiations The negotiation process shall

(a) Proceed concurrently with the board's hearings process

(b) Address the list of issues referred by the board and any other issues unanimously agreed to be considered by the applicant and all affected parties

(c) Be completed within 150 days after the first meeting of the board unless the applicant and 1 or more affected parties involved in the negotiation process jointly request an extension of not more than 60 days and the extension is approved by the board The board shall not grant extensions in excess of 60 days An extension granted under this subdivision may extend the time period in which the board either approves or rejects the construction permit application as specified in subsection (15)

(7) On each negotiation issue which has not reached a negotiated settlement the board shall select between final best offers presented by affected parties The final best offer or the negotiated settlement shall not be less stringent than the requirements of the law or pertinent decisions of the board whichever is the most stringent

(8) The board shall conduct formal or informal hearings to receive evidence on the disputed issues not subject to the negotiation process described in subsections (6) and (7)

(9) The formal hearings process shall be conducted by the board to receive information from technical experts on disputed issues Any affected party may request permission by the board to participate in the board's formal hearings within 15 days after the board's public hearing The board shall determine which affected parties shall participate in the board's formal hearing If the board denies the request of an affected party to participate in the board's formal hearing the board shall give the affected party notice of the board's decision and the reasons for the decision A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be automatically entitled to participate During the board's formal hearings process the board shall

(a) Receive sworn testimony

(b) Cross examine witnesses

(c) Allow representatives of affected parties to cross examine witnesses

(d) Request participation as needed

(10) Comments made at informal hearings shall not be made under oath and no cross examination shall occur

(11) The board shall deliberate on the impact of the proposed treatment storage or disposal facility on the municipality in which it is to be located and make a final determination as to its recommendation to the department regarding the construction permit application

(12) The board shall consider at a minimum all of the following

(a) The risk and impact of accident during the transportation of hazardous waste

(b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed treatment storage or disposal facility

(c) The risk of fires or explosions from improper treatment storage and disposal methods

(d) The impact on the municipality where the proposed treatment storage or disposal facility is to be located in terms of health safety cost and consistency with local planning and existing development The board also shall consider local ordinances permits or other requirements and their potential relationship to the proposed treatment storage or disposal facility

(e) The nature of the probable environmental impact including the specification of the predictable adverse effects on the following

(i) The natural environment and ecology

(ii) Public health and safety

(iii) Scenic historic cultural and recreational value

(iv) Water and air quality and wildlife

(f) An evaluation of measures to mitigate adverse effects

(g) The board shall consider the information contained in the construction permit application disclosure statement

(13) The board also shall consider the concerns and objections submitted by the public The board shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the treatment storage or disposal facility and operation at that site Through deliberations the board may modify the construction permit application in response to its findings To the fullest extent practicable the board also shall integrate by stipulation the provisions of the local ordinances permits or requirements

(14) The board may seek the advice of any person in order to render a decision to issue its recommendation to the department to approve or deny the construction permit application

(15) Within 180 days after the first meeting of the board the board shall make a decision on the negotiated agreement and the final best offer from each party on each issue and shall recommend to the department that the department either approve or reject the construction permit application The 180 day time period may be extended as provided in subdivision (6)(c) However an extension shall not exceed 60 days

(16) If the board recommends to the department the approval of the construction permit application and the department follows the recommendation the department shall prepare a draft construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act Upon completion of the public participation process the department shall review all comments made during that process and shall issue or revise and issue the construction permit or reconvene the board to consider issues specified by the department that were raised during the public participation process Within 30 days after having been reconvened under this subsection the board shall recommend to the department the rejection of the application or recommend the revision and issuance of the construction permit or recommend that the department revise the draft construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act

(17) If the board recommends the rejection of the construction permit application the board shall do all of the following

(a) State its reasons in writing and indicate the necessary changes to make the application acceptable if a new application is made

(b) Direct the department to deny the construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act

Sec 11121 A local ordinance permit requirement or other requirement does not prohibit the construction of a treatment storage or disposal facility except as otherwise provided in section 11122

Sec 11122 (1) A person may establish a limited storage facility without a construction permit from the department However a person shall not establish a limited storage facility or conduct manage maintain or operate a limited

storage facility within this state without an operating license from the department issued under this section notwithstanding section 11123 A limited storage facility is subject to the rules pertaining to storage facilities

(2) An applicant for a limited storage facility operating license shall apply for that license on a form provided by the department that shall include the name and residence of the applicant the location of the proposed or existing facility other information specified by rule or by federal regulation issued under the solid waste disposal act and proof of financial responsibility The application shall include a determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated by the department an environmental assessment an engineering plan procedures for closure and a resolution or other formal determination of the governing body of the municipality in which the proposed limited storage facility would be located indicating that the limited storage facility is compatible with local zoning ordinances However in the absence of a resolution or other formal determination the application shall include a copy of a registered letter sent to the municipality dated 60 days prior to the application submittal indicating the intent to construct a limited storage facility requesting a formal determination on whether the proposed facility is compatible with local zoning ordinances in effect on the date the letter is received and indicating that failure to pass a resolution or make a formal determination within 60 days of receipt of the letter means that the proposed facility is to be considered compatible with applicable zoning ordinances The environmental assessment shall include at a minimum an evaluation of the proposed facility's impact on the air water and other natural resources of the state and also shall contain an environmental failure mode assessment The application shall be accompanied by a fee of \$500.00 which shall be deposited in the general fund of the state

(3) If a municipality does not make a formal determination concerning whether a proposed limited storage facility is compatible with local zoning ordinances within 60 days of receiving a registered letter as described in subsection (2) it shall mean that the limited storage facility is to be considered compatible with local zoning ordinances and incompatibility with local zoning shall not be a basis for denial of the license by the department In determining whether the proposed limited storage facility is compatible with local zoning ordinances the municipality shall assess the proposed facility's compatibility with ordinances in effect at the date of receipt of the registered letter

(4) Prior to issuing an operating license for a limited storage facility the department shall deliberate on the impact that the proposed limited storage facility would have on the municipality in which it is to be located and shall consider at a minimum all of the following

(a) The risk and impact of accident during the transportation of hazardous waste

(b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed limited storage facility

(c) The risk of fires or explosions from improper storage methods

(d) The impact on the municipality where the proposed limited storage facility is to be located in terms of the health safety cost and consistency with local planning and existing development The department also shall consider local ordinances permits or other requirements and their potential relationship to the proposed limited storage facility

(e) The nature of the probable environmental impact including the specific predictable adverse effects on the following

(i) The natural environment and ecology

(ii) Public health and safety

(iii) Scenic historic cultural and recreational value

(iv) Water and air quality and wildlife

(f) An evaluation of measures to mitigate adverse effects

(5) The department shall consider the concerns and objections submitted by the public The department shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the limited storage facility and operation at that site The department shall not issue an operating license under this section unless the proposed limited storage facility is compatible with the zoning ordinances of the municipality in which the limited storage facility would be located

(6) The applicant also shall submit to the department a certification under the seal of a licensed professional engineer verifying that the construction of the limited storage facility has proceeded according to the plans approved by the department The department shall require additional certification periodically during the operation or in order to verify proper closure of the site

(7) The department shall either approve or deny the application for an operating license If the department denies the operating license the department shall state the reasons for the denial in writing

Sec 11123 (1) Unless a person is complying with subsection (5) or a rule promulgated under section 11127(4) a person shall not conduct manage maintain or operate a treatment storage or disposal facility within this state without an operating license from the department

(2) The application for an operating license shall contain the name and residence of the applicant the location of the proposed or existing treatment storage or disposal facility and other information considered necessary by the department including proof of financial responsibility In addition the application for the initial operating license after issuance of a construction permit shall contain all of the disclosure information called for in section 11118(4) that was not provided as part of the construction permit application and any changes in or additions to the previously submitted disclosure information In addition the owner and operator shall certify that the disclosure listings previously submitted continue to be correct An applicant for an operating license for a treatment storage or disposal facility that is a surface impoundment landfill or land treatment facility shall demonstrate financial responsibility for claims arising from nonsudden and accidental occurrences relating to the operation of the facility that cause injury to persons or property The application shall be accompanied by a fee of \$500 00 The license fees shall be deposited in the general fund of the state

(3) The applicant also shall submit to the department a certification under the seal of a registered professional engineer verifying that the construction of the treatment storage or disposal facility has proceeded according to the plans approved by the department and if applicable the approved construction permit The department shall require additional certification periodically during the operation or in order to verify proper closure of the site The department shall require from those treatment storage or disposal facilities that are permitted to operate pursuant to section 11116 certification of the treatment storage or disposal facilities capability of treating storing or disposing of hazardous waste in compliance with this part

(4) The department shall establish a schedule for requiring each person subject to subsection (5) to submit an operating license application The department may adjust this schedule as necessary Each person subject to subsection (5) shall submit a complete operating license application within 180 days of the date requested to do so by the department

(5) A person who owns or operates a treatment storage or disposal facility that is in existence on the effective date of an amendment of this part or of a rule promulgated under this part that renders all or portions of the facility subject to the operating license requirements of this section may continue to operate the facility or portions of the facility that are subject to the operating license until an operating license application is approved or denied if all of the following conditions have been met

(a) A complete operating license application is submitted within 180 days of the date requested by the department under subsection (4)

(b) The person is in compliance with all rules promulgated under this part and with all other state laws

(c) The person qualifies for interim status as defined in the solid waste disposal act is in compliance with interim status standards established by federal regulation under subtitle C of the solid waste disposal act title II of Public Law 89 272 42 U S C 6921 to 6931 and 6933 to 6939b and has not had interim status terminated

Sec 11124 Upon receipt of an operating license application meeting the requirements of section 11123 the department shall inspect the site and determine if the proposed treatment storage or disposal facility complies with this part the rules promulgated under this part and the stipulations included in the approved treatment storage or disposal facility construction permit An inspection report shall be filed in writing by the department before issuing an operating license and shall be made available for public review

Sec 11125 (1) The department shall provide notice and an opportunity for a public hearing before making a final decision on an operating license application The department shall make a final decision on an operating license application within 140 days after the department receives a complete application However if the state s hazardous waste management program is authorized by the United States environmental protection agency under sections 3006 to 3009 of subtitle C of the solid waste disposal act title II of Public Law 89 272 42 U S C 6926 to 6929 the department may extend the deadline beyond the limitation provided in this section in order to fulfill the public participation requirements of the solid waste disposal act The operating license may contain stipulations specifically applicable to site and operation A local ordinance permit or other requirement shall not prohibit the operation of a licensed treatment storage or disposal facility

(2) If any information required to be included in the disclosure statement required under section 11118 changes or is supplemented after the filing of the statement the applicant permittee or licensee shall provide that information to the department in writing within 30 days of the change or addition

(3) The department may deny an operating license application submitted pursuant to section 11123 if there are any listings pursuant to section 11118(4)(b) to (d) that were not identified during the site review board process or were not disclosed as required in section 11123(2) or this section

Sec 11126 The department shall coordinate and integrate the provisions of this part for purposes of administration and enforcement with appropriate state and federal law including the clean air act chapter 360 69 Stat 322 42 U S C 7401 to 7431 7470 to 7479 7491 to 7492 7501 to 7509a 7511 to 7515 7521 to 7525 7541 to 7545 7547 to 7550 7552 to

7554 7571 to 7574 7581 to 7590 7601 to 7612 7614 to 7617 7619 to 7622 7624 to 7627 7641 to 7642 7651 to 7651o 7661 to 7661f and 7671 to 7671q the federal water pollution control act chapter 758 86 Stat 816 33 U S C 1251 to 1252 1253 to 1254 1255 to 1257 1258 to 1263 1265 to 1270 1281 1282 to 1293 1294 to 1299 1311 to 1313 1314 to 1326 1328 to 1330 1341 to 1345 1361 to 1377 and 1381 to 1387 title XIV of the public health service act chapter 373 88 Stat 1660 the toxic substances control act Public Law 94 469 15 U S C 2601 to 2629 2641 to 2656 and 2661 to 2671 the resource conservation and recovery act of 1976 42 U S C 6901 to 6987 parts 31 55 115 and 121 the safe drinking water act Act No 399 of the Public Acts of 1976 being sections 325 1001 to 325 1023 of the Michigan Compiled Laws and the fire protection code Act No 207 of the Public Acts of 1941 being sections 29 1 to 29 33 of the Michigan Compiled Laws The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part

Sec 11127 (1) The department shall submit to the legislature after consultation with the department of public health rules necessary to implement and administer this part The rules required to be submitted by this subsection shall include but not be limited to requirements for generators transporters and treatment storage and disposal facilities

(2) The department may promulgate rules that exempt certain hazardous wastes and certain treatment storage or disposal facilities from all or portions of the requirements of this part as necessary to obtain or maintain authorization from the United States environmental protection agency under the solid waste disposal act or upon a determination by the department that a hazardous waste or a treatment storage or disposal facility is adequately regulated under other state or federal law and that scientific data supports a conclusion that an exemption will not result in an impairment of the department's ability to protect the public health and the environment However an exemption granted pursuant to this subsection shall not result in a level of regulation less stringent than that required under the solid waste disposal act

(3) If an amendment to this part or the rules promulgated under this part subjects a person to a new or different licensing requirement of this part the department shall promulgate rules to facilitate orderly and reasonable compliance by that person

(4) Changes in the definition of hazardous waste contained in section 11103 and the definition of treatment contained in section 11104 effected by the 1982 amendatory act that amended former Act No 64 of the Public Acts of 1979 do not eliminate any exemption provided to any hazardous waste or to any treatment storage or disposal facility under administrative rules promulgated under former Act No 64 of the Public Acts of 1979 before March 30 1983 However these exemptions may be modified or eliminated by administrative rules promulgated after March 30 1983 under former Act No 64 of the Public Acts of 1979 or under this part in order that the state may obtain authorization from the United States environmental protection agency under the solid waste disposal act or to provide adequate protection to the public health or the environment

Sec 11128 (1) The department shall submit to the legislature proposed rules listing hazardous waste and other criteria as required by this part The rules shall state the criteria for identifying the characteristics of hazardous waste and for listing the types of hazardous waste taking into account toxicity persistence degradability in nature potential for accumulation in tissue and other related factors including flammability corrosiveness and other hazardous characteristics The department shall revise by rule the criteria and listing as necessary A rule promulgated for the purpose of removing from the list those materials removed from the federal list of regulated materials or removing from management as a hazardous waste those wastes that have been exempted from management under the solid waste disposal act are not required to meet the requirements of sections 41 42 and 45(2) of the administrative procedures act of 1969 Act No 306 of the Public Acts of 1969 being sections 24 241 24 242 and 24 245 of the Michigan Compiled Laws

(2) Before the department establishes the list the department shall hold not less than 3 public hearings in different municipalities in the state To ensure consistency between federal and state requirements this part the rules promulgated by the department and the list shall be construed to conform as closely as possible to requirements established under the solid waste disposal act

Sec 11129 (1) Except as provided in subsections (2) and (3) information obtained by the department under this part is a public record as provided in the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

(2) A person regulated under this part may designate a record permit application other information or a portion of a record permit application or other information furnished to or obtained by the department or its agents as being only for the confidential use of the department and the board The department shall notify the regulated person of a request for public records under section 5 of Act No 442 of the Public Acts of 1976 being section 15 235 of the Michigan Compiled Laws whose scope includes information designated as confidential The person regulated under this part has 30 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process or is production commercial or financial information the disclosure of which would jeopardize the competitive position of the person from whom the

information was obtained and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part makes a satisfactory demonstration to the department that the information should not be disclosed. If there is a dispute between the owner or operator of a treatment, storage, or disposal facility and the person requesting information under Act No. 442 of the Public Acts of 1976, the commission shall make the decision to grant or deny the request. When the department makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after the decision is made.

(3) Data on the quantity or composition of hazardous waste generated, transported, treated, stored, or disposed of; air and water emission factors, rates, and characterizations; emissions during malfunctions of equipment required under this part on treatment, storage, or disposal facilities; or the efficiency of air and water pollution control devices is not rendered as confidential information by this section.

(4) The department may release any information obtained under this part, including a record, permit application, or other information considered confidential pursuant to subsection (2), to the United States environmental protection agency, the United States agency for toxic substance disease registry, or other agency authorized to receive information, including confidential information, under the solid waste disposal act.

Sec. 11130 (1) A person shall not engage in the business of transporting hazardous waste within this state without a hazardous waste transporter business license from the department. Any vehicle used to transport hazardous wastes off site shall be licensed under this part. An application for a hazardous waste transporter business license or a vehicle license shall be made on a form provided by the department. Railcars, airplanes, and watercraft used for the transportation of hazardous waste are exempt from the requirements of this section to obtain a hazardous waste transporter business license or a vehicle license.

(2) An application for a hazardous waste transporter business license shall be accompanied by the following:

(a) A business license application fee of \$1,000.00, of which \$100.00 shall be retained as a processing fee of the application. The remaining business license application fee and the vehicle license application fee as required in subdivision (b) shall be refunded if the application is denied by the department.

(b) A vehicle license application fee of \$500.00 for each vehicle used by the hazardous waste transporter to transport or carry hazardous waste.

(c) Proof of financial responsibility as defined in rules promulgated under this part.

(3) The hazardous waste transporter account is created within the environmental pollution prevention fund, which is hereby created in the state treasury.

(4) The state treasurer may receive money or other assets from any source for deposit into the account. The license fees collected pursuant to this section shall be deposited in the hazardous waste transporter account. The state treasurer shall direct the investment of the account. The state treasurer shall credit to the account interest and earnings from account investments.

(5) Money remaining in the account at the close of the fiscal year shall not lapse to the general fund.

(6) The department shall expend money from the account, upon appropriation, for the implementation of this part. In addition, funds not expended for the implementation of this part may be utilized for emergency response and cleanup activities related to hazardous waste that are initiated by the department.

Sec. 11132 Upon submission of the hazardous waste transporter business license application, the department shall examine the application to ensure that it is complete and accompanied by those items required by section 11130 and shall conduct an inspection to verify that the equipment, location, and methods of the applicant are adequate to effectuate service under this part and the rules promulgated under this part. The department shall establish by rule the inspection standards and requirements. Upon approval of the application, the department shall issue a business license and a vehicle license for each vehicle associated with the service. A business or vehicle license is not transferable from a business or vehicle to another business or vehicle. A vehicle used to transport or carry hazardous waste shall carry a license from the department that may be inspected by the department, an authorized representative of the department, or a peace officer.

Sec. 11133 (1) A license issued pursuant to section 11132 expires 2 years after the date of issuance. Application for renewal of a license shall be made at least 60 days before expiration. The fee for renewal shall be the same for an original license.

(2) A hazardous waste transporter business license issued under this part shall be revoked if the holder of the license selected a treatment, storage, or disposal facility which is operated contrary to this part or the rules promulgated under this part or uses a vehicle to store, treat, transport, or dispose of hazardous waste contrary to this part or the rules promulgated under this part.

Sec. 11134 A municipality or county shall not prohibit the transportation of hazardous waste through the municipality or county or prevent the ingress and egress into a licensed treatment, storage, or disposal facility.

Sec 11135 (1) A hazardous waste generator shall provide a separate manifest to the transporter for each load of hazardous waste transported to property that is not on the site where it was generated. The generator shall include on the manifest details as specified by the department and shall at least include sufficient qualitative and quantitative analysis and physical description to evaluate toxicity and methods of transportation, storage, and disposal. The manifest also shall include safety precautions as necessary for each load of waste. The generator shall submit to the department a copy of the manifest within a period of 10 days after the end of the month for each load of waste transported within that month.

(2) The generator shall certify that the information contained on the manifest is factual.

(3) The specified destination of each load of hazardous waste shall be a designated facility.

(4) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter to determine the status of the hazardous waste. If the generator is unable to determine the status of the hazardous waste upon contacting the transporter, the generator shall contact the owner or operator of the designated facility to which the waste was to be transported to determine the status of the waste.

(5) A generator shall submit an exception report to the department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report shall include the following:

(a) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(b) A cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(6) A generator shall keep a copy of each manifest signed and dated by the initial transporter for 3 years or until the generator receives a signed and dated copy from the owner or operator of the designated facility that received the waste. The generator shall keep the copy of the manifest signed and dated by the owner or operator of the designated facility for 3 years. The retention periods required by this subsection shall be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

Sec 11136 (1) The hazardous waste transporter shall certify acceptance of waste for transportation and shall deliver the hazardous waste and accompanying manifest only to the destination specified by the generator on the manifest.

(2) The hazardous waste transporter shall keep a copy of the manifest for a period of 3 years and shall make it readily available for review and inspection by the department, the director of public health, an authorized representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subsection shall be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

Sec 11137 The treatment, storage, or disposal facility owner or operator shall accept delivery of hazardous waste only if delivery is accompanied by a manifest properly certified by both the generator and the transporter and the treatment, storage, or disposal facility is the destination indicated on the manifest. The treatment, storage, or disposal facility owner or operator also shall do all of the following:

(a) Certify on the manifest receipt of the hazardous waste and return a signed copy of the manifest to the department within a period of 10 days after the end of the month for all hazardous waste received within that month.

(b) Return a signed copy of the manifest to the generator.

(c) Keep permanent records pursuant to the rules promulgated by the department.

(d) Compile a periodic report of hazardous waste treated, stored, or disposed of as required by the department under rules promulgated by the department.

(e) Retain a copy of each manifest and report described in this section for a period of 3 years and make each copy readily available for review and inspection by the department, the director of public health, or a designated representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

Sec 11138 (1) A generator of hazardous waste shall do the following:

(a) Compile and maintain information and records regarding the quantities of hazardous waste generated, characteristics and composition of the hazardous waste, and the disposition of hazardous waste generated.

(b) Utilize proper labeling and containerization of hazardous waste as required by the department.

(c) Provide for the transport of hazardous waste only by a transporter licensed under this part.

(d) Utilize and retain a manifest for each shipment of hazardous waste transported to property that is not on site as required by section 11135 and assure that the treatment storage or disposal facility to which the waste is transported is a designated facility

(e) Provide the information on the manifest as required under section 11135(1) to each person transporting treating storing or disposing of hazardous waste

(f) Keep all records readily available for review and inspection by the department or the authorized representative of the department of public health a peace officer or a representative of the United States environmental protection agency

(g) Retain all records for a period of 3 years The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department

(h) Compile and submit a periodic report of hazardous waste generated stored transferred treated disposed of or transported for treatment storage or disposal as required by the department

(2) A generator who also operates a treatment storage or disposal facility shall keep records of all hazardous waste produced and treated stored or disposed The generator shall submit a report to the department within a period of 10 days after the end of each month for all waste produced and treated stored or disposed

Sec 11139 (1) As a condition of obtaining an operating license for a disposal facility pursuant to section 11123 the applicant shall demonstrate to the department that the owner of the property has recorded on the deed to the property or some other document that is normally examined during a title search a notice that will notify in perpetuity any potential purchaser of the following

(a) That the property has been used to manage hazardous wastes

(b) That the use of the land should not disturb the final cover liners components of any containment system or the function of the monitoring systems on or in the property

(c) That the survey plat and records of type location and quantity of hazardous waste on or in the property have been filed with the local zoning or land use authority as required by the rules promulgated under this part

(2) As a condition of obtaining an operating license for a landfill pursuant to section 11123 the applicant shall demonstrate to the department that an instrument imposing a restrictive covenant upon the land involved has been executed by all of the owners of the tract of land upon which the landfill is to be located The instrument imposing the restrictive covenant shall be filed for record by the department in the office of the register of deeds in the county in which the disposal facility is located The covenant shall state that the land has been or may be used as a landfill for disposal of hazardous waste and that neither the property owners agents or employees nor any of their heirs successors lessees or assignees shall engage in filling grading excavating building drilling or mining on the property following completion of the landfill without authorization of the department In giving authorization the department shall consider at a minimum the original design type of operation hazardous waste deposited and the state of decomposition of the fill Before authorizing any activity that would disturb the integrity of the final cover of a landfill the department must find either that the disturbance of the final cover is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment or that disturbance of the final cover is necessary to reduce a threat to human health or the environment

Sec 11140 (1) The owner or operator of a treatment storage or disposal facility shall submit a closure plan to the department as part of the application for a construction permit under section 11118 In addition the owner or operator of a disposal facility shall submit a postclosure monitoring and maintenance plan to the department as part of the application At a minimum the closure plan shall include a description of how the facility shall be closed possible uses of the land after closure anticipated time until closure estimated time for closure and each anticipated partial closure Those facilities described in section 11116 shall submit a closure and if required by rule a postclosure plan with their operating license application

(2) The department shall promulgate rules regarding notification before closure length of time permitted for closure of the treatment storage or disposal facility removal and decontamination of equipment security groundwater and leachate monitoring system sampling analysis and reporting requirements and any other pertinent requirements

Sec 11141 An owner or operator of a treatment storage or disposal facility shall file as a part of the application for a license to operate a surety bond or other suitable instrument or mechanism or establish a secured trust fund as approved by the department to cover the cost of closing the treatment storage or disposal facility after its capacity is reached or operations have otherwise terminated In addition the owner or operator of a disposal facility shall also file a surety bond or other suitable instrument or mechanism or establish a secured trust fund approved by the department to cover the cost of postclosure monitoring and maintenance of the facility An owner or operator may use a combination of bonds instruments mechanisms or funds as approved by the department to satisfy the requirements of this section

The bond instrument mechanism or fund or combination of these methods of assurance shall be in an amount equal to a reasonable estimate of the cost required to adequately close the facility based on the level of operations proposed in the operating license application and with respect to a disposal facility to monitor and maintain the site for a period of at least 30 years. The bond instrument mechanism or fund or the combination of these methods of assurance shall be adjusted periodically as determined by rule to account for inflation or changes in the permitted level of operations. Failure to maintain the bond instrument mechanism or fund or combination of these methods of assurance constitutes a violation of this part.

Sec 11143 (1) There is created within the state treasury a hazardous waste service fund of not less than \$1 000 000 00 to be financed by appropriations for the following uses:

(a) For hazardous waste emergencies as defined by rule.

(b) For use in ensuring the closure and post closure monitoring and maintenance of treatment storage or disposal facilities.

(2) The department shall administer the fund and authorize expenditures upon a finding of actual or potential environmental damage caused by hazardous waste or when the owner or operator of the treatment storage or disposal facility is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of the site and the surety bond instrument mechanism or secured trust fund maintained by the owner or operator of a treatment storage or disposal facility as required by section 11141 is inadequate or is no longer in effect.

(3) After an expenditure from the fund, the department immediately shall request the attorney general to begin proceedings to recover any expenditure from the fund from the person responsible for the hazardous waste emergency or the owner or operator of a treatment storage or disposal facility who is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of a facility. If the owner of the property refuses to pay expenses incurred, the expenses shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the laws of the state.

(4) The department shall promulgate rules to define a hazardous waste emergency and to establish the method of payment from the fund.

Sec 11144 (1) The department shall inspect and file a written report not less than 4 times per year for each licensed treatment storage and disposal facility.

(2) A person may register with the department a complaint or allegation of improper action or violation of this part, a rule, or a condition of the license to operate a treatment storage or disposal facility or transporting vehicle.

(3) Upon receipt of a complaint or allegation from a municipality, the department shall make a record of the complaint and shall order an inspection of the treatment storage or disposal facility, transporting vehicle, or other location of alleged violation to investigate the complaint or allegation within not more than 5 business days after receipt of the complaint or allegation. If a complaint or allegation is of a highly serious nature as determined by the department, the facility or transporting vehicle shall be inspected as quickly as possible.

(4) Following an investigation of a complaint or allegation under subsection (3), the department shall make a written report to the municipality within 15 days.

(5) A person who has knowledge that hazardous waste is being treated, disposed of, or stored in violation of this part shall notify the department. A person who has knowledge that an emergency situation exists shall notify the department and the department of public health.

Sec 11145 (1) The department may certify a city, county, or district health department to administer and enforce portions of this part but only to an extent consistent with obtaining and maintaining authorization of the state's hazardous waste management program pursuant to sections 3006 to 3009 of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6926 to 6929. Certification procedures shall be established by the department by rule. The department may rescind certification upon the request of the certified city, county, or district health department or after reasonable notice and hearing if the department finds that a certified health department is not administering and enforcing this part as required.

(2) In order for a certified health department to carry out the responsibilities authorized under this part, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to each certified health department. A certified health department shall be eligible to receive 100% of its reasonable costs as determined by the department based on criteria established by rule. The department shall promulgate rules for distribution of the appropriated funds.

Sec 11146 (1) Any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste shall furnish information relating to the hazardous wastes or permit access to and copying of all records relating to the hazardous wastes or both if the information and records are required to be kept under this part.

or the rules promulgated under this part upon a request of the department made for the purpose of developing a rule or enforcing or administering this part or a rule promulgated under this part. This subsection does not limit the department's authority to pursue appropriate court authorization in order to obtain information pertaining to enforcement actions under this part.

(2) The department may enter at reasonable times any treatment, storage, or disposal facility or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from and may inspect the facility or other place and obtain from any person samples of the hazardous wastes and samples of the containers or labeling of the wastes for the purpose of developing a rule or enforcing or administering this part or a rule promulgated under this part.

(3) If the department or a law enforcement official has probable cause to believe that a person is violating this part or a rule promulgated under this part, the department or law enforcement official may search without a warrant a vehicle or equipment that is possessed, used, or operated by that person. The department or a law enforcement official may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose contrary to this part or a rule promulgated under this part. The department shall request that the attorney general petition the circuit court for the county of Ingham or the county where the violation occurred for permission to preserve the property as evidence to prosecute the violation or alternatively shall file an appropriate action to condemn the property.

Sec 11147. A person who violates this part by failing to carry a hazardous waste transporter vehicle license in a vehicle, who transfers a business or vehicle license in violation of section 11132, or who violates rules promulgated pursuant to section 11132 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00 or both for each violation. A law enforcement officer or a conservation officer may issue an appearance ticket to a person who is in violation of this section, section 11132, or the rules promulgated pursuant to section 11132.

Sec 11148. (1) Subject to subsection (2), upon receipt of information that the storage, transportation, treatment, or disposal of hazardous waste may present an imminent and substantial hazard to the health of persons or to the natural resources, or is endangering or causing damage to public health or the environment, the department, after consultation with the director of public health or a designated representative of the director of public health, shall take 1 or more of the following actions:

(a) Issue an order directing the owner or operator of the treatment, storage, or disposal facility, the generator, the transporter, or the custodian of the hazardous waste that constitutes the hazard to take the steps necessary to prevent the act or eliminate the practice that constitutes the hazard. The order may include permanent or temporary cessation of the operation of a treatment, storage, or disposal facility, generator, or transporter. An order issued under this subdivision may be issued without prior notice or hearing and shall be complied with immediately. An order issued under this subdivision shall not remain in effect more than 7 days without affording the owner or operator or custodian an opportunity for a hearing. In issuing an order calling for corrective action, the department shall specify the precise nature of the corrective action necessary and the specific time limits for performing the corrective action. If corrective action is not completed within the time limit specified and pursuant to the department's requirements, the department shall issue a cease and desist order against the owner or operator of the treatment, storage, or disposal facility, generator, or transporter and initiate action to revoke the operating or transporter's license and take appropriate action.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing by the department that a person has engaged in the prohibited act or practice.

(c) Revoke a permit, license, or construction permit after reasonable notice and hearing pursuant to 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, if the department finds that a treatment, storage, or disposal facility or transporting vehicle is not, or has not been, constructed or operated pursuant to the approved plans or this part and the rules promulgated under this part or the conditions of a license or construction permit.

(2) A determination of an instance of imminent and substantial hazard to the health of persons shall be made by the director of public health.

Sec 11149. A person who willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous waste or marking the boundaries of a hazardous waste treatment, storage, or disposal facility is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00 or both.

Sec 11150. (1) Upon receipt and verification of information that a licensed storage, treatment, or disposal facility does not have or has not maintained a suitable instrument or mechanism required under section 11141, or that the hazardous waste at the licensed facility exceeds the maximum quantities allowed under the storage, treatment, or disposal facility's license issued under this part, the department may issue an order of noncompliance directing the owner or operator of the storage, treatment, or disposal facility to take steps to eliminate the act or practice that results

in a violation listed in this section. An order issued pursuant to this section shall specify the corrective action necessary and may order a licensed facility that has exceeded the maximum quantities of hazardous waste allowed under the terms of the facility's license to cease receiving hazardous waste. The order shall specify the time limit in which corrective action must be completed. If a licensed storage, treatment, or disposal facility comes into compliance with this part following the issuance of an order of noncompliance, the department shall send written verification of compliance to the owner or operator of the facility.

(2) An order of noncompliance issued pursuant to subsection (1) that requires a licensed facility to reduce the quantity of hazardous waste on site and to cease receiving hazardous waste shall not remain in effect for more than 7 days without affording the owner or operator an opportunity for a hearing. If the order remains in effect following the hearing, or if the owner or operator of the facility waives his or her right to a hearing, the owner or operator shall cooperate with the department in developing and implementing a compliance plan to reduce the amount of hazardous waste at the facility. If the department determines that the owner or operator has failed to make reasonable and continuous efforts to comply with the order of noncompliance and the resulting compliance plan, the department may issue an order suspending or restricting the facility's license pursuant to 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. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(3) If the owner or operator of a storage, treatment, or disposal facility receives an order of noncompliance issued pursuant to subsection (1) for failing to maintain a suitable instrument or mechanism required under section 11141 and does not make reasonable efforts to comply with the order of noncompliance, the department may issue an order suspending or restricting the facility's license pursuant to Act No. 306 of the Public Acts of 1969. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(4) Upon receipt and verification that a storage, treatment, or disposal facility has not maintained a suitable instrument or mechanism required under section 11141 or that hazardous waste at a licensed facility exceeds the maximum quantities allowed under the facility's license and the owner or operator of the facility has previously been issued an order of noncompliance under this section, the department may do either of the following:

(a) Issue a second or subsequent order of noncompliance and proceed in the manner provided for in subsection (2) or (3);

(b) Initiate an action to suspend or restrict the facility's license or permit pursuant to Act No. 306 of the Public Acts of 1969 without first issuing an order of noncompliance.

Sec. 11151. (1) If the department finds that a person is in violation of a permit license rule promulgated under this part or requirement of this part including a corrective action requirement of this part, the department may issue an order requiring the person to comply with the permit license rule or requirement of this part including a corrective action requirement of this part. The attorney general or a person may commence a civil action against a person, the department, or a health department certified under section 11145 for appropriate relief, including injunctive relief for a violation of this part including a corrective action requirement of this part or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be deposited in the general fund of the state.

(2) A person who transports, treats, stores, disposes, or generates hazardous waste in violation of this part or contrary to a permit license, order, or rule issued or promulgated under this part, or who makes a false statement, representation, or certification in an application for, or form pertaining to, a permit license, or order, or in a notice or report required by the terms and conditions of an issued permit license, or order, or a person who violates section 11144(5), is guilty of a misdemeanor punishable by a fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, the person is guilty of a misdemeanor punishable by a fine of not more than \$50,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or by imprisonment for not more than 2 years, or both.

(3) Any person who knowingly stores, treats, transports, or disposes of any hazardous waste in violation of subsection (2) and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, and if his or her conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or if his or her conduct in the circumstances manifests an extreme indifference for human life, upon conviction, is subject to a fine of not more than \$250,000.00 or imprisonment for not more than 2 years, or both, except

that any person whose actions constitute an extreme indifference for human life upon conviction is subject to a fine of not more than \$250 000 00 or imprisonment for not more than 5 years or both A defendant that is not an individual and not a governmental entity upon conviction is subject to a fine of not more than \$1 000 000 00

(4) For the purposes of subsection (3) a person's state of mind is knowing with respect to

(a) His or her conduct if he or she is aware of the nature of his or her conduct

(b) An existing circumstance if he or she is aware or believes that the circumstance exists

(c) A result of his or her conduct if he or she is aware or believes that his or her conduct is substantially certain to cause danger of death or serious bodily injury

(5) For purposes of subsection (3) in determining whether a defendant who is an individual knew that his or her conduct placed another person in imminent danger of death or serious bodily injury both of the following apply

(a) The person is responsible only for actual awareness or actual belief that he or she possessed

(b) Knowledge possessed by a person other than the defendant but not by the defendant himself or herself may not be attributed to the defendant However in proving the defendant's possession of actual knowledge circumstantial evidence may be used including evidence that the defendant took affirmative steps to shield himself or herself from relevant information

(6) It is an affirmative defense to a prosecution under this part that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following

(a) An occupation a business or a profession

(b) Medical treatment or professionally approved methods and the other person had been made aware of the risks involved prior to giving consent

(7) The defendant may establish an affirmative defense under subsection (6) by a preponderance of the evidence

(8) For purposes of subsection (3) serious bodily injury means each of the following

(a) Bodily injury that involves a substantial risk of death

(b) Unconsciousness

(c) Extreme physical pain

(d) Protracted and obvious disfigurement

(e) Protracted loss or impairment of the function of a bodily member organ or mental faculty

(9) In addition to a fine the attorney general may bring an action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation The damages and cost collected under this subsection shall be deposited in the general fund if the damages or costs result from impairment or destruction of the fish wildlife or other natural resources of the state and shall be used to restore rehabilitate or mitigate the damage to those resources in the affected area and for the specific resource to which the damages occurred

(10) The court in issuing a final order in an action brought under this part may award costs of litigation including reasonable attorney and expert witness fees to a party if the court determines that the award is appropriate

(11) A person who has an interest that is or may be affected by a civil or administrative action commenced under this part has a right to intervene in that action

Sec 11152 The department shall encourage interstate and international cooperation for the improved management of hazardous waste for improved and so far as is practicable uniform state laws relating to the management of hazardous waste and compacts between this and other states for the improved management of hazardous waste

PART 113 LANDFILL MAINTENANCE TRUST FUND

Sec 11301 As used in this part

(a) Fund means the landfill maintenance trust fund created in section 11302

(b) Response activity means response activity as defined in part 201

Sec 11302 (1) There is hereby created the landfill maintenance trust fund The fund shall be established as a separate fund in the department of treasury

(2) The fund shall receive as revenue money from any source not to exceed \$500 000 00 as appropriated by the legislature

Sec 11303 (1) The interest and earnings of the fund shall be expended by the department to monitor the effectiveness of response activity and to provide necessary long term maintenance only at those landfills that are sites of polybrominated biphenyls contamination where the department has undertaken response activity through the use of funds appropriated by the state from a judicially approved settlement

(2) The corpus of the fund shall be maintained by the state treasurer in a manner that will provide for future disbursements to the department to ensure that the sites described in subsection (1) are properly monitored and maintained for as long as considered necessary by the department to assure the protection of the public health safety welfare and the environment

Sec 11304 The state treasurer shall direct the investment of the fund in the same manner as surplus funds are invested

PART 115 SOLID WASTE MANAGEMENT

Sec 11501 For purposes of this part the words and phrases defined in sections 11502 to 11506 have the meanings ascribed to them in those sections

Sec 11502 (1) Applicant includes any person

(2) Ashes means the residue from the burning of wood coal coke refuse wastewater sludge or other combustible materials

(3) Bond means a surety bond from a surety company authorized to transact business in this state a certificate of deposit a cash bond or an irrevocable letter of credit in favor of the department

(4) Certified health department means a city county or district department of health that is specifically delegated authority by the department to perform designated activities as prescribed by this part

(5) Coal or wood ash means either or both of the following

(a) The residue remaining after the ignition of coal or wood or both and may include noncombustible materials otherwise referred to as bottom ash

(b) The airborne residues from burning coal or wood or both that are finely divided particles entrained in flue gases arising from a combustion chamber otherwise referred to as fly ash

(6) Collection center means a tract of land building unit or appurtenance or combination thereof that is used to collect junk motor vehicles and farm implements under section 11530

Sec 11503 (1) Discharge includes but is not limited to any spilling leaking pumping pouring emitting emptying discharging injecting escaping leaching dumping or disposing of a substance into the environment which is or may become injurious to the public health safety or welfare or to the environment

(2) Disposal area means a solid waste transfer facility incinerator sanitary landfill processing plant or other solid waste handling or disposal facility utilized in the disposal of solid waste

(3) Enforceable mechanism means a legal method whereby the state a county a municipality or a person is authorized to take action to guarantee compliance with an approved county solid waste management plan Enforceable mechanisms include contracts intergovernmental agreements laws ordinances rules and regulations

(4) Garbage means rejected food wastes including waste accumulation of animal fruit or vegetable matter used or intended for food or that attends the preparation use cooking dealing in or storing of meat fish fowl fruit or vegetable

Sec 11504 (1) Health officer means a full time administrative officer of a certified city county or district department of health

(2) Inert material means a substance that will not decompose dissolve or in any other way form a contaminated leachate upon contact with water or other liquids determined by the department as likely to be found at the disposal area percolating through the substance

(3) Landfill means a disposal area that is a sanitary landfill

(4) Medical waste means that term as it is defined in part 138 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 13801 to 333 13831 of the Michigan Compiled Laws

(5) Municipal solid waste incinerator means an incinerator that is owned or operated by any person and meets all of the following requirements

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings hotels motels and other residential sources or this household waste together with solid waste from

commercial institutional municipal county or industrial sources that if disposed of would not be required to be placed in a disposal facility licensed under part 111

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to assure that the incinerator receives and burns only waste referred to in subdivision (a)

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

(d) The incinerator is not an industrial furnace as defined in 40 C F R 260.10

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

(6) Municipal solid waste incinerator ash means the substances remaining after combustion in a municipal solid waste incinerator

(7) Perpetual care fund means a perpetual care fund provided for in section 11525

Sec 11505 (1) Recyclable materials means source separated materials site separated materials high grade paper glass metal plastic aluminum newspaper corrugated paper yard clippings and other materials that may be recycled or composted

(2) Regional solid waste management planning agency means the regional solid waste planning agency designated by the governor pursuant to section 4006 of subtitle D of the solid waste disposal act title II of Public Law 89 272 42 U S C 6946

(3) Resource recovery facility means machinery equipment structures or any parts or accessories of machinery equipment or structures installed or acquired for the primary purpose of recovering materials or energy from the waste stream

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

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

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

(7) Site separated material means glass metal wood paper products plastics rubber textiles garbage yard clippings or any other material approved by the department that is separated from solid waste for the purpose of conversion into raw materials or new products Site separated material does not include the residue remaining after glass metal wood paper products plastics rubber textiles or any other material approved by the department is separated from solid waste

(8) Slag means the nonmetallic product resulting from melting or smelting operations for iron or steel

Sec 11506 (1) Solid waste means garbage rubbish ashes incinerator ash incinerator residue street cleanings municipal and industrial sludges solid commercial and solid industrial waste and animal waste other than organic waste generated in the production of livestock and poultry Solid waste does not include the following

(a) Human body waste

(b) Medical waste as it is defined in part 138 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 13801 to 333 13831 of the Michigan Compiled Laws and regulated under part 138 of Act No 368 of the Public Acts of 1978 and part 55

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

(d) Liquid waste

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

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

(g) Sludges and ashes managed as recycled or nondetrimental materials appropriate for agricultural or silvicultural use pursuant to a plan approved by the department A by product from the processing of fruits vegetables sugar beets field crops or lime from kraft pulping processes generated prior to bleaching may be applied on farmland or used as animal feed as appropriate and such an application or use does not require a plan described in this subdivision or a permit or license under this part In addition source separated materials approved by the department for land application for agricultural and silvicultural purposes and compost produced from those materials may be applied to the land for agricultural and silvicultural purposes and such an application does not require a plan described in this subdivision or permit or license under this part The application of a by product source separated material or compost to land for an agricultural or silvicultural purpose or use as animal feed as provided for in this subdivision shall occur in a manner that prevents losses from runoff and leaching and if applied to land the land application shall be at an

agronomic rate consistent with generally accepted agricultural and management practices under the right to farm act Act No 93 of the Public Acts of 1981 being sections 286 471 to 286 474 of the Michigan Compiled Laws

(h) Materials approved for emergency disposal by the department

(i) Source separated materials

(j) Site separated material

(k) Fly ash or any other ash produced from the combustion of coal when used in the following instances

(i) With a maximum of 6% of unburned carbon as a component of concrete grout mortar or casting molds

(ii) With a maximum of 12% unburned carbon passing M D O T test method MTM 101 when used as a raw material in asphalt for road construction

(iii) As aggregate road or building material which in ultimate use will be stabilized or bonded by cement limes or asphalt

(iv) As a road base or construction fill that is covered with asphalt concrete or other material approved by the department and which is placed at least 4 feet above the seasonal groundwater table

(v) As the sole material in a depository designed to reclaim develop or otherwise enhance land subject to the approval of the department In evaluating the site the department shall consider the physical and chemical properties of the ash including leachability and the engineering of the depository including but not limited to the compaction control of surface water and groundwater that may threaten to infiltrate the site and evidence that the depository is designed to prevent water percolation through the material

(l) Other wastes regulated by statute

(2) Solid waste hauler means a person who owns or operates a solid waste transporting unit

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

(4) Solid waste transporting unit means a container that may be an integral part of a truck or other piece of equipment used for the transportation of solid waste

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

(6) Source separated material means glass metal wood paper products plastics rubber textiles garbage yard clippings or any other material approved by the department that is separated at the source of generation for the purpose of conversion into raw materials or new products

(7) Yard clippings means leaves grass clippings vegetable or other garden debris shrubbery or brush or tree trimmings less than 4 feet in length and 2 inches in diameter that can be converted to compost humus Yard clippings do not include stumps agricultural wastes animal waste roots sewage sludge or garbage

Sec 11507 (1) The department and a health officer shall assist in developing and encouraging methods for the disposal of solid waste that are environmentally sound that maximize the utilization of valuable resources and that encourage resource conservation including source reduction and source separation

(2) This part shall be construed and administered to encourage and facilitate the effort of all persons to engage in source separation and site separation of material from solid waste and other environmentally sound measures to prevent materials from entering the waste stream or which encourage the removal of materials from the waste stream

(3) The department may exempt from regulation under this part solid waste that is determined by the department to be inert material for uses and in a manner approved by the department

Sec 11508 A city county or district health department may be certified by the department to perform a solid waste management program Certification procedures shall be established by the department by rule The department may rescind certification upon request of the certified health department or after reasonable notice and hearing if the department finds that a certified health department is not performing the program as required

Sec 11509 (1) Except as otherwise provided in section 11529 a person otherwise allowed under this part to own or operate a solid waste disposal area shall not establish a disposal area without a construction permit from the department contrary to an approved solid waste management plan or contrary to a permit license or final order issued pursuant to this part A person proposing the establishment of a disposal area shall make application for a construction

permit to the department through the health officer on a form provided by the department. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department.

(2) The application for a construction permit shall contain the name and residence of the applicant, the location of the proposed disposal area, and other information considered necessary by the department. The application shall be accompanied by an engineering plan and a construction permit application fee. A construction application permit fee for a landfill shall be accompanied by a fee in an amount that is the sum of all of the applicable fees in this subsection.

(a) For a permitted site size of the following:

(i) Less than 5 acres

(A) \$100.00 for a new permit application

(B) \$25.00 for a renewal permit application

(ii) 5 to 19 acres

(A) \$170.00 for a new permit application

(B) \$100.00 for a renewal permit application

(iii) 20 to 79 acres

(A) \$240.00 for a new permit application

(B) \$150.00 for a renewal permit application

(iv) 80 acres or more

(A) \$320.00 for a new permit application

(B) \$230.00 for a renewal permit application

(b) For the estimated solid waste volume per day:

(i) Less than 50 cubic yards

(A) \$60.00 for a new permit application

(B) \$15.00 for a renewal permit application

(ii) 50 to 100 cubic yards

(A) \$80.00 for a new permit application

(B) \$30.00 for a renewal permit application

(iii) 101 to 700 cubic yards

(A) \$100.00 for a new permit application

(B) \$50.00 for a renewal permit application

(iv) More than 700 cubic yards

(A) \$130.00 for a new permit application

(B) \$100.00 for a renewal permit application

(c) For the nature of the solid waste:

(i) Residential

(A) \$100.00 for a new permit application

(B) \$50.00 for a renewal permit application

(ii) Industrial or combination residential and industrial

(A) \$125.00 for a new permit application

(B) \$75.00 for a renewal permit application

(d) For hydrogeological characteristics:

(i) Natural soil

(A) \$40.00 for a new permit application

(B) \$10.00 for a renewal permit application

(ii) Compacted clay

(A) \$70.00 for a new permit application

(B) \$30.00 for a renewal permit application

(iii) Synthetic liner

(A) \$100.00 for a new permit application

(B) \$70 00 for a renewal permit application

(3) The application for a construction permit for a solid waste transfer facility or a solid waste processing plant shall be accompanied by a fee in an amount that is the sum of all of the applicable fees in this subsection

(a) For a permitted site size of the following

(i) Less than 5 acres

(A) \$50 00 for a new permit application

(B) \$15 00 for a renewal permit application

(ii) 5 acres or more

(A) \$100 00 for a new permit application

(B) \$75 00 for a renewal permit application

(b) For a building size of the following

(i) Less than 500 square feet

(A) \$50 00 for a new permit application

(B) \$20 00 for a renewal permit application

(ii) 500 to 1 000 square feet

(A) \$100 00 for a new permit application

(B) \$60 00 for a renewal permit application

(iii) More than 1 000 square feet

(A) \$150 00 for a new permit application

(B) \$100 00 for a renewal permit application

(c) For the nature of the solid waste

(i) Residential

(A) \$100 00 for a new permit application

(B) \$30 00 for a renewal permit application

(ii) Industrial or combination residential and industrial

(A) \$150 00 for a new permit application

(B) \$90 00 for a renewal permit application

(d) For site characteristics

(i) High site that is dry and has no groundwater or surface water problems

(A) \$50 00 for a new permit application

(B) \$10 00 for a renewal permit application

(ii) Surface water on site

(A) \$75 00 for a new permit application

(B) \$30 00 for a renewal permit application

(e) For the estimated solid waste volume per day

(i) Less than 50 cubic yards

(A) \$50 00 for a new permit application

(B) \$25 00 for a renewal permit application

(ii) 50 to 500 cubic yards

(A) \$100 00 for a new permit application

(B) \$75 00 for a renewal permit application

(iii) More than 500 cubic yards

(A) \$150 00 for a new permit application

(B) \$125 00 for a renewal permit application

(4) An applicant for a construction permit within 6 months after a permit denial may resubmit the application together with the additional information as needed to address the reasons for denial without being required to pay an additional application fee

Sec 11510 (1) Before the submission of a construction permit application for a new disposal area the applicant shall request a health officer or the department to provide an advisory analysis of the proposed disposal area. However the applicant not less than 15 days after the request and notwithstanding an analysis result may file an application for a construction permit.

(2) Upon receipt of a construction permit application the department shall do all of the following:

(a) Immediately notify the clerk of the municipality in which the disposal area is located or proposed to be located, the local soil erosion and sedimentation control agency, each division within the department of natural resources that has responsibilities in land, air, or water management, and the designated regional solid waste management planning agency.

(b) Publish a notice in a newspaper having major circulation in the vicinity of the proposed disposal area. The required published notice shall contain a map indicating the location of the proposed disposal area and shall contain a description of the proposed disposal area and the location where the complete application package may be reviewed and where copies may be obtained.

(c) Indicate in the public, departmental, and municipality notice that the department shall hold a public hearing in the area of the proposed disposal area if a written request is submitted by the applicant or a municipality within 30 days after the date of publication of the notice, or by a petition submitted to the department containing a number of signatures equal to not less than 10% of the number of registered voters of the municipality where the proposed disposal area is to be located who voted in the last gubernatorial election. The petition shall be validated by the clerk of the municipality. The public hearing shall be held after the department makes a preliminary review of the application and all pertinent data and before a construction permit is issued or denied.

(d) Review the plans of the proposed disposal area to determine if it complies with this part and the rules promulgated under this part. The review shall be made by persons qualified in hydrogeology and sanitary landfill engineering. A written approval by the persons qualified in hydrogeology and sanitary landfill engineering shall be received before a construction permit is issued. If the site review, plan review, and the application meet the requirements of this part and the rules promulgated under this part, the department shall issue a construction permit that may contain a stipulation specifically applicable to the site and operation. Except as otherwise provided in section 11542, an expansion of the area of a disposal area, an enlargement in capacity of a disposal area, or an alteration of a disposal area to a different type of disposal area than had been specified in the previous construction permit application constitutes a new proposal for which a new construction permit is required. The upgrading of a disposal area type required by the department to comply with this part or the rules promulgated under this part or to comply with a consent order does not require a new construction permit.

(e) Notify the Michigan aeronautics commission if the disposal area is a sanitary landfill proposed to be located within 10,000 feet of a runway or a proposed runway extension contained in a plan approved by the Michigan aeronautics commission of an airport licensed and regulated by the Michigan aeronautics commission. The department shall make a copy of the application available to the Michigan aeronautics commission. If, after a period of time for review and comment not to exceed 60 days, the Michigan aeronautics commission informs the department that it finds that operation of the proposed disposal area would present a potential hazard to air navigation and presents the basis for its findings, the department may either recommend appropriate changes in the location, construction, or operation of the proposed disposal area or deny the application for a construction permit. The department shall give an applicant an opportunity to rebut a finding of the Michigan aeronautics commission that the operation of a proposed disposal area would present a potential hazard to air navigation.

Sec 11511 (1) The department shall make a final decision as to whether to issue a construction permit within 120 days after the department receives an administratively complete application. The decision of the department and the reasons for the decision shall be in writing and shall be sent by first class mail to the clerk of the municipality in which the disposal area is proposed to be located and to the applicant within 10 days after the final decision is made. If the department fails to make a final decision within 120 days, the permit shall be considered issued.

(2) A construction permit shall expire 1 year after the date of issuance, unless development under the construction permit is initiated within that year. A construction permit that has expired may be renewed upon payment of a permit renewal fee and submission of any additional information the department may require.

(3) Except as otherwise provided in this subsection, the department shall not issue a construction permit for a disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. The department may issue a construction permit for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for electrical power generation in the absence of an approved county solid waste management plan upon receipt of a letter of approval from whichever county or counties, group of municipalities, or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

Sec 11512 (1) A person shall dispose of solid waste at a disposal area licensed under this part unless a person is permitted by state law or rules promulgated by the department to dispose of the solid waste at the site of generation

(2) Except as otherwise provided in this section or in section 11529 a person otherwise allowed under this part to own or operate a solid waste disposal area shall not conduct manage maintain or operate a disposal area within this state without a license from the department contrary to an approved solid waste management plan or contrary to a permit license or final order issued under this part A person who intends to conduct manage maintain or operate a disposal area shall make a prior license application to the department through a certified health department on a form provided by the department If the disposal area is located in a county or city that does not have a certified health department the application shall be made directly to the department

(3) The application for a license shall contain the name and residence of the applicant the location of the proposed or existing disposal area and other information the department considers necessary The application shall be accompanied by a fee of \$100 00

(4) At the time of application for a license for a disposal area the applicant shall submit to a health officer or the department a certification under the seal of a licensed professional engineer verifying that the construction of the disposal area has proceeded according to the approved plans The department shall require additional certification during intermediate progression of the operation or to verify proper closure of the site

(5) An applicant for an operating license within 3 months after a license denial may resubmit the application together with additional information or corrections as are necessary to address the reason for denial without being required to pay an additional application fee

(6) In order to conduct tests and assess operational capabilities the owner or operator of a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit may operate the incinerator without an operating license upon notice to the department for a period not to exceed 60 days

Sec 11513 A person shall not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the county is explicitly authorized in the approved county solid waste management plan The department shall take action to enforce this section within 30 days of obtaining knowledge of a violation of this section

Sec 11514 A person shall not knowingly dispose of and an owner or operator of a landfill shall not knowingly permit the disposal of medical waste in a landfill unless that medical waste has been decontaminated or is not required to be decontaminated but is packaged in the manner required under part 138 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 13801 to 333 13831 of the Michigan Compiled Laws

Sec 11515 (1) Upon receipt of a license application the department or a health officer or an authorized representative of a health officer shall inspect the site and determine if the proposed operation complies with this part and the rules promulgated under this part

(2) The department shall not license a landfill facility operating without an approved hydrogeologic monitoring program until the department receives a hydrogeologic monitoring program and the results of the program The department shall use this information in conjunction with other information required by this part or the rules promulgated under this part to determine a course of action regarding licensing of the facility consistent with section 4005 of subtitle D of the solid waste disposal act title II of Public Law 89 272 42 U S C 6945 and with this part and the rules promulgated pursuant to this part In deciding a course of action the department shall consider at a minimum the health hazards environmental degradation and other public or private alternatives The department may revoke a license or issue a timetable or schedule to provide for compliance for the facility or operation specifying a schedule of remedial measures including a sequence of actions or operations which leads to compliance with this part within a reasonable time period but not later than December 2 1987

Sec 11516 (1) Subject to subsection (4) the department shall make a final decision on a license application within 90 days after the department receives the application The decision of the department and the reasons for the decision shall be in writing and shall be sent by first class mail to the clerk of the municipality in which the disposal area is located and to the applicant within 10 days after the final decision is made If the department fails to make a final decision within 90 days the license is considered issued

(2) An operating license shall expire 2 years after the date of issuance An operating license may be renewed before expiration upon payment of a renewal application fee of \$100 00 if the licensee is in compliance with this part and the rules promulgated under this part

(3) The issuance of a license empowers the department or a health officer or an authorized representative of a health officer to enter at any reasonable time pursuant to law in or upon private or public property licensed under this part for the purpose of inspecting or investigating conditions relating to the storage processing or disposal of any material

(4) Except as otherwise provided in this subsection the department shall not issue an operating license for a new disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. The department may issue an operating license for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for electrical power generation in the absence of an approved county solid waste management plan upon receipt of a letter of approval from whichever county or counties group of municipalities or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

Sec 11517 (1) Within 9 months after the completion of construction of a municipal solid waste incinerator the owner or operator of a municipal solid waste incinerator shall submit a plan to the department for a program that to the extent practicable reduces the incineration of noncombustible materials and dangerous combustible materials and their hazardous by products at the incinerator. The department shall approve or disapprove the plan submitted under this subsection within 30 days after receiving it. In reviewing the plan the department shall consider the current county solid waste management plan, available markets for separated materials, disposal alternatives for the separated materials, and collection practices for handling such separated materials. If the department disapproves a plan the department shall notify the owner or operator submitting the plan of this fact and shall provide modifications that if included would result in the plan's approval. If the department disapproves a plan the owner or operator of a municipal solid waste incinerator shall within 30 days after receipt of the department's disapproval submit a revised plan that addresses all of the modifications provided by the department. The department shall approve or disapprove the revised plan within 30 days after receiving it and approval of the revised plan shall not be unreasonably withheld.

(2) Not later than 6 months after the approval of the plan by the department under subsection (1) the owner or operator shall implement the plan in accordance with the implementation schedule set forth in the plan. The operation of a municipal solid waste incinerator without an approved plan under this section shall subject the owner or operator or both to all of the sanctions provided by this part.

Sec 11518 (1) At the time a disposal area that is a sanitary landfill is licensed an instrument that imposes a restrictive covenant upon the land involved shall be executed by all of the owners of the tract of land upon which the landfill is to be located and the department. If the land involved is state owned the state administrative board shall execute the covenant on behalf of the state. The instrument imposing the restrictive covenant shall be filed for record by the department or a health officer in the office of the register of deeds of the county or counties in which the facility is located. The covenant shall state that the land described in the covenant has been or will be used as a landfill and that neither the property owners, their servants, agents, or employees nor any of their heirs, successors, lessees, or assigns shall engage in filling, grading, excavating, drilling, or mining on the property during the first 50 years following completion of the landfill without authorization of the department. In giving authorization the department shall consider the original design, type of operation, material deposited, and the stage of decomposition of the fill. Special exemption from this section may be granted by the department if the lands involved are federal lands or if contracts existing between the landowner and the licensee on January 11, 1979, are not renegotiable.

(2) This part does not prohibit the department from conveying, leasing, or permitting the use of state land for a solid waste disposal area or a resource recovery facility as provided by applicable state law.

Sec 11519 (1) The department shall specify in writing the reasons for denial of a construction permit or an operating license, further specifying those particular sections of this part or rules promulgated under this part that may be violated by granting the application and the manner in which the violation may occur.

(2) The health officer or department may issue a cease and desist order specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part or may establish a consent agreement specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part to a person who establishes, constructs, conducts, manages, maintains, or operates a disposal area without a permit or license or to a person who holds a permit or license but establishes, constructs, conducts, manages, maintains, or operates a disposal area contrary to an approved solid waste management plan or contrary to the permit or license issued under this part.

(3) The department may issue a final order revoking, suspending, or restricting a permit or license after a contested case hearing as provided in 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, if the department finds that the disposal area is not being constructed or operated in accordance with the approved plans, the conditions of a permit or license, this part, or the rules promulgated under this part. A final order issued pursuant to this section is subject to judicial review as provided in Act No. 306 of the Public Acts of 1969. The department or a health officer shall inspect and file a written report not less than 4 times per year for each licensed disposal area. The department or the health officer shall provide the municipality in which the licensed disposal area is located with a copy of each written inspection report if the

municipality arranges with the department or the health officer to bear the expense of duplicating and mailing the reports

(4) The department after consultation with the director of public health or a designated representative of the director of public health may issue an order summarily suspending a permit or license if the department determines that a violation of this part or rules promulgated under this part has occurred which in the department's opinion constitutes an emergency or poses an imminent risk of injury to the public health or the environment. A determination that a violation poses an imminent risk of injury to the public health shall be made by the director of public health. Summary suspension may be ordered effective on the date specified in the order or upon service of a certified copy of the order on the licensee whichever is later and shall remain effective during the proceedings. The proceedings shall be commenced within 7 days of the issuance of the order and shall be promptly determined.

Sec 11520 (1) Fees collected by a health officer under this part shall be deposited with the city or county treasurer who shall keep the deposits in a special fund designated for use in implementing this part. If there is an ordinance or charter provision that prohibits a health officer from maintaining a special fund the fees shall be deposited and used in accordance with the ordinance or charter provision. Fees collected by the department under this part shall be credited to the general fund of the state.

(2) This part does not prohibit an individual from disposing of solid waste from the individual's own household upon the individual's own land as long as the disposal does not create a nuisance or hazard to health. Solid waste accumulated as a part of an improvement or the planting of privately owned farmland may be disposed of on the property if the method used is not injurious to human life or property and does not unreasonably interfere with the enjoyment of life or property.

Sec 11521 (1) If the owner or operator of a landfill or a municipal solid waste incinerator knows or should know that solid waste to be disposed of includes yard clippings that are generated or collected or both on land that is owned by a county, municipality or a state facility the owner or operator of the landfill or municipal solid waste incinerator shall not accept the solid waste for disposal.

(2) Beginning on March 28, 1995, if the owner or operator of a landfill or a municipal solid waste incinerator knows or should know that solid waste to be disposed of includes yard clippings from any source the owner or operator of the landfill or municipal solid waste incinerator shall not accept the solid waste for disposal.

(3) This section does not apply to yard clippings that are diseased or infested.

Sec 11522 (1) Beginning on March 28, 1995, the open burning of grass clippings or leaves or both is prohibited in any municipality having a population of 7,500 or more unless specifically authorized by local ordinance which ordinance shall be reported to the department of natural resources within 30 days of enactment.

(2) This section does not allow a county or municipality to permit open burning of grass clippings or leaves or both by an ordinance that would otherwise be prohibited under part 55 or rules promulgated under that part.

Sec 11523 (1) The department shall not issue a license to operate a disposal area unless the applicant has filed as a part of the application for a license a bond to cover the cost of closure and of postclosure monitoring and maintenance of the disposal area after capacity has been reached or operations have otherwise terminated in accordance with the following:

(a) Except as provided in subdivision (b), a bond established for a landfill shall be in an amount equal to \$20,000.00 per acre of licensed landfill. However, the amount of the bond shall not be less than \$20,000.00 or more than \$1,000,000.00. Each bond shall provide assurance for the maintenance of the finished landfill site for a period of 30 years after the landfill or any approved portion is completed.

(b) A bond established for a landfill or portion of a landfill that receives municipal solid waste incinerator ash under section 11542 shall be in an amount equal to \$50,000.00 per acre of licensed landfill or portion of the landfill. Each bond shall provide assurance for the maintenance of the finished landfill site or portion of landfill site for a period of 30 years after the landfill or any approved portion is completed.

(c) A bond established for a solid waste transfer facility, incinerator, processing plant or other solid waste handling or disposal facility utilized in the disposal of solid waste shall be in an amount equal to 1/4 of 1% of the construction cost of the facility but shall not be less than \$4,000.00 and shall be continued in effect for a period of 2 years after the disposal area is closed.

(d) An applicant for a license to operate a landfill may post a cash bond with the department as provided for in subsection (2) instead of a surety bond or certificate of deposit. A minimum of \$20,000.00 shall be paid to the department prior to licensure. Subsequent payments to the department shall be made every 6 months in an amount per acre of licensed landfill or any approved portion of landfill as determined by the department until the required amount per acre is attained.

(2) An applicant who elects to use a certificate of deposit as bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department. An applicant who elects to post cash as bond shall accrue interest on that bond at the annual rate of 6% to be accrued quarterly except that the interest rate payable to an applicant shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the applicant upon release of the bond by the department. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund and shall be appropriated to the department to be used by the department for administration of this part.

(3) An applicant for a disposal area that is not a landfill who has accomplished closure or postclosure monitoring and maintenance approved by the department and in accordance with this part and the rules promulgated under this part may request a 50% reduction in the bond.

(4) The department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the applicant fails to comply with the closure and postclosure monitoring and maintenance requirements of this part and the rules promulgated under this part.

(5) In addition to the bond required in subsection (1), a landfill that receives municipal solid waste incinerator ash under section 11542 shall provide a bond or a letter of credit in an amount equal to \$2,000,000.00. The bond or letter of credit described in this subsection shall provide assurance for remedial action at the landfill for a period of time extending 30 years after the landfill or any portion of the landfill is closed.

(6) The department shall not issue a construction permit or a new license to operate a disposal area to an applicant that is the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 U.S.C. 101 to 1330 or any other predecessor or successor statute.

Sec. 11524. A person required under section 11523 to provide financial assurance in the form of a bond or a letter of credit for a landfill may request a reduction in the total amount of financial assurance required upon reapplication for an operating license pursuant to section 11516(2). The department shall grant this request unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the financial assurance within 60 days after the request is made. If the department grants a request for reduced financial assurance, the department shall require financial assurance in an amount such that the amount of money in the perpetual care fund plus the amount of the reduced financial assurance equals the amount of the financial assurance required in section 11523 plus an additional 20% of that amount. The department shall release the financial assurance required by section 11523 if the amount in the perpetual care fund exceeds the amount of the financial assurance required under section 11523. Prior to closure of a landfill, if money is disbursed from the perpetual care fund, then the department may require a corresponding increase in the amount of financial assurance required to be provided.

Sec. 11525. (1) The owner or operator of a landfill shall establish and maintain a perpetual care fund to be used exclusively for closure, monitoring, and maintenance of the landfill and for response activity necessitated by a discharge from the landfill of a substance that is or may become injurious to the public health, safety, or welfare or the environment. A perpetual care fund may be established as a trust or an escrow account.

(2) Except as otherwise provided in this section, the owner or operator of a landfill shall deposit into the perpetual care fund 75 cents for each ton or portion of a ton of solid waste that is disposed of in the landfill after June 17, 1990. If the landfill is not equipped with a scale, the owner or operator shall deposit into the perpetual care fund 25 cents for each cubic yard or portion of a cubic yard of solid waste that is disposed of in the landfill after June 17, 1990.

(3) The owner or operator of a landfill that is used for the disposal of the following materials shall deposit into the perpetual care fund 75 cents for each ton or cubic yard or portion of a ton or cubic yard of the following materials that are disposed of in the landfill after June 17, 1990:

(a) Coal or wood ash that is disposed of in a landfill that is used only for the disposal of coal or wood ash or that is permanently segregated in a landfill.

(b) Wastewater treatment sludge or sediments from wood pulp or paper producing industries that is disposed of in a landfill that is used only for the disposal of wastewater treatment sludge and sediments from wood pulp or paper producing industries or that is permanently segregated in a landfill.

(c) Foundry sand that is approved by the department for use as daily cover at an operating landfill that is disposed of in a landfill that is used only for the disposal of foundry sand or that is permanently segregated in a landfill.

(d) Until June 17, 1993, organic fruit and vegetable processing waste.

(4) The owner or operator of a landfill that is used only for the disposal of a mixture of 2 or more of the materials described in subsection (3)(a) to (c) or in which a mixture of 2 or more of these materials are permanently segregated shall deposit into the perpetual care fund 19 cents for each ton or cubic yard or portion of a ton or cubic yard of these materials that are disposed of in the landfill after June 17, 1990.

(5) Money is not required to be deposited into a perpetual care fund for materials that are regulated under Act No. 92 of the Public Acts of 1970, being sections 425.181 to 425.188 of the Michigan Compiled Laws.

(6) The owner or operator of a landfill may contribute additional amounts into the perpetual care fund at his or her discretion

(7) The custodian of a perpetual care fund shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. The custodian shall invest money in a perpetual care fund in time or demand deposits of the custodian or any other financial institution to the extent insured by an agency of the federal government in direct obligations of the federal government or this state or in obligations where the principal and interest are guaranteed by the federal government or this state or in a common trust fund or registered mutual fund comprised solely of these investments. Earnings shall be credited to the perpetual care fund. The agreement governing the operation of the perpetual care fund shall be executed on a form provided by the department. The custodian may be compensated for reasonable fees and costs incurred for his or her responsibilities as custodian. The accounts of a perpetual care fund shall be kept on a calendar year basis. The custodian of a perpetual care fund shall annually make an accounting to the department within 30 days following the close of the calendar year.

(8) The custodian of a perpetual care fund shall not disburse any funds to the owner or operator of a landfill for the purposes of the perpetual care fund except upon the prior written approval of the department. However, the custodian shall file all required tax returns for which the perpetual care fund is liable and shall disburse funds from earnings of the fund to pay lawfully due taxes owed by the perpetual care fund without permission of the department. Upon the request of the owner or operator of a landfill for a disbursement of funds from a perpetual care fund, the department within 60 days shall grant written approval or issue a written denial stating the reasons for denial. The owner or operator of the landfill shall provide notice of requests for disbursement and denials and approvals to the custodian of the perpetual care fund. Requests for disbursement from a perpetual care fund shall be submitted not more frequently than quarterly. If the amount of money in a perpetual care fund falls below an amount equal to that required in section 11523, the department is not required to approve a disbursement from the fund, and the cost of necessary closure monitoring, maintenance, and response activities shall be borne by the owner and operator of the landfill.

(9) If the owner or operator of a landfill refuses or fails to conduct closure monitoring, maintenance, or response activities as are necessary to protect the public health, safety, or welfare, or the environment, or fails to request the disbursement of money from a perpetual care fund when necessary to protect the public health, safety, or welfare, or the environment, then the department may require the disbursement of money from the perpetual care fund and may expend the money for closure monitoring, maintenance, and response activities. The department may assess a perpetual care fund for administrative costs associated with actions taken under this subsection.

(10) Except as provided in subsection (12), upon the expiration of 30 years after the closure of a landfill, any money in the perpetual care fund for that landfill shall be disbursed by the custodian upon approval by the department as follows:

(a) Fifty percent shall be deposited in the environmental response fund created in part 201.

(b) Fifty percent shall be returned to the owner of the disposal area unless a contract between the owner and the operator of the disposal area provides otherwise.

(11) The owner of a landfill shall provide notice to the custodian of the perpetual care fund for that landfill if there is a change of ownership of the landfill. The custodian shall maintain records of ownership of a landfill during the time in which a perpetual care fund is established.

(12) Following the expiration of 30 years after the closure of a landfill, the owner of the landfill may petition the department for approval of disbursement of money in a perpetual care fund. The department shall approve disbursement pursuant to subsection (10) unless the department determines that the owner or operator of the landfill has refused or failed to conduct closure monitoring, maintenance, or response activities at the landfill necessary to protect the public health, safety, or welfare, or the environment. If the department makes this determination, the department shall deny the owner's request for approval of disbursement and shall notify the owner of the landfill and the custodian in writing of that determination and the reasons for that determination. Ninety days after receiving notice of the department's determination under this subsection, the custodian shall disburse all of the money in the perpetual care fund to the environmental response fund created in part 201 unless during this 90-day period the owner or operator of the landfill appeals the department's determination in circuit court. If the owner of a landfill does not petition for the department's approval of a disbursement, the department on its own may approve disbursement of money in a perpetual care fund pursuant to subsection (10) or this subsection.

(13) This section does not relieve an owner or operator of a disposal area that is a landfill of any liability that he or she may have under this part or as otherwise provided by law.

(14) This section does not create a cause of action at law or in equity against a custodian of a perpetual care fund other than for errors or omissions related to investments, accountings, disbursements, filings of required tax returns, and maintenance of records required by this section or the applicable perpetual care fund.

(15) As used in this section, custodian means the trustee or escrow agent of a perpetual care fund.

Sec 11526 The department a health officer or a law enforcement officer of competent jurisdiction may inspect a solid waste transporting unit that is being used to transport solid waste along a public road to determine if the solid waste transporting unit is designed maintained and operated in a manner to prevent littering or to determine if the owner or operator of the solid waste transporting unit is performing in compliance with this part and the rules promulgated under this part

Sec 11527 (1) A solid waste hauler transporting solid waste over a public road in this state shall deliver all waste to a disposal area or solid waste transfer facility licensed under this part and shall use only a vehicle or container that does not contribute to littering and that conforms to the rules promulgated by the department

(2) A solid waste hauler who violates this part or a rule promulgated under this part or who is responsible for a vehicle that has in part contributed to a violation of this part or a rule promulgated under this part is subject to a penalty as provided in section 11549

Sec 11528 (1) A solid waste transporting unit used for garbage industrial or domestic sludges or other moisture laden materials not specifically covered by part 121 shall be watertight and constructed maintained and operated to prevent littering Solid waste transporting units used for hauling other solid waste shall be designed and operated to prevent littering or any other nuisance

(2) A solid waste hauler who violates this part or the rules promulgated under this part is subject to the penalties provided in this part

(3) The department a health officer or a law enforcement officer may order a solid waste transporting unit out of service if the unit does not satisfy the requirements of this part or the rules promulgated under this part Continued use of a solid waste transporting unit ordered out of service is a violation of this part

Sec 11529 (1) A disposal area that is a solid waste transfer facility is not subject to the construction permit and operating license requirements of this part if either of the following circumstances exists

(a) The solid waste transfer facility is not designed to accept wastes from vehicles with mechanical compaction devices

(b) The solid waste transfer facility accepts less than 200 uncompacted cubic yards per day

(2) A solid waste transfer facility that is exempt from the construction permit and operating license requirements of this part under subsection (1) shall comply with the operating requirements of this part and the rules promulgated under this part

(3) Except as provided in subsection (5) a disposal area that is an incinerator may but is not required to comply with the construction permit and operating license requirements of this part if both of the following conditions are met

(a) The operation of the incinerator does not result in the exposure of any solid waste to the atmosphere and the elements

(b) The incinerator has a permit issued under part 55

(4) A disposal area that is an incinerator that does not comply with the construction permit and operating license requirements of this part as permitted in subsection (3) is subject to the planning provisions of this part and must be included in the county solid waste management plan for the county in which the incinerator is located

(5) A disposal area that is a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit is not subject to the construction permit requirements of this part

Sec 11530 (1) A municipality or county may establish and operate a collection center for junk motor vehicles and farm implements

(2) A municipality or county may collect junk motor vehicles and farm implements and dispose of them through its collection center through the process of competitive bidding

(3) A municipality or county may issue bonds as necessary pursuant to Act No 342 of the Public Acts of 1969 being sections 141 151 to 141 153 of the Michigan Compiled Laws to finance the cost of constructing or operating facilities to collect junk motor vehicles or farm implements The bonds shall be general obligation bonds and shall be backed by the full faith and credit of the municipality or county

(4) As used in this section collect means to obtain a vehicle pursuant to section 252 of the Michigan vehicle code Act No 300 of the Public Acts of 1949 being section 257 252 of the Michigan Compiled Laws or to obtain a vehicle or farm implement and its title pursuant to a transfer from the owner

Sec 11531 (1) A municipality or county shall assure that all solid waste is removed from the site of generation frequently enough to protect the public health and is delivered to licensed disposal areas except waste that is permitted by state law or rules promulgated by the department to be disposed of at the site of generation

(2) An ordinance enacted before February 8 1988 by a county or municipality incidental to the financing of a publicly owned disposal area or areas under construction that directs that all or part of the solid waste generated in that county or municipality be directed to the disposal area or areas is an acceptable means of compliance with subsection (1) notwithstanding that the ordinance in the case of a county has not been approved by the governor This subsection applies only to ordinances adopted by the governing body of a county or municipality before February 8 1988 and does not validate or invalidate an ordinance adopted after February 8 1988 as an acceptable means of compliance with subsection (1)

Sec 11532 (1) Except as provided in subsection (3) a municipality may impose an impact fee of not more than 10 cents per cubic yard on solid waste that is disposed of in a landfill located within the municipality that is utilized by the public and utilized to dispose of solid waste collected from 2 or more persons However if the landfill is located within a village the impact fee provided for in this subsection shall be imposed by the township in agreement with the village The impact fee shall be assessed uniformly on all wastes accepted for disposal

(2) Except as provided in subsection (3) a municipality may impose an impact fee of not more than 10 cents per cubic yard on municipal solid waste incinerator ash that is disposed of in a landfill located within the municipality that is utilized to dispose of municipal solid waste incinerator ash However if the landfill is located within a village the impact fee provided for in this subsection shall be imposed by the township in agreement with the village

(3) A municipality may enter into an agreement with the owner or operator of a landfill to establish a higher impact fee than those provided for in subsections (1) and (2)

(4) The impact fees imposed under this section shall be collected by the owner or operator of a landfill and shall be paid to the municipality quarterly by the thirtieth day after the end of each calendar quarter However the impact fees allowed to be assessed to each landfill under this section shall be reduced by any amount of revenue paid to or available to the municipality from the landfill under the terms of any preexisting agreements including but not limited to contracts special use permit conditions court settlement agreement conditions and trusts

(5) Unless a trust fund is established by a municipality pursuant to subsection (6) the revenue collected by a municipality under subsections (1) and (2) shall be deposited in its general fund to be used for any purpose that promotes the public health safety or welfare of the citizens of the municipality However revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality

(6) The municipality may establish a trust fund to receive revenue collected pursuant to this section The trust fund shall be administered by a board of trustees The board of trustees shall consist of the following members

(a) The chief elected official of the municipality creating the trust fund

(b) An individual from the municipality appointed by the governing board of the municipality

(c) An individual approved by the owners or operators of the landfills within the municipality and appointed by the governing board of the municipality

(7) Individuals appointed to serve on the board of trustees under subsection (6)(b) and (c) shall serve for terms of 2 years

(8) Money in the trust fund may be expended pursuant to a majority vote of the board of trustees for any purpose that promotes the public health safety or welfare of the citizens of the municipality However revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality

Sec 11533 (1) Each solid waste management plan shall include an enforceable program and process to assure that the nonhazardous solid waste generated or to be generated in the planning area for a period of 10 years or more is collected and recovered processed or disposed of at disposal areas which comply with state law and rules promulgated by the department governing location design and operation of the disposal areas

(2) An initial solid waste management plan shall be prepared and approved under this section and shall be submitted to the director not later than January 5 1984 Following submittal of the initial plan the solid waste management plan shall be reviewed and updated every 5 years An updated plan and an amendment to a plan shall be prepared and approved as provided in sections 11533 11534 11535 11536 11537 and 11537a The solid waste management plan shall encompass all municipalities within the county The solid waste management plan shall at a minimum comply with the requirements of sections 11537a and 11538 The solid waste management plan shall take into consideration solid waste management plans in contiguous counties and existing local approved solid waste management plans as they relate to the county's needs At a minimum a county preparing a solid waste management plan shall consult with the regional planning agency from the beginning to the completion of the plan

(3) Not later than July 1 1981 each county shall file with the department and with each municipality within the county on a form provided by the department a notice of intent indicating the county's intent to prepare a county solid waste management plan or to upgrade an existing plan. The notice shall identify the designated agency which shall be responsible for preparing the county solid waste management plan.

(4) If the county fails to file a notice of intent with the department within the prescribed time the department immediately shall notify each municipality within the county and shall request those municipalities to prepare the county solid waste management plan and shall convene a meeting to discuss the plan preparation. Within 4 months following notification by the department the municipalities shall decide by a majority vote of the municipalities in the county whether or not to file a notice of intent to prepare the county solid waste management plan. Each municipality in the county shall have 1 vote. If a majority does not agree then a notice of intent shall not be filed. The notice shall identify the designated agency which is responsible for preparing the county solid waste management plan.

(5) If the municipalities fail to file a notice of intent to prepare a county solid waste management plan with the department within the prescribed time the department shall request the appropriate regional solid waste management planning agency to prepare the county solid waste management plan. The regional solid waste management planning agency shall respond within 90 days after the date of the request.

(6) If the regional solid waste management planning agency declines to prepare a county solid waste management plan the department shall prepare the solid waste management plan for the county and that plan shall be final.

(7) A solid waste management planning agency upon request of the department shall submit a progress report in preparing its solid waste management plan.

Sec 11534 (1) The county executive of a charter county that elects a county executive and that chooses to prepare a solid waste management plan under section 11533 or the county board of commissioners in all other counties choosing to prepare an initial solid waste management plan under section 11533 or the municipalities preparing an initial solid waste management plan under section 11533(4) shall appoint a planning committee to assist the agency designated to prepare the plan under section 11533. If the county charter provides procedures for approval by the county board of commissioners of appointments by the county executive an appointment under this subsection shall be subject to that approval. A planning committee appointed pursuant to this subsection shall be appointed for terms of 2 years. A planning committee appointed pursuant to this subsection may be reappointed for the purpose of completing the preparation of the initial solid waste management plan or overseeing the implementation of the initial plan. Reappointed members of a planning committee shall serve for terms not to exceed 2 years as determined by the appointing authority. An initial solid waste management plan shall only be approved by a majority of the members appointed and serving.

(2) A planning committee appointed pursuant to this section shall consist of 14 members. Of the members appointed 4 shall represent the solid waste management industry 2 shall represent environmental interest groups 1 shall represent county government 1 shall represent city government 1 shall represent township government 1 shall represent the regional solid waste planning agency 1 shall represent industrial waste generators and 3 shall represent the general public. A member appointed to represent a county city or township government shall be an elected official of that government or the designee of that elected official. Vacancies shall be filled in the same manner as the original appointments. A member may be removed for nonperformance of duty.

(3) A planning committee appointed pursuant to this section shall annually elect a chairperson and shall establish procedures for conducting the committee's activities and for reviewing the matters to be considered by the committee.

Sec 11535 A county or regional solid waste management planning agency preparing a solid waste management plan shall do all of the following:

(a) Solicit the advice of and consult periodically during the preparation of the plan with the municipalities appropriate organizations and the private sector in the county under section 11538(1) and solicit the advice of and consult with the appropriate county or regional solid waste management planning agency and adjacent counties and municipalities in adjacent counties which may be significantly affected by the solid waste management plan for a county.

(b) If a planning committee has been appointed under section 11534 prepare the plan with the advice consultation and assistance of the planning committee.

(c) Notify by letter the chief elected official of each municipality within the county and any other person within the county so requesting not less than 10 days before each public meeting of the planning agency designated by the county if that planning agency plans to discuss the county plan. The letter shall indicate as precisely as possible the subject matter being discussed.

(d) Submit for review a copy of the proposed county or regional solid waste management plan to the department to each municipality within the affected county and to adjacent counties and municipalities that may be affected by the plan or that have requested the opportunity to review the plan. The county plan shall be submitted for review to the designated regional solid waste management planning agency for that county. Reviewing agencies shall be allowed an

opportunity of not less than 3 months to review and comment on the plan before adoption of the plan by the county or a designated regional solid waste management planning agency. The comments of a reviewing agency shall be submitted with the plan to the county board of commissioners or to the regional solid waste management planning agency.

(e) Publish a notice at the time the plan is submitted for review under subdivision (d) of the availability of the plan for inspection or copying at cost by an interested person.

(f) Conduct a public hearing on the proposed county solid waste management plan before formal adoption. A notice shall be published not less than 30 days before a hearing in a newspaper having a major circulation within the county. The notice shall indicate a location where copies of the plan are available for public inspection and shall indicate the time and place of the public hearing.

Sec 11536 (1) A municipality located in 2 counties or adjacent to a municipality located in another county may request to be included in the adjacent county's plan. Before the municipality may be included, the request shall be approved by a resolution of the county boards of commissioners of the counties involved. A municipality may appeal to the department a decision to exclude it from an adjacent county's plan. If there is an appeal, the department shall issue a decision within 45 days. The decision of the department is final.

(2) Except as provided in subsection (3), the county board of commissioners shall formally act on the plan following the public hearing required by section 11535(f).

(3) If a planning committee has been appointed by the county board of commissioners under section 11534(1), the county board of commissioners, or if a plan is prepared under section 11533(4), the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan shall take formal action on the plan after the completion of public hearings and only after the plan has been approved by a majority of the planning committee as provided in section 11534(1). If the county board of commissioners, or if a plan is prepared under section 11533(4), a majority of the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan does or do not approve the plan as submitted, the plan shall be returned to the planning committee along with a statement of objections to the plan. Within 30 days after receipt, the planning committee shall review the objections and shall return the plan with its recommendations.

(4) Following approval, the county plan shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan may take effect.

(5) A county plan prepared by a regional solid waste management planning agency shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan may take effect.

(6) If after the plan has been adopted, the governing bodies of not less than 67% of the municipalities have not approved the plan, the department shall prepare a plan for the county including those municipalities that did not approve the county plan. A plan prepared by the department shall be final.

Sec 11537 (1) The department shall, within 6 months after a plan has been submitted for approval, approve or disapprove the plan. An approved plan shall at a minimum meet the requirements set forth in section 11538(1).

(2) The department shall review an approved plan periodically and determine if revisions or corrections are necessary to bring the plan into compliance with this part. The department, after notice and opportunity for a public hearing held pursuant to 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, may withdraw approval of the plan. If the department withdraws approval of a county plan, the department shall establish a timetable or schedule for compliance with this part.

Sec 11537a Beginning on June 9, 1994, a county that has a solid waste management plan that provides for siting of disposal areas to fulfill a 20-year capacity need through use of a siting mechanism is only required to use its siting mechanisms to site capacity to meet a 10-year capacity need. If any county is able to demonstrate to the department that it has at least 66 months of available capacity, that county may refuse to utilize its siting mechanism until the county is no longer able to demonstrate 66 months of capacity or until the county amends its plan in accordance with this part to provide for the annual certification process described in section 11538.

Sec 11538 (1) Not later than September 11, 1979, the director shall promulgate rules for the development, form, and submission of initial solid waste management plans. The rules shall require all of the following:

(a) The establishment of goals and objectives for prevention of adverse effects on the public health and on the environment resulting from improper solid waste collection, processing, or disposal, including protection of surface and groundwater quality, air quality, and the land.

(b) An evaluation of waste problems by type and volume including residential and commercial solid waste hazardous waste industrial sludges pretreatment residues municipal sewage sludge air pollution control residue and other wastes from industrial or municipal sources

(c) An evaluation and selection of technically and economically feasible solid waste management options which may include sanitary landfill resource recovery systems resource conservation or a combination of options

(d) An inventory and description of all existing facilities where solid waste is being treated processed or disposed of including a summary of the deficiencies if any of the facilities in meeting current solid waste management needs

(e) The encouragement and documentation as part of the plan of all opportunities for participation and involvement of the public all affected agencies and parties and the private sector

(f) That the plan contain enforceable mechanisms for implementing the plan including identification of the municipalities within the county responsible for the enforcement This subdivision does not preclude the private sector's participation in providing solid waste management services consistent with the county plan

(g) Current and projected population densities of each county and identification of population centers and centers of solid waste generation including industrial wastes

(h) That the plan area has and will have during the plan period access to a sufficient amount of available and suitable land accessible to transportation media to accommodate the development and operation of solid waste disposal areas or resource recovery facilities provided for in the plan

(i) That the solid waste disposal areas or resource recovery facilities provided for in the plan are capable of being developed and operated in compliance with state law and rules of the department pertaining to protection of the public health and the environment considering the available land in the plan area and the technical feasibility of and economic costs associated with the facilities

(j) A timetable or schedule for implementing the county solid waste management plan

(2) Each solid waste management plan shall identify specific sites for solid waste disposal areas for a 5 year period after approval of a plan or plan update In calculating disposal need requirements to measure compliance with this section only those existing waste stream volume reduction levels achieved through source reduction reuse composting recycling or incineration or any combination of these reduction devices that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects may be assumed by the planning entity In addition if the solid waste management plan does not also identify specific sites for solid waste disposal areas for the remaining portion of the entire planning period required by this part after approval of a plan or plan update the solid waste management plan shall include an interim siting mechanism and an annual certification process as described in subsections (3) and (4) In calculating the capacity of identified disposal areas to determine if disposal needs are met for the entire required planning period full achievement of the solid waste management plan's volume reduction goals may be assumed by the planning entity if the plan identifies a detailed programmatic approach to achieving these goals If a siting mechanism is not included and disposal capacity falls to less than 5 years of capacity a county shall amend its plan to resolve the shortfall

(3) An interim siting mechanism shall include both a process and a set of minimum siting criteria both of which are not subject to interpretation or discretionary acts by the planning entity and which if met by an applicant submitting a disposal area proposal will guarantee a finding of consistency with the plan The interim siting mechanism shall be operative upon the call of the board of commissioners or shall automatically be operative whenever the annual certification process shows that available disposal capacity will provide for less than 66 months of disposal needs In the latter event applications for a finding of consistency from the proposers of disposal area capacity will be received by the planning agency commencing on January 1 following completion of the annual certification process Once operative an interim siting mechanism will remain operative for at least 90 days or until more than 66 months of disposal capacity is once again available either by the approval of a request for consistency or by the adoption of a new annual certification process which concludes that more than 66 months of disposal capacity is available

(4) An annual certification process shall be concluded by June 30 of each year commencing on the first June 30 which is more than 12 months after the department's approval of the plan or plan update The certification process will examine the remaining disposal area capacity available for solid wastes generated within the planning area In calculating disposal need requirements to measure compliance with this section only those existing waste stream volume reduction levels achieved through source reduction reuse composting recycling or incineration or any combination of these reduction devices that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects may be assumed The annual certification of disposal capacity shall be approved by the board of commissioners Failure to approve an annual certification by June 30 is equivalent to a finding that less than a sufficient amount of capacity is available and the interim siting mechanism will then be operative on the first day of the following January As part of the department's responsibility to act on construction permit applications the department has final decision authority to approve or disapprove capacity certifications and to determine consistency of a proposed disposal area with the solid waste management plan

(5) A board of commissioners may adopt a new certification of disposal capacity at any time. A new certification of disposal capacity shall supersede all previous certifications and become effective 30 days after adoption by the board of commissioners and remain in effect until subsequent certifications are adopted.

(6) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county. With regard to intercounty service within Michigan, the service must also be explicitly authorized in the exporting county's solid waste management plan.

(7) A person shall not dispose of, store, or transport solid waste in this state unless the person complies with the requirements of this part.

(8) Following approval by the director of a county solid waste management plan and after July 1, 1981, an ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute which prohibits or regulates the location or development of a solid waste disposal area and which is not part of or not consistent with the approved solid waste management plan for the county shall be considered in conflict with this part and shall not be enforceable.

Sec 11539 (1) The director shall not approve a plan update unless

(a) The plan contains an analysis or evaluation of the best available information applicable to the plan area in regard to recyclable materials and all of the following:

(i) The kind and volume of material in the plan area's waste stream that may be recycled or composted.

(ii) How various factors do or may affect a recycling and composting program in the plan area. Factors shall include an evaluation of the existing solid waste collection system, materials market, transportation networks, local composting and recycling support groups, or both; institutional arrangements; the population in the plan area; and other pertinent factors.

(iii) An identification of impediments to implementing a recycling and composting program and recommended strategies for removing or minimizing impediments.

(iv) How recycling and composting and other processing or disposal methods could complement each other and an examination of the feasibility of excluding site-separated material and source-separated material from other processing or disposal methods.

(v) Identification and quantification of environmental, economic, and other benefits that could result from the implementation of a recycling and composting program.

(vi) The feasibility of source separation of materials that contain potentially hazardous components at disposal areas. This subparagraph applies only to plan updates that are due after January 31, 1989.

(b) The plan either provides for recycling and composting recyclable materials from the plan area's waste stream or establishes that recycling and composting are not necessary or feasible or are only necessary or feasible to a limited extent.

(c) A plan that proposes a recycling or composting program, or both, details the major features of that program including all of the following:

(i) The kinds and volumes of recyclable materials that will be recycled or composted.

(ii) Collection methods.

(iii) Measures that will ensure collection such as ordinances or cooperative arrangements, or both.

(iv) Ordinances or regulations affecting the program.

(v) The role of counties and municipalities in implementing the plan.

(vi) The involvement of existing recycling interests, solid waste haulers, and the community.

(vii) Anticipated costs.

(viii) On-going program financing.

(ix) Equipment selection.

(x) Public and private sector involvement.

(xi) Site availability and selection.

(xii) Operating parameters such as pH and heat range.

(d) The plan includes an evaluation of how the planning entity is meeting the state's waste reduction and recycling goals as established pursuant to section 11541(4).

(2) The director may promulgate rules as may be necessary to implement this section.

Sec 11539a (1) The department shall prepare a proposed standard format for the submittal of updates to solid waste management plans. This proposed standard format shall be submitted to the standing committees of the legislature that

address issues primarily pertaining to natural resources and the environment by November 1 1994 for a 30 day review and comment period Following this 30 day period the department shall finalize the standard format and provide a copy of the standard format to each planning entity in the state that the department knows will be preparing an update to a solid waste management plan The standard format shall be submitted to planning entities by January 1 1995 Additionally the department shall provide the standard format to any other person upon request

(2) Notwithstanding any other provision of this part the department shall not require planning entities to begin the process for updating solid waste management plans prior to January 1 1995

Sec 11540 Not later than September 11 1979 the department shall submit to the legislature rules that contain sanitary design and operational standards for solid waste transporting units and disposal areas and otherwise implement this part The rules shall include standards for hydrogeologic investigations monitoring liner materials leachate collection and treatment if applicable groundwater separation distances environmental assessments methane gas control soil erosion sedimentation control groundwater and surface water quality noise and air pollution and the use of floodplains and wetlands

Sec 11541 (1) The state solid waste management plan shall consist of the state solid waste plan and all county plans approved or prepared by the department

(2) The department shall consult and assist in the preparation and implementation of the county solid waste management plans

(3) The department may undertake or contract for studies or reports necessary or useful in the preparation of the state solid waste management plan

(4) The department shall develop a strategy to encourage resource recovery and establishment of waste to energy facilities By March 30 1989 the department shall submit to the legislature a report on the details of the strategy The report shall recommend public and private sector incentives and suggest potential regulatory relief to remove constraints on the siting of waste to energy and resource recovery facilities The strategy and report shall be prepared with the goal of reducing land disposal to unusable residuals by the year 2005 The report shall include specific recommendations for necessary legislation to implement the strategy

Sec 11542 (1) The generation transportation treatment storage and disposal of municipal solid waste incinerator ash is regulated under this part as solid waste and is not regulated under part 111

(2) Except as provided in subsection (10) municipal solid waste incinerator ash shall be disposed of in 1 of the following

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

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

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

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

(A) A leachate collection system

(B) A synthetic liner at least 60 mils thick

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

(D) A leak detection and leachate collection system

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

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

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

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

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

(A) A leachate collection system

(B) A synthetic liner at least 60 mils thick

(C) A geotextile layer at least 100 mils thick

(D) A synthetic liner at least 40 mils thick

(E) A geotextile layer at least 100 mils thick

(F) A leak detection and leachate collection system

(G) A synthetic liner at least 40 mils thick

(w) The landfill's cells each hold a maximum of 100 000 cubic yards of municipal solid waste incinerator ash

(v) If contaminants that may threaten the public health safety or welfare or the environment are found in the leachate collection system described in subparagraph (u)(F) the owner or operator of the landfill shall determine the source and nature of the contaminants and make repairs to the extent practicable that will prevent the contaminants from entering the leachate collection system. If the department determines that the source of the contaminants is caused by a design failure of the landfill the department notwithstanding an approved construction permit or operating license may require landfill cells at that landfill that will be used for the disposal of municipal solid waste incinerator ash which are under construction or will be constructed in the future at the landfill to be constructed in conformance with improved design standards approved by the department. However this subparagraph does not require the removal of liners or leak detection and leachate collection systems that are already in place in a landfill cell under construction

(vi) On June 12 1989 the owner or operator of the landfill has a letter of agreement with an existing municipal solid waste incinerator to receive municipal solid waste incinerator ash and the owner or operator has by September 10 1989 submitted this letter to the department

(c) A landfill that meets all of the following requirements

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

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

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

(A) A leachate collection system

(B) A synthetic liner at least 80 mils thick

(C) At the option of the owner or operator of the landfill a leak detection and leachate collection system

(D) At least 10 feet of either natural or compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second

(iv) If construction of the landfill begins prior to June 1 1990 the liner specified in subparagraph (iii)(B) may be 60 mils thick

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

(e) A type II landfill as defined in R 299 4105 of the Michigan administrative code if all of the following conditions apply

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

(ii) The ash is tested by a laboratory listed on the list compiled by the department under section 11544 and the ash upon testing meets the requirements of 40 C.F.R. 261.20 to 261.24. A person seeking to dispose of ash under this subdivision may select an approved laboratory from the list compiled in section 11544 to conduct the test

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

(3) Except as provided in subsection (5) a landfill that is constructed pursuant to the design described in subsection (2)(a) or (b) shall be capped following its closure by all of the following in descending order

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

(b) Two feet of subsurface drainage media or cobbles or a combination thereof to protect against animal burrowing temperature erosion and rooted vegetation

(c) A flexible membrane liner at least 30 mils thick

(d) 3 feet of compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second

(e) A synthetic liner at least 30 mils thick with a geomembrane infiltration system above the liner may be used in place of the compacted clay specified in subdivision (d) if on June 12 1989 the owner or operator of the landfill has a letter of agreement with an existing municipal solid waste incinerator to receive municipal solid waste incinerator ash and the owner or operator has by September 10 1989 submitted this letter to the department

(4) Except as provided in subsection (5) a landfill that is constructed pursuant to the design described in subsection (2)(c) shall be capped following its closure by all of the following in descending order

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

(b) Two feet of compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second of compacted clay

(c) An infiltration collection system

(d) A synthetic liner at least 30 mils thick

(e) One foot of compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second

(5) A landfill that receives municipal solid waste incinerator ash under this section may be capped with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subsections (3) and (4)

(6) If leachate is collected from a landfill under this section the leachate shall be monitored and tested in accordance with this part and the rules promulgated under this part

(7) Prior to and after June 12 1989 notwithstanding any other provision in this section municipal solid waste incinerator ash may be stored or may continue to be stored on a temporary basis if all of the following conditions exist

(a) The ash is stored in a landfill licensed under this part

(b) The owner or operator of the landfill by September 12 1989 does either of the following

(i) Applies for an operating permit amendment pursuant to subsection (11) that would allow the permanent disposal of the ash at the landfill

(ii) Applies for a construction permit under this part that would allow the permanent disposal of the ash at the landfill

(c) The ash is stored for not longer than 9 months after an operating license or an operating license amendment is approved or denied by the department or by June 12 1991 whichever occurs first unless the department has unreasonably delayed approving or denying an operating license or operating license amendment

(d) On June 12 1989 the owner or operator of the landfill has a letter of agreement with an existing municipal solid waste incinerator or with a municipal solid waste incinerator under construction to receive municipal solid waste incinerator ash and the owner or operator has by September 10 1989 submitted this letter to the department

(e) The temporary storage at the landfill provides for an intermediate separation of the ash from other solid waste using not less than 2 feet of compacted soil or a synthetic liner at least 30 mils thick and the ash is covered daily in a manner that prevents the ash from blowing

(f) By September 10 1989 or prior to beginning temporary storage the owner or operator of the landfill receiving the municipal solid waste incinerator ash submits an ash management plan to the department that includes leachate and runoff control measures and dust control measures. The department shall approve or disapprove the plan submitted under this subsection within 30 days of receiving it. If the department disapproves the plan the department shall notify the owner or operator submitting the plan of this fact and shall provide modifications that if included would result in the plan's approval. If the department disapproves a plan the owner or operator of the landfill shall within 30 days after receipt of the department's disapproval submit a revised plan that addresses all of the modifications provided by the department. The department shall approve or disapprove the revised plan within 30 days of receiving it and the department shall not unreasonably withhold approval of the revised plan. Upon approval by the department the plan shall become part of the operating license of the landfill. The operation of a landfill without an approved plan under this subdivision subjects the owner or operator or both to all of the sanctions provided by this part.

(g) By July 12 1989 or prior to receiving the ash for temporary storage the owner or operator of the landfill notifies the governing body of the municipality and the county board of commissioners of the county in which the landfill is located of its intent to temporarily store the ash.

(8) Following a period of temporary storage under subsection (7) municipal solid waste incinerator ash shall be permanently disposed of in accordance with this section. In addition to any other penalty provided in this part a person who stores municipal solid waste incinerator ash under subsection (7) for a period longer than is allowed by subsection (7) is liable for a civil fine of \$5 000.00 per day of violation.

(9) The owner or operator of a landfill that receives municipal solid waste incinerator ash under this section for temporary storage or for disposal shall do all of the following:

(a) Manage the ash to control dust

(b) Manage the landfill to control track out

(c) Manage all access roads within the landfill to control dust

(d) Only dispose of wet ash in the landfill

(e) If the ash was in temporary storage under subsection (7) rewet the ash prior to transporting the ash to the permanent landfill

(10) As an alternative to disposal described in subsection (2) the owner or operator of a municipal solid waste incinerator may process municipal solid waste incinerator ash through mechanical or chemical methods or both to substantially diminish the toxicity of the ash or its constituents or limit the leachability of the ash or its constituents to minimize threats to human health and the environment if processing is performed on the site of the municipal solid waste incinerator or at the site of a landfill described in subsection (2) if the process has been approved by the department as provided by rule and if the ash is tested after processing in accordance with a protocol approved by the

department as provided by rule. The department shall approve the process and testing protocol under this subsection only if the process and testing protocol will protect human health and the environment. In making this determination the department shall consider all potential pathways of human and environmental exposure including both short term and long term to constituents of the ash that may be released during the reuse or recycling of the ash. The department shall consider requiring methods to determine the leaching, total chemical analysis, respirability, and toxicity of reused or recycled ash. A leaching procedure shall include testing under both acidic and native conditions. If municipal solid waste incinerator ash is processed in accordance with the requirements of this subsection and the processed ash satisfies the testing protocol approved by the department as provided by rule, the ash may be disposed of in a type II landfill as defined by R 299.4105 of the Michigan administrative code, licensed under this part, or may be used in any manner approved by the department. If municipal solid waste incinerator ash is processed as provided in this subsection but does not satisfy the testing protocol approved by the department as provided by rule, the ash shall be disposed of in accordance with subsection (2).

(11) The disposal of municipal solid waste incinerator ash within a landfill that is in compliance with subsection (2) does not constitute a new proposal for which a new construction permit is required under section 11510 if a construction permit has previously been issued under section 11509 for the landfill and the owner or operator of the landfill submits 6 copies of an operating license amendment application to the department for approval. The operating license amendment application shall include revised plans and specifications for all facility modifications including a leachate disposal plan, an erosion control plan, and a dust control plan which shall be part of the operating license amendment. The dust control plan shall contain sufficient detail to ensure that dust emissions are controlled by available control technologies that reduce dust emissions by a reasonably achievable amount to the extent necessary to protect human health and the environment. The dust control plan shall provide for the ash to be wet during all times that the ash is exposed to the atmosphere at the landfill or otherwise to be covered by daily cover material for dust emissions to be controlled during dumping, grading, loading, and bulk transporting of the ash at the landfill, and for dust emissions from access roads within the landfill to be controlled. With the exception of a landfill that is in existence on June 12, 1989 that the department determines is otherwise in compliance with this section, the owner or operator of the landfill shall obtain the operating license amendment prior to initiating construction. Prior to operation, the owner or operator of a landfill shall submit to the department certification from a licensed professional engineer that the landfill has been constructed in accordance with the approved plan and specifications. At the time the copies are submitted to the department, the owner or operator of the landfill shall send a copy of the operating license amendment application to the municipality where the landfill is located. At least 30 days prior to making a final decision on the operating license amendment, the department shall hold at least 1 public meeting in the vicinity of the landfill to receive public comments. Prior to a public meeting, the department shall publish notice of the meeting in a newspaper serving the local area. The department shall issue a final decision on an operating license amendment application within 120 days after the department receives an administratively complete application.

(12) Once every other month, the owner or operator of a municipal solid waste incinerator shall collect a 24-hour composite sample of the municipal solid waste incinerator ash generated by the incinerator. By July 12, 1989, the owner or operator of a municipal solid waste incinerator shall submit a protocol for sample collection to the department for approval. Each sample shall be collected according to the approved protocol. The owner or operator shall perform an analysis of the collected sample for trace metals as totals by acid digestion using analytical methods described in SW 846 test methods for evaluating solid waste, third edition. The purpose of these tests is to determine the changes in characteristics of municipal solid waste incinerator ash from source separation initiatives over the life of the facility. If fly ash generated by the municipal solid waste incinerator is processed separately from the bottom ash, the owner or operator shall perform separate tests on the fly ash and the bottom ash. The owner or operator of the municipal solid waste incinerator shall submit these test results to the department within 60 days after the sample was collected.

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

(14) As used in subsection (2), "landfill" means a landfill or a specific portion of a landfill.

Sec. 11543 (1) If municipal solid waste incinerator ash is transported, it shall be transported in compliance with section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws.

(2) If municipal solid waste incinerator ash is transported by rail, it shall be transported in covered, leakproof railroad cars.

(3) The outside of all vehicles and accessory equipment used to transport municipal solid waste incinerator ash shall be kept free of the ash.

Sec. 11544 (1) The department shall compile a list of approved laboratories that are capable of performing the test provided for in section 11542.

(2) The department shall publish the list compiled under subsection (1) on or before July 1 1989 and shall after that date make the list available to any person upon request

(3) Except as provided in subsection (4) a test conducted by an approved laboratory from the list compiled under subsection (1) is definitive for purposes of this part

(4) If the department has reason to believe that test results provided by an approved laboratory are fraudulent or that a test was carelessly performed the department may conduct its own test or may have an additional test performed at the department's expense

Sec 11545 Beginning June 21 1993 a municipal solid waste incinerator shall not incinerate used oil As used in this section used oil has the meaning ascribed to this term in part 167

Sec 11546 (1) The department or a health officer may request that the attorney general bring an action in the name of the people of the state or a municipality or county may bring an action based on facts arising within its boundaries for any appropriate relief including injunctive relief for a violation of this part or rules promulgated under this part

(2) In addition to any other relief provided by this section the court may impose on any person who violates any provision of this part or rules promulgated under this part or who fails to comply with any permit license or final order issued pursuant to this part a civil fine of not more than \$10 000 00 for each day of violation

(3) In addition to any other relief provided by this section the court may order a person violating this part or the rules promulgated under this part either to restore or to pay to the state an amount equal to the cost of restoring the natural resources of this state affected by the violation to their original condition before the violation and to pay to the state the costs of surveillance and enforcement incurred by the state as a result of the violation

(4) This part does not preclude any person from commencing a civil action based on facts that may also constitute a violation of this part or the rules promulgated under this part

Sec 11547 (1) In order for a county to effectively implement the planning responsibilities designated under this part a grant program is established to provide financial assistance to county or regional solid waste management planning agencies Municipalities joined together with interlocal agreements relating to solid waste management plans within a county having a city of a population of more than 1 million are eligible for a separate planning grant in addition to those granted to counties This separate grant allocation provision does not alter the planning and approval process requirements for county plans as specified in this part Eighty percent of the money for the program not provided for by federal funds shall be appropriated annually by the legislature from the general fund of the state and 20% shall be appropriated by the applicant Grant funds appropriated for local planning may be used by the department if the department finds it necessary to invoke the department's authority to develop a local plan under section 11533(6) The department shall promulgate rules for the distribution of the appropriated funds

(2) In order for a certified health department to effectively implement the responsibilities designated under this part an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to a certified health department A certified health department is eligible to receive 100% of reasonable personnel costs as determined by the department based on criteria established by rule The department shall promulgate rules for the distribution of the appropriated funds

Sec 11548 (1) This part is not intended to prohibit the continuation of the private sector from doing business in solid waste disposal and transportation This part is intended to encourage the continuation of the private sector in the solid waste disposal and transportation business when in compliance with the minimum requirements of this part

(2) This part is not intended to prohibit salvaging

Sec 11549 A person who violates this part a rule promulgated under this part or a condition of a permit license or final order issued pursuant to this part is guilty of a misdemeanor punishable by a fine of not more than \$1 000 00 for each violation and costs of prosecution and if in default of payment of fine and costs imprisonment for not more than 6 months Each day upon which a violation occurs is a separate offense

PART 117 SEPTAGE WASTE SERVICES

Sec 11701 As used in this part

(a) Certified health department means a city county or district department of health to which the director has delegated the authority to perform activities as prescribed by this part

(b) Cesspool means a cavity in the ground that receives waste to be partially absorbed directly or indirectly by the surrounding soil

(c) Governmental unit means a county township municipality or other regional authority

- (d) Injection means the pressurized placement of septage waste below the surface of soil
- (e) Motor vehicle means a vehicle that is self propelled and used to transport septage waste
- (f) Peace officer means every sheriff or sheriff's deputy village or township marshal officer of the police department of any city village or township any officer of the Michigan state police any peace officer who is trained and certified pursuant to the Michigan law enforcement officers training council act of 1965 Act No 203 of the Public Acts of 1965 being sections 28 601 to 28 616 of the Michigan Compiled Laws or any conservation officer appointed by the department pursuant to section 6 of Act No 192 of the Public Acts of 1929 being section 300 16 of the Michigan Compiled Laws
- (g) Portable toilet means a receptacle for human waste temporarily in a location for human use
- (h) Public septage waste treatment facility means a septage waste or other wastewater treatment facility owned and operated by a governmental unit and approved by the department for treating septage waste
- (i) Seepage pit means a dry well leaching pit or any other cavity in the ground that receives the liquid discharge of a septic tank
- (j) Septage waste means any human excrement other domestic or restaurant waste or other material or substance removed from a portable toilet septic tank seepage pit cesspool sewage lift station or other enclosure as determined by the department under section 11718 but does not include liquid industrial waste regulated under part 121
- (k) Septic tank means a septic toilet chemical closet or other enclosure used for the storage or decomposition of septage waste
- (l) Service or servicing means cleaning removing transporting or disposing of septage waste from a portable toilet septic tank seepage pit cesspool sewage lift station or other enclosure as determined by the department under section 11718
- (m) Sewage lift station means a pumping facility that lifts septage waste to a higher elevation
- (n) Site means a location that has been approved by the department as a suitable location for the disposal of septage waste
- (o) Tank means a container placed on a motor vehicle to carry or transport septage waste

Sec 11702 (1) Except as otherwise provided in this section a person shall not engage in the business of servicing or contract with a person to service a portable toilet septic tank seepage pit cesspool or other enclosure as determined by the department under section 11718 unless the person who will perform the servicing is licensed as provided in sections 11703 and 11704

(2) Licensure as provided in this part is not required for a real property owner who services his or her own portable toilet septic tank seepage pit cesspool sewage lift station or other enclosure as determined by the department under section 11718 located on that person's property Septage waste removed by a real property owner pursuant to this subsection may be disposed of on the real property from which it originates if the real property is at least 20 acres in size and if the disposal is in compliance with sections 11710 11711 and 11714 and any rules promulgated under this part pertaining to the disposal of septage waste

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

Sec 11703 (1) A person engaged in the business of servicing shall apply for a septage waste servicing license on an application form provided by the department The department shall provide an application form that includes all of the following

- (a) The applicant's name and mailing address
- (b) The location or locations where the business is operated
- (c) Additional information pertinent to this part as required by the department

(2) A person who submits a completed application form under subsection (1) shall submit to the department with the application all of the following

- (a) An application fee of \$300 00 that will be refunded by the department if a septage waste servicing license is not issued
- (b) A \$100 00 fee to accompany an initial license application to be credited to the septage waste site contingency fund as provided in section 11717

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

(3) A person who holds a septage waste servicing license shall maintain at all times at his or her place of business a complete record of the amount of septage waste that the person has transported and disposed of and the location at which the disposal of septage waste has occurred. The person shall display these records upon the request of the director, a peace officer, or an official of a certified health department.

Sec 11704 (1) A person who is required to be licensed pursuant to section 11703 is required to have a septage waste motor vehicle license issued by the department for each vehicle that is used to transport septage waste. A septage waste motor vehicle license application form shall be provided by the department and shall be submitted to the department with a license fee of \$75.00 for each vehicle required to be licensed under this part. A motor vehicle license application is to include all of the following information:

- (a) The model and year of the motor vehicle
- (b) The capacity of any tank used to remove or transport the septage waste
- (c) The name of the motor vehicle's insurance carrier
- (d) Additional information pertinent to this part as required by the department

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

(3) Without the express permission of the department, a person shall not use a vehicle used to transport septage waste to transport hazardous waste regulated under part 111 or liquid industrial waste regulated under part 121.

Sec 11705 A tank upon a vehicle licensed pursuant to section 11704 shall be closed in transit to prevent the release of septage waste and odor. The motor vehicle, tank, and accessory equipment shall be clean and maintained in a manner that prevents environmental damage or harm to the public health.

Sec 11706 (1) Upon receipt of application forms complying with sections 11703 and 11704, the department shall review each application to ensure that it is complete. If the department determines that the application forms are complete, the department shall promptly provide the applicable certified health department with copies of all application materials. Upon receipt of the application materials, a certified health department shall conduct all necessary investigations to verify that the locations to be used for disposal, the servicing methods, and the motor vehicles and tanks are in compliance with this part and the rules promulgated under this part. Upon approving of the applicant, the department shall issue a license as provided in sections 11703 and 11704. If a certified health department does not exist, the department may perform the functions of a certified health department as necessary.

(2) A license issued pursuant to section 11703 or 11704 is not transferable and is valid for 3 years unless revoked or suspended by the department.

Sec 11707 Each motor vehicle licensed pursuant to section 11704 shall display on both sides of the motor vehicle in letters not less than 2 inches high the words "licensed septage hauler," the motor vehicle license number issued by the department, and a seal furnished by the department that designates the year the license was issued.

Sec 11708 A person licensed under this part shall deposit all septage waste in a public septage waste treatment facility if a facility is available to receive that septage waste and is located within 15 road miles of the location where the septage waste is received. This section does not restrict a licensed person from taking septage waste to any public septage waste treatment facility, regardless of where that facility is located. The public septage waste treatment facility may charge a disposal fee that does not exceed the actual costs related to the treatment and storage of the waste.

Sec 11709 (1) Subject to the limitations contained in sections 11710 and 11711, septage waste that is picked up at a location that is further than 15 road miles from a public septage waste treatment facility or where a public waste treatment facility is not available, may be disposed of on land if the person holding licenses issued pursuant to sections 11703 and 11704 applies to the department for a permit authorizing the disposal of septage waste on land, supplies any additional information pertinent to this part as required by the department, and sends notice to property owners as provided in subsection (2).

(2) An applicant for a permit under subsection (1) shall send a notice to each land owner who owns property located within 800 feet of the proposed disposal location on a form approved by the department. Service of the notice shall be made by first class mail. The notification shall include the nature of the proposed land use, the location of the proposed disposal area, and whom to contact if there is an objection to the proposed land use. A copy of the notice that is mailed to each property owner shall be sent to the certified health department having jurisdiction. If no substantiated objections as determined by the department are received within 10 business days following the mailing of the notification, the department may issue a permit as provided in this section. If the department finds that the applicant

is unable to provide notice as required in this subsection the department may waive the notice requirement or allow the applicant to use a substitute means of providing notice

(3) A permit issued under this section shall expire at the same time as a septage waste servicing license issued pursuant to section 11703 but is subject to renewal at that time A permit issued under this section may be revoked by the department if septage waste disposal or site management is in violation of this part or the rules promulgated under this part

Sec 11710 Except as provided in section 11711 a permit issued pursuant to section 11709 is subject to the following requirements

(a) The quantity of septage waste disposed of shall be applied uniformly at a rate no greater than 15 000 gallons per acre per month and not greater than 60 000 gallons per acre per year Land may be utilized as a septage waste disposal site for 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 11711 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 (v) equals or exceeds the following isolation distances

TYPE OF APPLICATION

	<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 department unless public access to the site is restricted for 12 months and no animals whose products are consumed by humans are allowed to graze on the site for at least 1 month following disposal

(h) Septage waste shall be treated to reduce pathogens by composting heat drying or treatment thermophilic aerobic digestion or other process or method approved by the department prior to disposal on lands where crops for direct human consumption are grown if contact between the septage waste and the edible portion of the crop is possible

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

Sec 11711 (1) The department may approve of surface application of septage waste when the soil is frozen and the following requirements are met

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

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

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

(d) The United States department of agriculture defines the soil as well drained moderately well drained somewhat poorly drained or poorly drained if the department finds that the poorly drained soil is systematically tiled or specifies other reasons for approving surface application

(2) The department may grant a variance from the requirements of section 11710(d) (e) or (f) or subsection (1) if the department finds that the conditions of the variance provide the same or a higher degree of protection to the environment and the public health as provided in subsection (1) or section 11710(d) (e) or (f)

(3) The department may grant a variance to the requirements of section 11710(a) if it can be demonstrated that no adverse impact will affect the soil groundwater surface water or public health and safety as a result of the variance

(4) The department may grant a variance to the requirements of section 11710(c) if all the following conditions are present

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

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

(c) The slope of any lands on which septage waste is applied is less than 2% or less than 4% if the land is internally drained

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

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

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

(g) All other provisions and isolation distances stated in section 11710(d) are complied with

Sec 11712 The standards provided for in sections 11710 and 11711 may be modified by rules promulgated by the department provided that if the rules provide the same or a higher degree of protection to the environment and the public health as provided in sections 11710 and 11711

Sec 11713 The department shall inspect a septage waste disposal site at least once each year

Sec 11714 A person shall not dispose of septage waste in a lake pond stream river or other body of water

Sec 11715 (1) If a governmental unit requires that all septage waste collected in that governmental unit be disposed of in a septage waste treatment facility or prohibits or effectively prohibits the application of septage waste to land within that governmental unit the governmental unit shall make available a public septage waste treatment facility that can lawfully accept all septage waste generated within that governmental unit that is not lawfully applied to land

(2) The owner or operator of a public septage waste treatment facility shall not require the posting of a surety including cash in an escrow account or a performance bond to dispose of septage waste in the public septage waste treatment facility

Sec 11716 (1) The department shall certify city county and district departments of health to carry out certain responsibilities under this part Except as provided in subsection (2) and in section 11717 the department shall provide for the payment of all fees collected under this part to certified health departments that carry out responsibilities under this part

(2) A certified health department that carries out responsibilities under this part may assess a fee to cover the actual costs incurred by the certified health department in fulfilling its responsibilities under this part

(3) If a certified health department does not exist in a city county or district or does not fulfill its responsibilities pursuant to this part the department may carry out those responsibilities it considers necessary The department shall retain the fees collected under this part that would have been paid to the certified health department had it existed or fulfilled its responsibilities pursuant to this part

Sec 11717 There is created in the state treasury a septage waste site contingency fund The contingency fund shall be financed by a \$100 00 fee collected from each person who holds a septage waste servicing license under this part The fee shall be collected from a person holding a license under section 11703 with the first application and shall not be collected with subsequent renewal licenses The fees shall be deposited in the state treasury to the credit of the septage waste site contingency fund The department shall administer the fund and authorize expenditures to remove or treat septage waste which has been disposed of in violation of this part Following an expenditure from the fund the department immediately shall request that the attorney general begin proceedings to recover the expenditure from the fund from the person responsible for the damage Interest earned by the fund shall remain in the fund unless expended as provided in this section

Sec 11718 The department may promulgate rules to implement this part The rules may include rules establishing other materials and substances that are included in the definition of septage waste and other enclosures for septage waste that require licenses to service under this part

Sec 11719 (1) A person who violates this part a condition of a license or permit issued under this part or who makes false statements to obtain a license under this part is guilty of a misdemeanor punishable by imprisonment for not more than 10 days or a fine of not more than \$500 00 or both If the violation is of a continuing nature each day the violation occurs is a separate offense

(2) If the department finds that a person is in violation of a license permit or a requirement of this part pursuant to 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 the department may revoke suspend or modify the license or permit

(3) Upon receipt of information that the servicing of septage waste regulated by this part presents an imminent or substantial threat to the public health safety welfare or the environment after consultation with the director or a designated representative of the department of public health the department or a peace officer if authorized by law shall do 1 or more of the following

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

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

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

(4) If the department determines that hazardous or nuisance conditions or unlawful pollution of the waters of the state has resulted or may result from the activities of a person who holds a license the department shall notify the holder of that license and afford the license holder the opportunity to take corrective action to abate or prevent the pollution

PART 119 WASTE MANAGEMENT AND RESOURCE RECOVERY FINANCE

PART 121 LIQUID INDUSTRIAL WASTES

Sec 12101 (1) Brine means a liquid produced as a by product of oil or natural gas production or exploration

(2) Container means any portable device in which a liquid industrial waste is stored transported treated or otherwise handled

(3) Designated facility means a treatment storage disposal or reclamation facility that receives liquid industrial waste from off site

(4) Discarded means any of the following

(a) Abandoned by being disposed of burned or incinerated or accumulated stored or treated before or instead of being abandoned

(b) Accumulated stored or treated before being managed in 1 of the following ways

(i) By being used or reused in a manner constituting disposal by being applied to or placed on the land or by being used to produce products that are applied to or placed on the land

(ii) By being burned to recover energy or used to produce a fuel

(iii) By reclamation

(5) Discharge means the accidental or intentional spilling leaking pumping releasing pouring emitting emptying or dumping of liquid industrial waste into the land air or water

(6) Disposal means the abandonment discharge deposit injection dumping spilling leaking or placing of a liquid industrial waste into or on land or water in such a manner that the liquid industrial waste may enter the environment or be emitted into the air or discharged into surface water or groundwater

(7) Disposal facility means a facility or a part of a facility at which liquid industrial waste is disposed

(8) Facility means all contiguous land and structures other appurtenances and improvements on the land for treating storing disposing of or reclamation of liquid industrial waste

(9) Federal water pollution control act means chapter 758 86 Stat 816 33 U S C 1251 to 1252 1253 to 1254 1255 to 1257 1258 to 1270 1281 1282 to 1293 1294 to 1299 1311 to 1313 1314 to 1330 1341 to 1345 1361 to 1377 and 1381 to 1387

(10) Generator means a person whose act or process produces liquid industrial waste

(11) Liquid industrial waste means any brine by product industrial wastewater leachate off specification commercial chemical product sludge sanitary sewer clean out residue storm sewer clean out residue grease trap clean out residue spill residue used oil or other liquid waste that is produced by is incident to or results from industrial commercial or governmental activity or any other activity or enterprise determined to be liquid by method 9095 (paint filter liquids test) as described in Test methods for evaluating solid wastes physical/chemical methods United States environmental protection agency publication no SW 846 and which is discarded Liquid industrial waste does not include any of the following

(a) Hazardous waste regulated and required to be manifested pursuant to part 111

(b) Septage waste regulated pursuant to part 117

(c) Medical waste as defined in part 138 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 13801 to 333 13831 of the Michigan Compiled Laws

(d) A discharge permitted or authorized under part 31

(e) A material that is used or reused as an effective substitute for commercial products or returned to the original process if the material does not require reclamation prior to use or reuse is not directly burned to recover energy or used to produce a fuel or is not applied to the land and not used in products applied to the land

(f) A household generated liquid waste

(g) A liquid industrial waste utilized for land application in accordance with a program for effective residuals management approved by the director or the United States environmental protection agency or both pursuant to the federal water pollution control act

(h) Oil field brines used for public road dust control and ice removal as authorized under the terms of the rules standards and brine management plan approved by the department in existence on June 1 1993 until rules are promulgated

Sec 12102 (1) Manifest means either of the following

(a) A form approved by the department used for identifying the quantity composition origin routing or destination of liquid industrial waste during its transportation from the point of generation to the point of disposal treatment storage or reclamation

(b) For shipments of liquid industrial waste that are not generated or transported to a disposal treatment storage or reclamation facility in this state a United States environmental protection agency form number 8700 22 or its successor

(2) On site means on the same geographically contiguous property which may be divided by a public or private right of way and access is by crossing rather than going along the right of way On site includes noncontiguous pieces of property owned by the same person but connected by a right of way which the owner controls and to which the public does not have access

(3) Peace officer means any law enforcement officer who is trained and certified pursuant to the Michigan law enforcement officers training council act of 1965 Act No 203 of the Public Acts of 1965 being sections 28 601 to 28 616 of the Michigan Compiled Laws or an officer appointed by the director of the department of state police pursuant to section 6d of Act No 59 of the Public Acts of 1935 being section 28 6d of the Michigan Compiled Laws

(4) Publicly owned treatment works means any entity that treats municipal sewage or industrial waste of a liquid nature that is owned by the state or a municipality as that term is defined in section 502(4) of title V of the federal water pollution control act 33 U S C 1362 Publicly owned treatment works include sewers pipes or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment

(5) Reclamation means either processing to recover a usable product or regeneration

(6) Reclamation facility means a facility or part of a facility where liquid industrial waste reclamation is conducted

(7) Storage means the containment of liquid industrial waste on a temporary basis in a manner that does not constitute disposal of liquid industrial waste

(8) Storage facility means a facility or part of a facility where liquid industrial waste is stored

(9) Surface impoundment means a treatment storage or disposal facility or part of a treatment storage or disposal facility that is either a natural topographic depression a human made excavation or a diked area formed primarily of earthen materials A surface impoundment may be lined with human made materials designed to hold an accumulation of liquid waste or waste containing free liquids and which is not an injection well Surface impoundments include but are not limited to holding storage settling aeration pits ponds and lagoons

(10) Tank means a stationary device designed to contain an accumulation of liquid industrial waste that is constructed primarily of nonearthen materials such as wood concrete steel or plastic to provide structural support

(11) Transportation means the movement of liquid industrial waste by air rail highway or water

(12) Transporter means a person engaged in the off site transportation of liquid industrial waste by air rail highway or water

(13) Treatment means any method technique or process including neutralization designed to change the physical chemical or biological character or composition of any liquid industrial waste to neutralize the waste or to render the waste safer to transport store or dispose of amenable to recovery amenable to storage or reduced in volume

(14) Treatment facility means a facility or part of a facility at which liquid industrial waste is treated

(15) Vehicle means each separate conveyance used in the transportation of liquid industrial waste and is 1 of the following

(a) A rail car as defined in 49 C F R 171 8

(b) A semitrailer truck or trailer as defined in the Michigan vehicle code Act No 300 of the Public Acts of 1949 being sections 257 1 to 257 923 of the Michigan Compiled Laws

(c) A truck tractor as defined in Act No 300 of the Public Acts of 1949 only if the liquid industrial waste is actually transported in the cab of the vehicle

Sec 12103 (1) A generator shall do all of the following

(a) Characterize the waste in accordance with the requirements of part 111 and rules promulgated under that part and maintain records of the characterization

(b) Obtain and utilize a generator identification number assigned by the United States environmental protection agency or the department

(c) Engage employ or contract for the transportation of liquid industrial waste only with a transporter licensed under this part unless otherwise authorized in this part

(d) Utilize and retain a separate manifest for each shipment of liquid industrial waste transported to a designated facility The department may authorize the use of a consolidated manifest for waste loads that are multiple pickups of uniform types of wastes that constitute a single shipment of waste In this case a receipt shall be obtained from the transporter documenting the transporter's company name driver's signature date of pickup type and quantity of waste accepted from the generator the consolidated manifest number and the designated facility A generator of brine may complete a single manifest per transporter of brine per disposal well each month

(e) Submit a copy of the manifest to the department by the tenth day after the end of the month in which a load of waste is transported

(f) Certify that at the time the transporter picks up liquid industrial waste the information contained on the manifest is factual by signing the manifest This certification is to be by the generator or his or her authorized representative

(g) If a copy of the manifest with a handwritten signature of the owner or operator of the designated facility is not received within 35 days after the date the waste was accepted by the initial transporter contact the transporter or owner or operator of the designated facility or both to determine the status of the waste

(h) Submit an exception report to the department if a copy of the manifest is not received with the handwritten signature of the owner or operator or his or her authorized representative of the designated facility within 45 days after the date the waste was accepted by the initial transporter The exception report shall include both of the following

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery

(ii) A cover letter signed by the generator explaining the efforts taken to locate the waste and the results of those efforts

(2) A generator who also operates an on site reclamation treatment or disposal facility shall keep records of all liquid waste produced and reclaimed treated or disposed of at his or her facility

(3) A generator shall retain all records required pursuant to this part for a period of at least 3 years and shall make those records readily available for review and inspection by the department or a peace officer The retention period required by this subsection is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as otherwise required by the department

Sec 12104 (1) A person shall not engage in the business of transporting liquid industrial wastes from the premises of another person without a transporter business license issued by the department In addition a person shall not use a vehicle to transport liquid industrial waste unless the vehicle is licensed by the department as a liquid industrial waste transport vehicle and displays a decal issued by the department that indicates current vehicle licensure A liquid industrial waste transporter business license issued pursuant to section 12106 shall expire 2 years after the date of issuance unless otherwise issued in accordance with subsection (6) Vehicle licenses issued during the term of a transporter business license expire on the same date as the transporter business license

(2) A completed application for a transporter business license shall be submitted on a form provided by the department and shall be accompanied by all of the following

(a) A transporter business application fee of \$400 00

(b) Proof of insurance as specified in section 12110

(c) A vehicle application fee of \$100 00 for each vehicle

(d) Other information required by the department to implement this part

(3) Lost destroyed or damaged decals are to be replaced by submission of a vehicle license application and a fee of \$50 00

(4) An application for a transporter business or vehicle license renewal shall be submitted at least 60 days before expiration of the existing license. The fee for renewal is the same as for the original license.

(5) The transporter business license and vehicle license fees collected pursuant to this section shall be deposited in the liquid industrial transporter waste account created in section 12117 within the environmental pollution prevention fund created in section 11130.

(6) When a transporter business license first expires following the effective date of this part, the department may issue a 1 year license at 1/2 the fees that would otherwise be required under this part.

(7) An applicant for a transporter business license shall obtain at least 1 vehicle license when he or she applies for a transporter business license. However, the holder of a transporter business license may at any time apply for an additional vehicle license by completing and submitting that portion of a transporter vehicle license that applies to vehicle licenses and submitting a \$100.00 fee for each vehicle as required in subsection (2)(c).

Sec 12105 (1) A person transporting liquid industrial waste generated on property in which he or she owns or holds an interest, railcars, airplanes, and watercraft used for the transportation of liquid industrial waste, and persons and vehicles licensed pursuant to part 111 are exempt from the requirements of sections 12104, 12106, 12108, and 12110, and section 12107(1), (2), (3), and (4) but remain subject to all other provisions of this part and any other applicable part or act.

(2) A vehicle may be licensed under this part and under part 117 under the following conditions:

(a) All licensing requirements of this part and part 117 are met.

(b) No septage waste or liquid industrial waste transported by the license holder is disposed of on land.

(c) All liquid waste, including septage waste, is manifested pursuant to the requirements of sections 12103, 12109, and 12112.

(d) In addition to the lettering and decal requirements of this part and part 117, the words "Land Application Prohibited" shall be affixed as specified in section 12107(1).

(3) A generator, subject to the reporting requirements under part C of title XIV of the public health service act, 88 Stat. 1674, 42 U.S.C. 300h to 300h-7, and regulations promulgated under that act, who transports brine generated on property he or she owns or holds an interest in to the generator's own disposal well is exempt from the provisions of this part regarding manifests.

Sec 12106 Upon receipt of the liquid industrial waste transporter business license application or a vehicle license application, the department shall examine the application to ensure that it is complete and accompanied by those items required by section 12104(2) and may conduct an inspection to verify information provided and that methods and operations of the applicant are adequate to comply with this part. The department may request the motor carrier division of the department of state police to determine compliance with the acts specified in section 12107(5). The department shall issue a license to an applicant that the department determines is in compliance with the applicable requirements of this part. A license is not transferable from a business or vehicle to another business or vehicle.

Sec 12107 (1) A vehicle used to transport liquid industrial waste shall have affixed to it the business name and the city and state in which the business is located. The lettering providing this information shall be readily legible during daylight hours from a distance of 50 feet. Decals furnished by the department shall be affixed directly adjacent to the required lettering. The lettering and decals shall be clearly legible in a conspicuous location, visible, and permanently affixed on both sides of the licensed vehicle for the duration of the licensing period.

(2) A vehicle used to transport liquid industrial waste shall carry a copy of the license issued by the department and shall produce it upon request of the department or peace officer.

(3) A permanent vehicle identification number shall be affixed to the vehicle.

(4) At the time a vehicle is no longer licensed under this part, the transporter shall remove all previously required decals.

(5) All vehicles used to transport liquid industrial waste shall operate in compliance with each of the following:

(a) The hazardous materials transportation act, title I of the transportation safety act of 1974, Public Law 93-633, 88 Stat. 2156.

(b) The Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(c) The motor carrier safety act of 1963, Act No. 181 of the Public Acts of 1963, being sections 480.11 to 480.21 of the Michigan Compiled Laws.

(6) All vehicles and containers used to transport liquid industrial waste shall be closed or covered to prevent the escape of liquid industrial waste, and the outside of all vehicles, containers, and accessory equipment shall be kept free of liquid industrial waste and its residue.

(7) To avoid cross contamination all portions of a vehicle that have been in contact with liquid industrial waste shall be cleaned and decontaminated before the transport of any products incompatible waste or nonwaste material. A transporter who owns or legally controls a vehicle shall maintain as part of the transporter's records documentation that before its use for the transportation of nonwaste or a product the vehicle has been decontaminated. This subsection does not apply to a vehicle if brine was transported in the vehicle and the next load transported in the vehicle is brine for disposal or well drilling or production purposes or oil or other hydrocarbons produced from an oil or gas well or water or other fluids to be used in activities regulated under Act No. 61 of the Public Acts of 1939 being sections 319.1 to 319.27 of the Michigan Compiled Laws or the rules, orders, or instructions under that act.

Sec. 12108 (1) The department shall deny an application for a liquid industrial waste transporter business license or vehicle license for any of the following reasons:

- (a) The proposed transporter business license or vehicle license would violate this part.
- (b) The applicant is not in compliance with the requirements of section 12107 as applicable.
- (c) The applicant has not submitted sufficiently detailed or accurate information to enable the department to make reasonable judgments as to whether the business, stationary facility, or any vehicles licensed under this part are in compliance with this part.
- (d) The application is not timely or complete as required in section 12104.

(2) The department shall notify the applicant in writing of the reasons for denial.

(3) A transporter business license or a vehicle license issued under this part may be revoked after reasonable notice and hearing pursuant to 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, if the department finds that the transporter has failed to comply with the requirements of this part or a license issued under this part.

(4) If the department determines that a violation of this part or a license issued under this part has or may result in an imminent or substantial threat to the public safety, health, or welfare or to the environment, he or she may order immediate suspension of a license issued under this part. An order issued under this subsection shall not remain in effect more than 10 days without affording the licensee an opportunity for a hearing.

(5) A transporter who has applied for renewal of a license as prescribed in section 12104 may continue to transport liquid industrial wastes if all of the following conditions are met:

- (a) The transporter is operating in compliance with the transporter's existing license.
- (b) The transporter is operating in compliance with this part.
- (c) The department has not denied the transporter's application for renewal of the transporter's license.

Sec. 12109 (1) A liquid industrial waste transporter shall certify acceptance of waste for transportation by completing the transporter section of the manifest and shall deliver the liquid industrial waste and accompanying manifest only to the designated facility specified by the generator on the manifest.

(2) The liquid industrial waste transporter shall retain all records required pursuant to this part for a period of at least 3 years and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required in this subsection is automatically extended during the course of any unresolved enforcement action regarding an activity regulated under this part or as required by the department.

(3) The department may authorize, for certain waste streams, the use of a consolidated manifest as authorized under section 12103(1)(d). In this case, the transporter shall give to the generator a receipt documenting the transporter's company name, driver's signature, date of pickup, type and quantity of waste removed, the consolidated manifest number, and the designated facility.

(4) A transporter is required to maintain a trip log for consolidated manifest shipments and for brine shipments. The transporter shall do all of the following:

- (a) Identify on the trip log the consolidated manifest number, the generator, date of pickup, type and quantity of waste, and the designated facility location for each shipment of waste.
- (b) Keep a copy of all trip logs in the transport vehicle, at a minimum, for the current shipment on the transport vehicle and retain these records as specified in subsection (2).
- (c) Display the logs upon the request of the department or a peace officer.
- (d) Obtain and utilize a transporter identification number assigned by the United States environmental protection agency or the department.

Sec. 12110 (1) A transporter shall demonstrate proof of financial responsibility for bodily injury and property damage to third parties caused by accidental occurrences arising from the liquid industrial waste transportation.

activities of the transporter. The transporter shall have and maintain liability coverage for accidental occurrences in an amount not less than \$750 000 00 per occurrence.

(2) A transporter shall demonstrate the required liability coverage for all vehicles to be licensed regardless of the limitations provided for under section 10927 of title 49 of the United States Code 49 U.S.C. 10927 and a note to section 10927 of title 49 of the United States Code 49 U.S.C. 10927 nt by submitting any of the following to the department:

(a) A signed copy of form MCS 90 (3/82) entitled endorsement for motor carrier policies of insurance for public liability under sections 29 and 30 of the motor carrier act of 1980 which is found in illustration I in 49 C.F.R. 387.15 and an endorsement on a form provided by the department which identifies the insurance policy number and expiration date all vehicles covered under the policy and provides that cancellation termination or material change to the policy which affects the coverages required by this section shall not occur unless and until not less than 30 days written notice of such cancellation termination or material change is first provided to the department regardless of which party initiates the cancellation termination or material change and whether or not nonpayment of premium is involved. The insurer shall at a minimum be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in this state.

(b) Form MCS 82 (4/83) entitled motor carrier public liability surety bond under sections 29 and 30 of the motor carrier act of 1980 which is found in illustration II 49 C.F.R. 387.15. The surety company issuing the bond shall at a minimum be among those listed as acceptable sureties on federal bonds in circular 570 of the United States department of the treasury.

(c) A written decision order or authorization of the interstate commerce commission authorizing the transporter to self insure under 49 C.F.R. 1043.5 provided the transporter maintains a satisfactory safety rating as determined by the bureau of motor carrier safety under 49 C.F.R. part 385.

Sec 12111 (1) If a fire explosion or other discharge of liquid industrial waste occurs which could threaten the public health safety and welfare or the environment or when a generator transporter or owner or operator of a designated facility has knowledge that a spill has reached surface water or groundwater the generator transporter or owner or operator of the designated facility shall take appropriate immediate action to protect the public health safety and welfare and the environment including notification of local authorities and the pollution emergency alerting system using the telephone number 800 292 4706.

(2) The generator transporter or owner or operator of a designated facility shall within 30 days prepare and maintain as part of their records a written report documenting the incident and the response action taken including any supporting analytical data. The report shall be provided to the department upon request. Both the initial notification as appropriate and the report shall include all of the following information:

(a) The name and telephone number of the person reporting the incident.

(b) The name address telephone number and identification number of the generator transporter or designated facility.

(c) The date time and type of incident.

(d) The name and quantity of waste involved and discharged.

(e) The extent of injuries if any.

(f) The estimated quantity and disposition of recovered materials that resulted from the incident if any.

(g) An assessment of actual or potential hazards to human health or the environment.

(h) The response action taken.

(3) Incidents occurring in connection with activities regulated under Act No. 61 of the Public Acts of 1939 being sections 319.1 to 319.27 of the Michigan Compiled Laws or the rules orders or instructions under that act or under part C of title XIV of the public health service act 88 Stat. 1674 42 U.S.C. 300h to 300h.7 or the regulations promulgated under that act are exempt from the requirements of this section.

Sec 12112 (1) The owner or operator of a facility that accepts liquid industrial waste shall accept delivery of waste at the designated facility only if delivery is accompanied by a manifest or consolidated manifest properly certified by the generator and the transporter and the facility is the destination indicated on the manifest. The facility owner or operator shall do all of the following:

(a) Obtain and utilize an identification number either assigned from the United States environmental protection agency or the department.

(b) Certify on the manifest receipt of the liquid industrial waste by completing the facility section of the manifest and returning a signed copy of the manifest to the department within a period of 10 days after the end of the month for all liquid industrial waste received within the month.

(c) Return a signed copy of the manifest to the generator.

(d) Maintain records of the characterization of the waste Characterization shall be in accordance with the requirements of part 111

(2) All storage treatment and reclamation of liquid industrial waste at the designated facility shall be in either containers or tanks or as otherwise specified in section 12113(5) or (6) Storage treatment or reclamation regulated under Act No 61 of the Public Acts of 1939 being sections 319 1 to 319 27 of the Michigan Compiled Laws or the rules orders or instructions under that act or under part C of title XIV of the public health service act 88 Stat 1674 42 U S C 300h to 300h 7 or the regulations promulgated under that act are exempt from this subsection

(3) The owner or operator of a designated facility shall retain all records required pursuant to this part for a period of at least 3 years and shall make those records readily available for review and inspection by the department or a peace officer The retention period required by this subsection is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department

Sec 12113 (1) Storage of liquid industrial waste either at the location of generation under the control of the transporter or at the designated facility shall be protected from weather fire physical damage and vandals All vehicles containers and tanks used to hold liquid industrial waste shall be closed or covered except when necessary to add or remove waste to prevent the escape of liquid industrial waste The exterior of all vehicles containers and tanks used to hold liquid industrial waste shall be kept free of liquid industrial waste and its residue

(2) Except as otherwise authorized pursuant to this section applicable statutes rules and orders of the department liquid industrial waste shall be managed to prevent any of the following

- (a) Discharge of liquid industrial waste into the soil
- (b) Discharge of liquid industrial waste into surface water or groundwater
- (c) Discharge of liquid industrial waste into a drain or sewer
- (d) Discharge of liquid industrial waste in violation of part 55

(3) A person shall treat store and dispose of liquid industrial waste in accordance with all applicable statutes rules and orders of the department

(4) This part does not prevent a publicly owned treatment works from accepting liquid industrial waste from the premises of a person and does not prevent a person from engaging employing or contracting with a publicly owned treatment works However a publicly owned treatment works receiving waste by means of transportation shall be a designated facility and shall comply with the requirements specified in section 12112

(5) A person shall not treat store or dispose of liquid industrial waste in a surface impoundment unless the surface impoundment has a discharge or storage permit authorized under part 31 or in the case of leachate is authorized in a permit issued under part 115

(6) The department may authorize land application of liquid industrial waste in accordance with a program for effective residuals management that is approved by the department or the United States environmental protection agency or both pursuant to the federal water pollution control act

(7) Activities regulated under Act No 61 of the Public Acts of 1939 being sections 319 1 to 319 27 of the Michigan Compiled Laws or the rules orders or instructions under that act or part C of title XIV of the public health service act 88 Stat 1674 42 U S C 300h to 300h 7 or the regulations promulgated under that act are exempt from the requirements of this section

Sec 12114 (1) If the department or a peace officer has probable cause to believe that a person is violating this part the department or a peace officer may search without a warrant a vehicle or equipment that is possessed used or operated by that person The department or a peace officer may seize a vehicle used or operated in a manner or for a purpose in violation of this part

(2) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action under this section

Sec 12115 (1) The attorney general or a person may bring a civil action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources that are damaged or destroyed as a result of a violation of this part The damages collected under this section shall be deposited in the general fund However if the damages result from the impairment or destruction of the fish wildlife or other natural resources of the state the damages shall be deposited in the game and fish protection fund created in part 435 The attorney general may in addition recover expenses incurred by the department to address and remedy a violation of this part that the department reasonably considered an imminent and substantial threat to the public health safety or welfare or to the environment

(2) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action pursuant to this section or to a person who successfully defends against an action brought under this section that the court determines is frivolous

Sec 12116 (1) A person who violates section 12107(1) (2) (3) (4) (6) or (7) or section 12109(4) is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than \$200 00 and not more than \$500 00 or both A peace officer may issue an appearance ticket to a person who is in violation of section 12107(1) (2) (3) (4) (6) or (7) or section 12109(4)

(2) A person who knowingly makes or causes to be made a false statement or entry in a license application or a manifest is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not less than \$2 500 00 or more than \$10 000 00 or both

(3) A person who violates this part or a license issued under this part except as provided in subsections (1) and (2) is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not less than \$1 000 00 or more than \$2 500 00 or both

(4) Each day that a violation continues constitutes a separate violation

Sec 12117 (1) The liquid industrial transporter waste account is created within the environmental pollution prevention fund which is created in section 11130

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

(3) Money remaining in the account at the close of the fiscal year shall not lapse to the general fund

(4) The department shall expend money from the account upon appropriation for the implementation of this part In addition funds not expended from the account for the implementation of this part may be utilized for emergency response and cleanup activities related to liquid industrial waste that are initiated by the department

Sec 12118 (1) A person who on the effective date of this part holds a transporter business license or a vehicle license issued pursuant to former Act No 136 of the Public Acts of 1969 may continue to operate under the authority of that license until its expiration However except as otherwise provided in subsection (2) that person shall operate in compliance with this part

(2) A person who on the effective date of this part holds a transporter business license or a vehicle license may continue to operate with liability coverage required under former Act No 136 of the Public Acts of 1969 until that person seeks to renew his or her license under this part Upon license renewal the applicant shall provide evidence of coverage as required under section 12110

CHAPTER 4 POLLUTION PREVENTION

PART 141 POLLUTION PREVENTION POLICY

PART 143 WASTE MINIMIZATION

Sec 14301 As used in this part

(a) Office means the office of waste reduction created in section 14302

(b) Waste means hazardous waste as defined in section 11103 solid waste as defined in section 11506 liquid industrial waste as defined in section 12101 discharges regulated by part 31 and air contaminants regulated by part 55

(c) Waste reduction means any practice such as an equipment or technology modification a process or procedure modification a reformulation or redesign of a product a substitution of raw materials or improved management training or inventory control which practice is undertaken by a person to reduce the volume or quantity or toxicity of waste that may be released into the environment or that is treated at a location other than the location where it is produced

Sec 14302 (1) The office of waste reduction is created within the department of natural resources to advise the department on methods of incorporating waste reduction goals within the department of natural resources regulatory and permit programs including data collection and analysis to advance the concept and implementation of waste reduction

(2) The department of natural resources shall employ personnel and provide support staff as are necessary to implement this part

Sec 14303 (1) The office shall do all of the following

(a) Identify opportunities to encourage waste reduction through the department of natural resources regulatory programs

(b) Identify opportunities to encourage waste reduction through the department of natural resources permit programs

(c) Identify how waste reduction efforts should be documented in environmental impact statements

(d) Analyze and make recommendations on the value of imposing statewide goals or goals for particular wastes or both for waste reduction minimum recycling standards and waste treatment standards

(e) Publish an annual analysis of waste reduction efforts and potentials in the state

(2) In performing its responsibilities under subsection (1) the office shall place a particular emphasis on in plant waste reduction

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

Sec 14304 (1) The office shall complete the studies provided in section 11110(3) upon the request of the department and shall provide the information generated by those studies to the department

(2) The department shall assure that relevant information received under section 313 of subtitle B of title III of the superfund amendments and reauthorization act of 1986 Public Law 99 499 42 U S C 11023 is transmitted to the hazardous waste policy committee by the office

Sec 14305 (1) Upon request the office shall provide information to the waste reduction assistance service and to the department of commerce liaison created in part 145

(2) The director shall designate 1 individual from the department to serve as a liaison between the department and the waste reduction assistance service in the department of commerce on all matters related to waste reduction

Sec 14306 The office shall prepare and deliver before January 1 of each year a report detailing the efforts the office has undertaken during the previous fiscal year to implement this part The annual report shall be delivered to the legislature the governor and the chairpersons of the appropriations committees in the senate and the house of representatives for their use in evaluating future appropriations for the office The annual report may include the information generated pursuant to sections 14303 and 14304 and may recommend changes in policies and regulatory approaches that will encourage waste reduction

PART 145 WASTE REDUCTION ASSISTANCE

Sec 14501 As used in this part

(a) Committee means the waste reduction advisory committee created in section 14507

(b) Department means the department of commerce

(c) Director means the director of commerce

(d) Service means the waste reduction assistance service created in section 14502

(e) 'Waste means hazardous waste as defined in section 11103 solid waste as defined in section 11506 liquid industrial waste as defined in section 12101 discharges regulated by part 31 and air contaminants regulated by part 55

(f) Waste reduction means any practice such as an equipment or technology modification a process or procedure modification a reformulation or redesign of a product a substitution of raw materials or improved management training or inventory control which practice is undertaken by a person to reduce the volume or quantity or toxicity of waste that may be released into the environment or that is treated at a location other than the location where it is produced

Sec 14502 (1) The waste reduction assistance service is created within the department of commerce The service shall inform assist educate and provide funding as provided in this part to persons to facilitate a reduction in the amount of waste generated in the state The service shall place a particular emphasis on in plant waste reduction

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

Sec 14503 (1) The service shall establish a waste reduction information clearinghouse which shall do all of the following

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

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

Sec 14504 The service shall provide technical assistance regarding waste reduction to business and industry throughout the state and shall do all of the following

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

Sec 14505 (1) The department shall establish a waste reduction grants program

(2) Information and applications for grants provided by this section shall be distributed upon request through the service. Additionally, the service shall, upon request, make referrals and provide information about other state agencies and programs and federal agencies and programs where funding alternatives may be available.

(3) An application for a grant under this section shall be on a form provided by the department and contain information as required by the director.

(4) The director, after the consideration of the recommendations of the committee, shall make waste reduction grants for either or both of the following purposes:

(a) To fund projects that demonstrate new and emerging waste reduction technologies. A grant made under this subdivision shall require that information generated by the project shall be available to the service for distribution through the waste reduction information clearinghouse created in section 14503.

(b) To fund waste reduction projects.

(5) The director, in making grants pursuant to this section, shall consider all of the following:

- (a) The severity of the waste problem being addressed
- (b) The extent that the technological development will reduce waste at its source
- (c) The potential for the application of the waste reduction technology to other persons
- (d) The ability of the applicant to contribute matching funds
- (e) The percentage reduction of volume or quantity or toxicity of waste that will be achieved
- (f) Whether the project is consistent with state law and policy
- (g) Additional criteria as the director considers appropriate

Sec 14506 (1) The department shall establish a waste reduction research grants program

(2) Information and applications for grants under this section shall be distributed upon request through the service.

(3) An application for a grant under this section shall be on a form provided by the department and shall contain information required by the director.

(4) The director, after consideration of the recommendations of the committee, shall make grants to colleges and universities, nonprofit corporations, or industry associations or other persons for industry specific research projects pertaining to waste reduction.

(5) The director, in making grants pursuant to this section, shall consider all of the following:

- (a) The severity of the waste problem being addressed
- (b) The extent that the technological development will reduce the volume or quantity or toxicity of waste generated
- (c) The potential for the application of waste reduction technology to other persons
- (d) The ability of the applicant to contribute matching funds
- (e) The percentage reduction of volume or quantity or toxicity of waste that will be achieved

(f) The likelihood of the applicant's project qualifying for other research grants or subsequent research grants from other sources

(g) Whether the project is consistent with state law and policy

(h) Additional criteria as the director considers appropriate

Sec 14507 (1) The waste reduction advisory committee is created within the department. The committee shall consist of the following members who shall be appointed by the governor with the advice and consent of the senate:

(a) One individual from a major industry

(b) One individual from a small business

(c) One individual from an environmental organization

(d) One individual who has knowledge and experience in waste reduction methods and technology

(e) One individual from the general public

(2) The governor shall select 1 of the individuals appointed under subsection (1) to serve as the chairperson of the committee. The committee shall meet when necessary at the call of the chairperson.

(3) Members of the committee shall be appointed for terms of 2 years each. However, of the members first appointed, 3 shall be appointed to serve for terms of 3 years.

(4) A vacancy on the committee shall be filled in the same manner as the original appointment. A member of the committee whose term has expired shall not continue to serve as a member of the committee unless he or she has been reappointed by the governor with the advice and consent of the senate.

(5) A meeting of the committee shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and notice of the time, date, and place of the meeting shall be given in the manner required by that act.

Sec 14508 The committee shall do all of the following:

(a) Advise the service on the administration of the waste reduction information clearinghouse and the technical assistance program established pursuant to this part.

(b) Provide information to the service regarding waste reduction technology.

(c) Review applications and make recommendations to the director regarding grants available pursuant to sections 14505 and 14506.

Sec 14509 The director shall designate 1 individual from the department to serve as a liaison between the department and the office of waste reduction in the department of natural resources created in part 143 on all matters related to waste reduction.

Sec 14510 The service shall prepare and deliver, before January 1 of each year, a report detailing the efforts the service has undertaken during the previous fiscal year to implement this part. The annual report shall be delivered to the legislature, the governor, and the chairpersons of the appropriations committees in the senate and the house of representatives for their use in evaluating future appropriations for the service.

PART 147 PCB COMPOUNDS

Sec 14701 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 of these compounds is determined to be dangerous to the public health, safety, and welfare under section 14703.

(b) Ppm means parts per million.

Sec 14702 The department 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 department shall promulgate rules to implement and administer this part.

Sec 14703 After receiving a recommendation by affirmative majority vote of a special committee consisting of a representative of the department, the director of commerce, and the director of public health, the department shall by rule determine, within the concentrations prescribed by this part, whether the chlorinated biphenyls, terphenyls, higher

polyphenyls or mixtures of these compounds named in the recommendation and having certain functional groups in addition to chlorine attached to the molecule constitute a sufficient danger to the public health safety and welfare as to be regulated as a PCB by this part

Sec 14704 A person shall not dispose of solid or liquid waste resulting from the use in his or her business of PCB or an item product or material containing a concentration equal to or greater than 100 ppm of PCB except in conformity with rules promulgated by the department

Sec 14705 (1) A person who violates this part or a rule promulgated under this part is guilty of a misdemeanor punishable by a fine of not less than \$2 500 00 or more than \$25 000 00

(2) Each day that a violation of this part or a rule promulgated under this part continues shall be considered a separate violation

CHAPTER 5 RECYCLING AND RELATED SUBJECTS

PART 161 PLASTIC PRODUCTS LABELING

Sec 16101 As used in this part

(a) Degradable means capable of being broken down by biodegradation photodegradation or chemical degradation into component parts within 360 days under exposure to the elements

(b) Label means a molded imprinted or raised symbol on or near the bottom of a plastic product

(c) Plastic means any material made of polymeric organic compounds and additives that can be shaped by flow

(d) Plastic bottle means a rigid plastic container with a capacity of 16 ounces or more that has a neck that is smaller than the body of the container

(e) Plastic product means a plastic bottle and any other rigid plastic container

(f) Rigid plastic container means any container composed predominantly of plastic resin and having a relatively inflexible finite shape or form that directly holds a substance or material and has a capacity of 8 ounces or more

(g) PETE means polyethylene terephthalate

(h) HDPE means high density polyethylene

(i) V means vinyl

(j) LDPE means low density polyethylene

(k) PP means polypropylene

(l) PS means polystyrene

(m) OTHER means multilayer

(n) D means degradable

Sec 16102 (1) All plastic products sold in this state shall be labeled with a code indicating the plastic resin used to produce the product The code shall consist of a number placed within a triangle of arrows with letters placed below the triangle of arrows The triangle shall be equilateral formed by 3 arrows with the apex of each point of the triangle at the midpoint of each arrow rounded with a short radius The pointer or arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow The triangle formed by the 3 arrows curved at their midpoints shall depict a clockwise path around the code number The triangle of arrows shall be not less than 1/2 inch high or if the plastic product is designed so that a triangle or arrows of not less than 1/2 inch height cannot be added to the product a smaller label may be used if the label can be easily read The code shall appear on or near the bottom of the plastic product as follows

(a) 1 PETE

(b) 2 HDPE

(c) 3 V

(d) 4 LDPE

(e) 5 PP

(f) 6 PS

(g) 7 OTHER

(h) 8 D

(2) The department shall maintain a list of the label codes provided in subsection (1) and shall provide a copy of that list to any person upon request

Sec 16103 Additional staff shall not be hired by the department for the purposes of enforcing this part

Sec 16104 (1) A person who violates this part is subject to a civil fine of \$500 00 per violation

(2) A default in the payment of a civil fine ordered under this part may be remedied by any means authorized under the revised judicature act of 1961 Act No 236 of the Public Acts of 1961 being sections 600 101 to 600 9947 of the Michigan Compiled Laws

PART 163 PLASTIC DEGRADABLE CONTAINERS

Sec 16301 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 16302 (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 16303 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 165 OFFICE PAPER RECOVERY

Sec 16501 As used in this part

(a) Accessible and available market means that opportunities exist to sell wastepaper products that are collected pursuant to this part at rates and at locations that make it fiscally reasonable to collect that paper

(b) Recycled paper means a paper product that contains not less than 50% wastepaper

(c) Wastepaper means any discarded paper or corrugated paper board 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 newsprint telephone books catalogs or other mixed postconsumer paper Wastepaper does not include mill broke or other in plant residual wastes

Sec 16502 (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 wastepaper 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 |
| (d) January 1 2000 | 85% or more |

(2) The paper recycling system established by the department shall provide for the expansion and improvement of any wastepaper recycling system that exists on March 30 1989 and shall provide for all of the following

(a) An aggressive program to locate and develop if necessary markets for recyclable wastepaper products

(b) An education program to assure that employees who participate in the recycling system are knowledgeable about both of the following

(i) The importance of recycling paper

(ii) The components of the paper recycling system and how the system will impact each employee

- (c) The recovery of all wastepaper for which a market is available and accessible
- (d) The separation of the recyclable wastepaper by the generator in close proximity to the point at which the paper product enters the waste stream
- (e) A central collection system within each building or office of facility that is participating in the recycling system
- (f) The compiling of information and the preparation of an annual written report to be sent to the governor the senate majority leader the speaker of the house and the chief justice of the supreme court detailing the implementation and operation of the paper recycling system the level of participation in the paper recycling system of offices facilities and agencies within each branch of government the availability of markets for the wastepaper collected recommendations on how the market for recycled paper can be stimulated and recommendations regarding whether the system can be and should be expanded

Sec 16503 The proceeds of the paper recycling system shall be forwarded to the state treasurer and credited to the office services revolving fund created in section 269 of the management and budget act Act No 431 of the Public Acts of 1984 being section 18 1269 of the Michigan Compiled Laws to be utilized by the department of management and budget to implement this part and to reimburse other state departments that incur expenses under this part

PART 167 USED OIL RECYCLING

Sec 16701 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 16702 The department shall implement a plan to promote the recycling of motor oil by the public and private sectors The department 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 16703 (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 department shall conduct a demonstration used oil recycling project that does all of the following
 - (a) Provides for a system of used oil recycling tanks or barrels for use by the general public The recycling tanks or barrels shall be located in designated state owned vehicle maintenance garages or other publicly owned structures that the department determines meet both of the following criteria
 - (i) Are locations where used oil is generated from oil changes for state owned vehicles or vehicles operated under contracts with this state
 - (ii) Are locations where oil recycling services are not otherwise available to the general public
 - (b) Promotes public awareness of the availability to the general public of recycling tanks or barrels for used oil
- (3) The department shall establish a project plan for conducting the demonstration project provided for in subsection (2) The project plan shall include the number of locations proposed sites methods of public notice security procedures and model language for cooperative agreements with other state agencies for use of their facilities in the demonstration project
- (4) Funding necessary to implement this part may come from any lawful source including appropriations funds from private sources and funds generated from the sale of general obligation bonds

Sec 16704 (1) A person shall not dispose of or cause the disposal of used oil by dumping used oil onto the ground discharging dumping or depositing used oil into sewers drainage systems surface waters groundwaters or other waters of this state except as provided in subsection (2) by incineration as refuse or onto any public or private land unless the land is designated by the state or an agency or political subdivision of the state as a collection facility for the disposal dumping or deposit of used oil and if the used oil is placed in a receptacle or container installed or located at the collection facility

(2) Subsection (1) does not apply to the use of used oil in an incinerator or other heater that is operated for purposes of providing heat or energy or as a rust preventive coating on farm or construction equipment

(3) Notwithstanding subsection (2) beginning March 28 1994 used oil shall not be disposed of in a municipal solid waste incinerator as defined in part 115

(4) Beginning on July 1 1991 a person who violates this section is guilty of a misdemeanor punishable by imprisonment for 90 days or a fine of not more than \$1 000 00 or both In place of a sentence provided in this subsection the court may order that the defendant engage in court supervised recycling related labor for a number of hours determined by the court including but not limited to oil recycling A violation of this section by a person other than an individual is punishable by a fine of not more than \$2 500 00

(5) This section does not prohibit enforcement actions under other state or federal laws applicable to an activity described in this section

(6) The department shall establish criteria to be used in designating collection facilities under subsection (1) In developing the criteria the department shall encourage private and local collection facilities as an integral part of the department's efforts to establish a statewide network of collection facilities as required in section 16705(a)

Sec 16705 In addition to the other powers and duties of the department under this part by January 1 1991 the department shall develop and submit to the legislature a comprehensive plan that does all of the following

(a) Provides for a network of private state and local collection facilities on a statewide basis by July 1 1991 to facilitate compliance with section 16704

(b) Provides for a publicity program to assure that the public is aware of the requirements of section 16704 the location of collection facilities and the penalties for violating section 16704

(c) Provides 1 or more proposed funding mechanisms that the department considers feasible to assure that an operational collection facility network is available statewide by July 1 1991

PART 169 SCRAP TIRES

Sec 16901 As used in this part

(a) Bond means a performance bond from a surety company authorized to transact business in this state a certificate of deposit a cash bond or an irrevocable letter of credit in favor of the department

(b) Collection site means a site other than a landfill a racecourse or a feed storage location that contains either of the following

(i) One or more pieces of adjacent real property where 500 or more scrap tires are accumulated and that is not associated with a retail operation as provided in subparagraph (ii)

(ii) One or more pieces of adjacent real property where 1 500 or more scrap tires are accumulated if that property is adjacent to and owned or leased by a person who is a retailer

(c) Feed storage location means a location on 1 or more pieces of adjacent real property containing a commercially operated farming operation where not more than 3 000 scrap tires are used for the purpose of securing stored feed

(d) Fund means the scrap tire regulatory fund created in section 16908

(e) Landfill means that term as it is defined in part 115

(f) Racecourse means a commercially operated track for go carts vehicles off road recreational vehicles or motorcycles that uses not more than 3 000 scrap tires for bumpers along the track for safety purposes

(g) Retailer means a person who sells or offers for sale new retreaded or remanufactured tires to consumers in this state

(h) Scrap tire means a tire that is no longer being used for its original intended purpose Scrap tire does not include a vehicle support stand

(i) Scrap tire hauler means a person who as part of a commercial business transports scrap tires other than a solid waste hauler as defined in part 115 who transports 7 or fewer scrap tires along with other solid waste in any truckload

(j) Scrap tire processor means a person engaged in the business of storing buying or otherwise acquiring scrap tires and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires A scrap tire processor includes a person who in addition to processing the scrap tires incinerates the tires or converts the tires into a product or another end use

(k) Tire means a continuous solid or pneumatic rubber covering encircling the wheel of a tractor other farm machinery or a vehicle

(l) Tire storage area means a location within a collection site where tires are accumulated

(m) Vehicle means every device in upon or by which any person or property is or may be transported or drawn upon a highway excepting devices exclusively moved by human power or used exclusively upon stationary rails or tracks and excepting a mobile home as defined in section 2 of the mobile home commission act Act No 96 of the Public Acts of 1987 being section 125 2302 of the Michigan Compiled Laws

(n) Vehicle support stand means equipment used to support a stationary vehicle consisting of an inflated tire and wheel that is attached to another wheel

Sec 16902 (1) A person shall not discard a tire on any property that is not in compliance with sections 16903 and 16904

(2) A person shall not dispose of a scrap tire in any manner other than a manner authorized by this part or by part 55 or part 115

Sec 16902a (1) A retailer who receives scrap tires in this state shall dispose of the scrap tires at a registered scrap tire collection site at a licensed landfill or by contracting with a scrap tire hauler who is registered pursuant to section 16905

(2) A retailer shall maintain records indicating the number of scrap tires and the final disposition of scrap tires disposed of under subsection (1) These records shall be maintained for a period of 5 years and shall be made available upon request to the department or to a law enforcement officer at reasonable hours

Sec 16903 (1) A person who owns or operates a collection site where less than 2 500 scrap tires have been accumulated that are not stored in a building or stored in a covered vehicle shall comply with all of the following

(a) Only tires shall be accumulated in a tire storage area

(b) Except as provided in subdivision (f) the tires shall be accumulated in piles no greater than 15 feet in height with horizontal dimensions no greater than 200 by 40 feet

(c) Except as provided in subdivision (f) the tires shall not be within 20 feet of the property line or within 60 feet of a building or structure

(d) The tires shall be maintained in a manner that limits the potential of mosquito breeding by complying with 1 or more of the following

(i) The tires shall be covered by plastic sheets or other impermeable barriers to prevent the accumulation of precipitation

(ii) The tires shall be chemically treated to eliminate mosquito breeding

(iii) The tires shall be shredded or chipped into pieces no larger than 4 inches by 6 inches and stored in piles that allow complete water drainage

(e) Except as provided in subdivision (f) there shall be a minimum separation of 20 feet between tire piles The open space between tire piles shall at all times be free of rubbish equipment and other materials

(f) Tire piles shall be accessible to fire fighting equipment If the requirement of this subdivision is met the local fire department that serves the jurisdiction in which the collection site is located may approve a variance from the requirements of subdivisions (b) (c) and (e) Such an approval if granted shall be in writing

(g) The person who owns a collection site shall maintain a bond in favor of the department in an amount as determined by the department sufficient to cover the cost of removing the tires from the tire storage area However for collection sites with fewer than 2 500 tires the bond shall not exceed \$2 500 00 A person who elects to use a certificate of deposit as bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department A person who elects to post cash as bond shall accrue interest on that bond at the annual rate of 6% to be accrued quarterly except that the interest rate payable to an applicant shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined Interest shall be paid to the applicant upon release of the bond by the department Any interest greater than 6% shall be deposited into the fund The department may utilize a bond required under this part for removing scrap tires from a collection site in case of an emergency at the collection site insolvency of the collection site owner or if the owner or operator of the collection site fails to comply with the requirements of this section and does not cause the removal of the tires at the direction of the department or a court of competent jurisdiction

(2) A person who owns or operates a collection site where at least 2 500 but less than 100 000 scrap tires have been accumulated that are not stored in a building shall comply with all of the following

(a) All of the requirements of subsection (1)

(b) The area in which the tires are accumulated shall be completely enclosed with a fence that is at least 6 feet tall with lockable gates and that is designed to prevent easy access

(c) An earthen berm not less than 5 feet in height shall be positioned outside of the fence in which the tires are enclosed

- (d) The collection site shall contain sufficient drainage so that water does not pool or collect on the property
- (e) The approach road to the tire storage area and on site access roads to the tire storage area shall be of all weather construction and maintained in good condition so that it is passable at all times for fire fighting equipment vehicles
- (f) Tire storage areas shall be mowed regularly or otherwise kept free of weeds vegetation and other growth at all times
- (g) An emergency procedures plan shall be prepared and displayed at the collection site The plan shall include telephone numbers of the local fire and police departments The plan shall be reviewed by the local fire department prior to being posted
- (3) A person who owns or operates a collection site where 100 000 or more scrap tires have been accumulated that are not stored in a building shall comply with all of the requirements of subsections (1) and (2) and that person shall operate as a scrap tire processor

Sec 16904 (1) By January 31 of each year a person who owns a collection site shall annually register with the department The registration shall be on a form provided by the department and shall contain information as required by the department

(2) The owner of a scrap tire collection site shall annually submit to the department documentation indicating that the collection site is currently bonded The department shall not register a scrap tire collection site until the owner submits documentation that the collection site is bonded in accordance with the requirements of section 16903(1)(g) for the registration period

(3) A \$200 00 registration fee shall accompany each annual registration under this section The department shall deposit money collected under this subsection into the state treasury to be credited to the fund

Sec 16905 (1) By January 31 of each year a scrap tire hauler shall annually register with the department on a form provided by and containing the information required by the department A scrap tire hauler who does not provide all of the information required by the department shall not be considered registered under this part

(2) A scrap tire hauler when transporting scrap tires shall have in his or her possession a copy of the current unexpired scrap tire hauler registration and shall present it upon demand of a peace officer The scrap tire hauler registration number issued by the department shall be visibly displayed on a vehicle transporting scrap tires

(3) A scrap tire hauler shall maintain a record of each load of scrap tires he or she transports on forms approved by the department These records shall be maintained for a period of 5 years and shall be made available upon request to the department or to a peace officer at reasonable hours These records shall contain at least the following information

- (a) The name address telephone number authorized signature and registration number of the scrap tire hauler
- (b) The name address telephone number and authorized signature of the person who contracts for the removal of the scrap tires
- (c) The date of removal number of scrap tires and intended final destination of the scrap tires
- (4) A scrap tire hauler shall not dispose of scrap tires at a site other than the site identified on the record required by subsection (3)
- (5) The original record as required by subsection (3) shall be in the possession of the scrap tire hauler during the actual transportation of the scrap tires A copy of the record provided for in subsection (3) shall be provided to the person who contracts for the removal of scrap tires at the time of removal of the tires from the originating site A copy shall also be provided to the registered scrap tire collection site or licensed landfill to which the scrap tires are delivered at the time of delivery
- (6) A person who contracts for the removal of scrap tires shall contract with a scrap tire hauler who is registered under subsection (1)

Sec 16906 The department shall contact each local health department as defined in section 1105 of the public health code Act No 368 of the Public Acts of 1978 being section 333 1105 of the Michigan Compiled Laws and shall request that local health department to provide a list including the location and owner if known of all known significant tire piles within its jurisdiction

Sec 16907 By January 1 1996 the department shall report to the legislature on all of the following

- (a) The effectiveness of this part and whether the department recommends any changes in this part
- (b) The volume of tires that are being disposed of in landfills and whether the department recommends banning tires from landfills in the future
- (c) Whether a manifest system to track scrap tires would be useful in the enforcement of this part

(d) Whether under certain circumstances the fund should be used for the cleanup of abandoned scrap tires on land owned by persons other than the state or a municipality or county

(e) Whether sufficient collection sites are available for the disposal of scrap tires from private individuals

Sec 16908 (1) The scrap tire regulatory fund is created in the state treasury. The fund shall receive money as provided by law and any gifts or contributions to the fund. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used upon appropriation for all of the following purposes:

(a) Not more than 50% of the money in the fund annually for administrative costs of the department associated with this part including the implementation and enforcement of this part or for the employment of not more than 13.5 full time equated positions.

(b) For the administrative costs of the secretary of state associated with the collection of the tire disposal surcharge pursuant to section 806 of the Michigan vehicle code Act No. 300 of the Public Acts of 1949 being section 257.806 of the Michigan Compiled Laws.

(c) For the cleanup or collection of abandoned scrap tires on land owned by the state or a local unit of government.

(3) The department shall annually report to the legislature on the utilization of revenues of the fund.

Sec 16909 (1) A person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$10.00 for each tire that is disposed of or accumulated in violation of this part or both.

(2) In addition to or as an alternative to the penalties provided under subsection (1) the court may order a person who violates this part to perform not more than 100 hours of community service.

(3) Each day that a violation continues may constitute a separate violation.

(4) A law enforcement officer or a conservation officer may issue an appearance ticket to a person who is in violation of this part.

PART 171 BATTERY DISPOSAL

Sec 17101 As used in this part:

(a) Distributor means a person who sells batteries to retailers in this state.

(b) Lead acid battery means a storage battery in which the electrodes are grids of lead containing lead oxides that change in composition during charging and discharging and the electrolyte is dilute sulfuric acid.

(c) Manufacturer means a person who produces batteries for sale in this state.

(d) Mercury battery means a dry cell storage battery that delivers an essentially constant output voltage throughout its useful life by means of a chemical reaction between zinc and mercuric oxide.

(e) Nickel cadmium battery means a sealed storage battery that has a nickel anode, a cadmium cathode, and an alkaline electrolyte that is widely used in cordless appliances and that may serve as a primary battery.

(f) Retailer means a person who sells or offers to sell batteries to consumers within this state.

(g) Solid waste disposal area means a disposal area as defined in part 115.

Sec 17102 (1) A person other than a retailer, distributor, or manufacturer shall not dispose of a lead acid battery except by delivery to 1 of the following:

(a) A retailer.

(b) A distributor.

(c) A manufacturer.

(d) A collection, recycling, or smelting facility approved by the department.

(2) A retailer shall not dispose of used lead acid batteries except by delivery to 1 of the following:

(a) A distributor or his or her authorized agent.

(b) A collection, recycling, or smelting facility approved by the department.

(c) A manufacturer.

(3) A distributor shall dispose of lead acid batteries by delivery to a manufacturer or to a collection, recycling, or smelting facility approved by the department.

(4) A manufacturer shall dispose of lead acid batteries by delivery to a recycling or smelting facility approved by the department

Sec 17103 A retailer of lead acid batteries shall do all of the following

(a) Accept at or near the point at which lead acid batteries are offered for sale in a quantity at least equal to the number of new lead acid batteries sold by the retailer used lead acid batteries from customers if offered by the customers

(b) Post a written notice in a location that is readily visible to customers within the retail establishment that is at least 8 1/2 inches by 11 inches in size and contains the universal recycling symbol and contains essentially all of the following

(i) Recycle your used lead acid batteries

(ii) It is illegal to discard a lead acid battery except by delivery to a retailer a distributor a manufacturer or a collection recycling or smelting facility approved by the department

(iii) State law requires retailers to accept used lead acid batteries upon the purchase or within 30 calendar days of the purchase of a lead acid battery

(c) After January 1 1993 the notice described in subdivision (b) shall also include information pertaining to the required deposit for lead acid batteries and the availability of refunds under this part

(d) The format design and wording of the notice described in this section shall be provided to retailers of lead acid batteries by the department

Sec 17104 (1) The department shall produce print and make available to retailers notices required by section 17103

(2) A retailer who fails to post a notice required by this part following warning by the department is subject to a civil fine of \$25 00 per day of violation

(3) A default in the payment of a civil fine ordered under this part may be remedied by any means authorized under the revised judicature act of 1961 Act No 236 of the Public Acts of 1961 being sections 600 101 to 600 9947 of the Michigan Compiled Laws

Sec 17105 (1) A distributor shall accept used lead acid batteries from retailers in a quantity at least equal to the number of new lead acid batteries sold by the distributor

(2) A distributor accepting lead acid batteries from a retailer as required under this section shall remove the lead acid batteries from the point of collection within 90 days of receiving the batteries

Sec 17106 (1) Beginning on July 1 1995 a person who purchases a lead acid battery from a retailer may exchange a used lead acid battery for the battery purchased If a person purchasing a lead acid battery does not exchange a used lead acid battery the purchaser shall pay to the retailer a deposit of \$6 00 and shall receive from the retailer a voucher approved by the retailer If within 30 calendar days of purchase of a lead acid battery the person who purchased a lead acid battery returns to the retailer any used lead acid battery accompanied by the voucher he or she is entitled to a full refund of the \$6 00 deposit If the person returns a used lead acid battery accompanied by a voucher that was approved by the retailer who sold the battery to a collection recycling or smelting facility approved by the department he or she is entitled to a full refund of the \$6 00 deposit and the collection recycling or smelting facility may seek from the battery retailer who issued the original voucher reimbursement for the \$6 00 deposit that was refunded

(2) A deposit received by a retailer under subsection (1) that is unredeemed at the time of purchase or within 30 calendar days of purchase minus a 1/2% deposit administration fee that may be retained by the retailer escheats to the state on a quarterly basis and shall be deposited in the environmental response fund established in section 20108

(3) The requirements of this section do not apply to a retailer who sells a lead acid battery as a component part within a motorized vehicle sold by that person

Sec 17106a (1) Beginning on January 1 1998 a person who purchases a nickel cadmium or mercury battery from a retailer may exchange a used nickel cadmium or mercury battery for the battery purchased If a person purchasing a nickel cadmium or mercury battery does not exchange a used nickel cadmium or mercury battery the purchaser shall pay to the retailer a deposit of \$2 00 and shall receive from the retailer a voucher approved by the retailer If within 30 calendar days of purchase of a nickel cadmium or mercury battery the person who purchased a nickel cadmium or mercury battery returns to the retailer any used nickel cadmium or mercury battery accompanied by the voucher he or she shall be entitled to a full refund of the \$2 00 deposit If the person returns a used nickel cadmium or mercury battery accompanied by a voucher that was approved by the retailer who sold the battery to a collection recycling or smelting facility approved by the department he or she is entitled to a full refund of the \$2 00 deposit and the collection

recycling or smelting facility may seek from the battery retailer who issued the original voucher reimbursement for the \$2 00 deposit that was refunded

(2) A deposit received by a retailer under subsection (1) that is unredeemed at the time of purchase or within 30 calendar days of purchase minus a 1/2% deposit administration fee that may be retained by the retailer shall escheat to the state on a quarterly basis and shall be deposited in the environmental response fund established in section 20108

(3) Beginning on January 1 1998 a retailer who receives used nickel cadmium or mercury batteries pursuant to this section shall deliver those batteries only to a collection recycling or smelting facility approved by the department

Sec 17107 (1) The department shall enforce this part

(2) A person other than a retailer distributor or manufacturer who violates section 2 by improperly disposing of lead acid batteries is guilty of a misdemeanor punishable by a fine of not more than \$25 00 plus the costs of prosecution Each battery that is unlawfully disposed of is a separate violation

(3) Except as otherwise provided in this part a retailer manufacturer or distributor who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 60 days or a fine of not more than \$1 000 00 or both plus the costs of prosecution

CHAPTER 6 ENVIRONMENTAL FUNDING

PART 191 CLEAN MICHIGAN FUND

Sec 19101 For purposes of this part the words and phrases defined in sections 19102 and 19103 have the meanings ascribed to them in those sections

Sec 19102 (1) Approved solid waste management plan means a solid waste management plan submitted and approved under part 115

(2) Capital costs means those allowable costs as determined by the department of constructing or equipping or both a solid waste transfer facility a recycling project or a composting project

(3) Composting project means a project in which yard wastes including leaves and grass clippings are converted into humus through natural biological processes

(4) Disposal area means disposal area as defined in part 115

(5) Fund means the clean Michigan fund created in section 19104

(6) Municipality means a county city village township or an agency of a county city village or township an authority or any other public body created by or pursuant to state law or this state or an agency or department of this state

(7) Nonprofit private entity means a private entity that carries out any lawful purpose or purposes not involving pecuniary profit or gain for its directors officers shareholders or members

Sec 19103 (1) Private entity means an individual trust firm joint stock company corporation or association that is not a local unit of government

(2) Recycling project means a project in which materials that otherwise would become solid waste are collected separated or processed and returned for conversion into raw materials or products

(3) Resource recovery means the processing or collecting of solid wastes so as to produce materials or energy that may be used in manufacturing agriculture heat production or other productive processes or purposes designed to reuse materials or products or to conserve natural resources

(4) Site separated material means glass metals wood paper products plastics rubber textiles or any other material approved by the department that is separated from solid waste for conversion into raw materials or new products

(5) Solid waste means solid waste as defined in part 115

(6) Solid waste transfer facility means a solid waste transfer facility as defined in part 115

(7) Source separated material means glass metals wood paper products plastics rubber textiles or any other material approved by the department that is separated at the source of generation for conversion into raw material or new products

(8) Waste to energy means a process that is specifically designed to recover energy through the combustion or volume reduction of solid waste

Sec 19104 The clean Michigan fund is created in the state treasury The fund shall consist of appropriations from the general fund or any other fund as provided by law and any gifts and donations to the fund The fund shall be

expended only for the programs described in this part and for the staffing and administrative costs to the department of administering those programs

Sec 19105 (1) The department may make a grant to a county having a population of less than 12 000 enabling the county to establish a revolving loan fund with money received from the department The initial grant shall be used by the county to establish a revolving loan fund that shall be allocated and reallocated as provided in this section Not more than 1% of a grant made pursuant to this section may be utilized by a county for the administration of the loan program

(2) Grant money loaned by a county under this section shall be loaned to a private entity or nonprofit private entity only for purposes and programs that would be eligible to receive a grant under this part and may not be used for any other purpose except administration costs

(3) A county that receives a grant under this section shall establish a county loan board to review applications for loans submitted to the county and the board shall make recommendations to the county board of commissioner The county loan board shall consist of a member to represent each of the following

- (a) The county
- (b) Nonprofit private entities and private entities engaged in resource recovery alternatives
- (c) Conservation or environmental organizations
- (d) The department
- (e) A member of the general public

(4) Upon receipt of the recommendations of the county loan board the county board of commissioners of a county that receives a grant under this section shall determine when a loan shall be made The board of commissioners shall not make a loan unless both of the following conditions are met

(a) The loan applicant is seeking a loan for a purpose or program that would be eligible to receive a grant under this part

(b) The amount of the proposed loan is not more than \$300 000 00

(5) The county shall provide the department with an annual audit of the revolving loan fund using generally accepted accounting procedures

(6) A county may be liable to the department for the full amount of a grant made pursuant to this section if at any time the county makes a loan in a manner or to an entity that is substantially out of compliance with this part

(7) A grant to a county made under this section shall not exceed \$300 000 00

Sec 19106 (1) The department shall cause to be conducted a series of waste stream assessments in representative areas of the state The assessments shall determine the characteristics of the waste stream and document seasonal fluctuations in the volume of waste

(2) The department shall select a site for a waste stream assessment subject to the following prerequisites

- (a) The site is located in a county that has an approved solid waste management plan
- (b) The approved solid waste management plan for the county proposes some type of resource recovery
- (c) The site has not been the subject of an adequate waste stream assessment within the 5 years before the assessment authorized by this part is performed

(3) The department shall consider the following in determining appropriate sites for inclusion in the waste stream assessment

- (a) The extent to which the owners of the disposal areas in the proposed study site will do the following
 - (i) Provide an area on the site for scales and for composition studies
 - (ii) Provide temporary shelter for work during inclement weather
 - (iii) Enlist the cooperation of solid waste haulers
- (b) The likelihood that a resource recovery project or projects will be undertaken at the proposed site
- (c) The likelihood that the data resulting from the assessment of the proposed site will be usable or useful in evaluating the waste stream in other similar areas of the state
- (d) The extent to which selection of the site contributes to the achievement of a balanced distribution of assessments throughout the state
- (e) The availability of a scale at the proposed site

(4) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year on the assessments described in this section The department shall not expend more than \$50 000 00 for any single assessment conducted under this section

Sec 19107 (1) The department shall cause to be conducted a series of recycling and composting feasibility studies. A study shall establish a basis upon which a decision to commit financial resources to a proposed recycling or composting project can be made. The department shall prescribe the elements to be included within a study.

(2) The department shall select a site for a recycling and composting feasibility study subject to the following prerequisites:

(a) The site is located in a county that has an approved solid waste management plan.

(b) The recycling or composting project proposed by the municipality is consistent with the approved solid waste management plan.

(3) The department shall consider the following factors in selecting a site for a recycling and composting feasibility study:

(a) The extent to which a municipality commits to proceeding with the project if the study determines that the project is feasible.

(b) The degree of demonstrated municipality, community group, or volunteer interest in undertaking a recycling or composting project.

(c) A demonstration that a recycling or composting project undertaken on the basis of the study would provide a necessary solid waste management alternative given the status of existing disposal areas serving the location.

(d) The extent to which selection of the site contributes to the achievement of a balanced distribution of studies throughout the state.

(e) The demonstrated capability of the municipality in which the site is located to work with adjacent municipalities on alternative resource recovery projects.

(4) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year on the studies described in this section. The department shall not expend more than \$30,000.00 for any single study conducted under this section.

Sec 19108 (1) The department shall cause to be conducted a series of waste to energy feasibility studies. A study shall establish a basis upon which a decision to commit financial resources to a proposed waste to energy project can be made. The department shall prescribe the elements to be included in the study.

(2) The department shall select a site for a waste to energy feasibility study subject to the following prerequisites:

(a) The site is located in a county that has an approved solid waste management plan.

(b) The waste to energy project proposed is consistent with the approved solid waste management plan.

(3) The department shall consider the following factors in selecting a site for a waste to energy feasibility study:

(a) The extent to which the municipality proposing the project has done the following:

(i) Held meetings to discuss a waste to energy project.

(ii) Sought funding for studies of a waste to energy project.

(iii) Sought feasibility data on its own.

(b) The availability of letters of interest from potential energy markets.

(c) Whether a recycling feasibility study for the area to be served by the proposed waste to energy facility is available.

(d) Whether a waste to energy facility undertaken on the basis of the study would provide a necessary solid waste management alternative given the status of existing disposal areas serving the location.

(e) The extent to which selection of the site contributes to the achievement of a balanced distribution of studies throughout the state.

(f) The demonstrated efforts of the municipality in which the site is located in working towards alternative resource recovery solutions to solid waste management problems, such as implementing recycling or composting programs in the area to be served.

(g) The demonstrated capability of the municipality in which the site is located to work with adjacent municipalities on alternative resource recovery projects.

(4) The department shall not expend more than 15% of the total amount in the fund in any state fiscal year for the studies described in this section. The department shall not expend more than \$400,000.00 for any single study conducted under this section.

Sec 19109 (1) The department shall establish an educational program with respect to resource recovery to accomplish the following:

(a) To promote on a statewide basis the purchase of recycled products and materials.

(b) To develop promotional materials for distribution by municipalities in support of their resource recovery initiatives

(2) The department shall establish a resource recovery education grant program. The program shall provide funding for the direct promotion of local resource recovery initiatives by municipalities, nonprofit private entities, and private entities. The department shall make the grants described in this subsection.

(3) The department shall not make a resource recovery education grant unless both of the following conditions are met:

(a) The proposed education project is conducted in a county that has an approved solid waste management plan.

(b) A local resource recovery project is planned or under way and the proposed education project directly promotes the use of that project.

(4) The department shall consider the following factors in selecting recipients of resource recovery education grants:

(a) Whether the education program has measurable objectives.

(b) The extent of background research completed.

(c) The type and extent of follow up or evaluation, or both, to be conducted.

(d) The level of commitment by local officials.

(e) The extent to which the recipient commits its own financial resources to the education project.

(f) The extent to which selection of the project contributes to the achievement of a balanced distribution of grants throughout the state.

(5) The department shall not expend more than 25% of the total amount in the trust fund in any state fiscal year on the educational program and the education grant program described in this section. The department shall not expend more than \$50,000.00 for any single education grant made under this section.

Sec. 19110 (1) The department shall establish a solid waste transfer station grant program. The program shall provide funding to municipalities, nonprofit private entities, and private entities for the cost of transfer station construction. The department shall make the grants described in this section.

(2) The department shall not make a solid waste transfer station grant unless both of the following conditions are met:

(a) The proposed transfer station is located in a county that has an approved solid waste management plan.

(b) The proposed solid waste transfer station is consistent with the approved solid waste management plans of all of the affected counties.

(3) The department shall consider the following factors in selecting recipients for solid waste transfer station grants:

(a) The potential for providing to the municipality resource recovery alternatives otherwise not available to the municipality without the proposed transfer station.

(b) The willingness of the municipality to form or participate in a joint solid waste management system with adjacent municipalities.

(c) The applicant demonstrates that the proposed transfer station replaces a sanitary landfill or open dump closed according to the standards contained in part 115.

(4) The department shall not dispense a solid waste transfer station grant unless all permits that are required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 25% of the total amount in the fund in any state fiscal year on the solid waste transfer station grant program. The department shall not expend more than \$300,000.00 for any single transfer station grant made under this section.

Sec. 19111 (1) The department shall establish a recycling and composting capital grant program. The program shall provide funding for the capital costs of recycling and composting programs undertaken by municipalities, nonprofit private entities, or private entities. The department shall make the grants described in this section.

(2) The department shall not make a recycling or composting capital grant unless all of the following conditions are met:

(a) The proposed recycling or composting project is located in a county that has an approved solid waste management plan.

(b) The proposed recycling or composting project is consistent with the approved solid waste management plan.

(c) The applicant provides either a feasibility study with positive results supportive of project initiation or sufficient data justifying project expansion.

(d) The equipment obtained with the grant is used for source separated materials or site separated materials or both

(3) The department shall consider the following factors in selecting recipients for recycling and composting capital grants

(a) The likelihood of project success as indicated by the feasibility study results

(b) The availability of an appropriate site

(c) A demonstration by the applicant that the materials to be collected or processed or both are not being recovered presently and would not be recovered without the proposed recycling or composting project

(d) A demonstration by the applicant that the materials to be collected or processed or both will be absorbed in an existing market without displacing existing resource recovery operations or that the materials by being collected or processed or both will create a new market

(e) The business and accounting plans for the proposed recycling or composting project

(f) The need for a new or expanded recycling or composting program in the area to be served relative to the needs of other areas

(g) The extent to which selection of the recycling or composting program contributes to the achievement of a balanced distribution of grants throughout the state

(h) A demonstration by the applicant that land buildings personnel support services or funds have been committed to the recycling or composting project

(i) The portion of the waste stream that is projected to be diverted from landfills compared to the projected costs of the recycling or composting project

(j) The immediacy of the reduction in waste resulting from the recycling or composting program

(k) The potential of the recycling or composting project to be replicated in similar areas of the state

(l) The availability of capacity at existing licensed landfills that serve the area to be served by the proposed recycling or composting program

(m) The demonstrated municipality community group or volunteer interest in undertaking a recycling or composting project

(n) The demonstrated capability of the applicant in working with adjacent municipalities on alternative resource recovery projects such as development of a regional resource recovery organization jointly sponsored resource recovery initiatives or regional materials marketing strategies

(4) The department shall not dispense a recycling or composting capital grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained

(5) The department shall not expend more than 20% of the total amount in the fund in any state fiscal year on the recycling and composting capital grant program. The department shall not expend more than \$500 000 00 for any single recycling or composting capital grant made under this section

Sec 19112 (1) The department shall establish a waste to energy capital grant program. The program shall provide funding for the capital costs of waste to energy programs undertaken by municipalities nonprofit private entities or private entities. The department shall make the grants described in this section

(2) The department shall not make a waste to energy capital grant unless all of the following conditions are met

(a) The proposed waste to energy project is located in a county that has an approved solid waste management plan

(b) The proposed waste to energy project is consistent with the approved solid waste management plan

(c) The applicant provides either a feasibility study with positive results supportive of project initiation or sufficient data justifying project expansion

(3) The department shall consider the following factors in selecting recipients for waste to energy capital grants

(a) The likelihood of project success as indicated by the feasibility study results

(b) The availability of an appropriate site

(c) A demonstration by the applicant that the materials to be collected or processed or both are not being recovered presently

(d) The business and accounting plans for the proposed waste to energy project

(e) The need for a new or expanded waste to energy program in the area to be served relative to the needs of other areas

(f) The extent to which selection of the waste to energy program contributes to the achievement of a balanced distribution of grants throughout the state

(g) A demonstration by the applicant that land buildings personnel support services or funds have been committed to the waste to-energy project

(h) The portion of the waste stream that is projected to be diverted from landfills compared to the projected costs of the waste to energy project

(i) The potential of the waste to energy project to be replicated in similar areas of the state

(4) The department shall not dispense a waste to energy capital grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained

(5) The department shall not expend more than 30% of the total amount in the fund in any state fiscal year on the waste to energy capital grant program The department shall not expend more than \$2 000 000 00 for any single waste to energy grant made under this section

Sec 19113 (1) The department shall establish a recycling operational grant program The program shall provide temporary operating subsidies to assist municipalities nonprofit private entities and private entities in recapturing the difference between the cost of collection processing and transportation and the revenues generated from the sale of the recovered materials The department shall make the grants described in this section

(2) The department shall not make a recycling operational grant unless all of the following conditions are met

(a) The proposed recycling project is located in a county with an approved solid waste management plan

(b) The proposed recycling project is consistent with the approved solid waste management plan

(c) A positive feasibility study of the proposed recycling project or sufficient data justifying project expansion is available

(d) The applicant agrees to match the grant on a dollar for dollar basis

(e) The applicant agrees to continue support for the recycling project if the project is within 10% of previous disposal costs

(f) The applicant agrees to provide the department with an annual operation report

(g) The need for an operating subsidy is demonstrated

(h) The grant is used for a project handling source separated material or site separated material or both

(3) The department shall consider the following factors in determining whether to make a recycling operational grant

(a) The portion of the waste stream projected to be diverted from a landfill compared to projected costs

(b) A demonstration by the applicant that land buildings personnel support services or funds have been committed to the recycling project

(c) The applicant's willingness to show others the program

(d) The potential of the recycling project to be replicated in similar areas of the state

(e) The extent to which selection of the project contributes to the achievement of a balanced distribution of grants throughout the state

(f) The demonstrated municipality community group or volunteer interest in undertaking a recycling project

(g) The demonstrated capability of the applicant in working with adjacent municipalities on alternative resource recovery projects such as development of a regional resource recovery organization jointly sponsored resource recovery initiatives or regional materials marketing strategies

(h) The availability of capacity at existing licensed landfills that serve the area to be served by the proposed recycling project

(i) The existence of a plan for transferring financial responsibility for the program to another funding source

(j) The existence of sources of capital funding for the project

(4) The department shall not dispense a recycling operational grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained

(5) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year for the recycling operational grant program The department shall not expend more than \$150 000 00 for any single recycling operational grant made under this section

Sec 19114 (1) The department shall establish a composting operational grant program The program shall provide temporary operating subsidies to assist municipalities nonprofit private entities and private entities in undertaking composting projects The department shall make the grants described in this section

- (2) The department shall not make a composting operational grant unless all of the following conditions are met
 - (a) The proposed composting project is located in a county with an approved solid waste management plan
 - (b) The proposed composting project is consistent with the approved solid waste management plan
 - (c) A positive feasibility study of the proposed composting project or sufficient data justifying project expansion is available
 - (d) The applicant agrees to match the grant on a dollar for dollar basis
 - (e) The applicant agrees to provide the department with an annual operation report
- (3) The department shall consider the following factors in determining whether to make a composting operational grant
 - (a) The portion of the waste stream projected to be diverted from a landfill compared to projected costs
 - (b) A demonstration by the applicant that land buildings personnel support services or funds have been committed to the composting project
 - (c) The applicant's willingness to show others the program
 - (d) The potential of the composting project to be replicated in similar areas of the state
 - (e) The extent to which selection of the project contributes to the achievement of a balanced distribution of grants throughout the state
 - (f) The demonstrated municipality community group or volunteer interest in undertaking a composting project
 - (g) The demonstrated capability in working with adjacent municipalities on alternative resource recovery projects such as development of a regional resource recovery organization jointly sponsored resource recovery initiatives or regional materials marketing strategies
 - (h) The availability of capacity at existing licensed landfills that serve the area to be served by the proposed composting project
 - (i) A plan for transferring financial responsibility for the program to another funding source has been developed
 - (j) The sources of capital funding for the project
- (4) The department shall not dispense a composting operational grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained
- (5) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year for the composting operational grant program. The department shall not expend more than \$150 000 00 for any single composting operational grant made under this section

Sec 19115 (1) The department shall establish a household hazardous waste disposal grant program. The program shall assist municipalities in projects that educate citizens as to methods of household hazardous waste reduction and disposal, option, promote the safe handling of household hazardous waste, or dispose of household hazardous waste at a state or federally permitted or licensed hazardous waste treatment, storage, or disposal facility. The department shall make the grants described in this section.

- (2) The department shall not make a household hazardous waste disposal grant unless all of the following conditions are met
 - (a) The project is not funded under a federal program
 - (b) The municipality commits to contributing 20% of the total project cost in cash or in kind services or both
 - (c) The project is completed within 1 year after receipt of the grant
 - (d) The project is consistent with this part and other state law and policy
- (3) The department shall not dispense a household hazardous waste disposal grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained
- (4) The department shall not expend more than 2% of the total amount in the fund in any state fiscal year for the household hazardous waste disposal grant program. The department shall not expend more than \$15 000 00 for any single household hazardous waste disposal grant made under this section

Sec 19116 (1) The department shall cause to be conducted a statewide market development research study to assess the current markets and the potential for and the means for expansion of markets for recycled materials in this state. The department shall not expend more than 2.5% of the total amount in the fund in any state fiscal year for the market development research study. In addition, the department shall establish a market development plan based on the market development research study. The plan shall identify the barriers in attracting or expanding industries that use

recycled materials and determine the appropriate methods for eliminating those barriers. The department of commerce shall serve as project coordinator for the market development study funded and administered by the department pursuant to this section.

(2) The department shall establish a market development grant program. The program shall encourage expansion of the use of recycled materials and the development of innovative technologies to use recycled materials. The department shall make a grant under the program described in this section.

(3) The department shall select development projects subject to the following prerequisites:

- (a) The project is beyond the research stage and a demonstration has indicated that it is technically feasible.
- (b) The recipient of the grant is a municipality, nonprofit private entity, or private entity in this state.
- (c) The project shall be performed in this state.
- (4) The department shall consider the following factors in selecting recipients of market development grants:
 - (a) The contribution that would be made by the project toward the goal of increasing the use of recycled materials.
 - (b) The market's need for the development of the technology or equipment.
 - (c) The potential impact of the technology or equipment on the cost effectiveness of using recycled materials.
 - (d) The potential for development of new resource recovery markets and for the generation of positive economic impacts.
 - (e) The potential of the project for commercial application.
 - (f) The stage of the development of the technology or equipment proposed to be used in the project.
 - (g) The environmental, economic, and social benefits to the state of the development of the technology or equipment.
 - (h) The future sources of capital funding for the project.
 - (i) The extent to which the applicant has committed land, buildings, personnel, support services, or funds to the project.
 - (j) The potential of the project for developing multiple markets.

(5) The department shall not dispense a market development grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(6) The department shall not expend more than 25% of the total amount in the fund in any state fiscal year for the market development grant program. The department shall not expend more than \$500,000.00 for any single grant made under this program.

Sec. 19117 (1) The department shall establish a program to perform hydrogeological monitoring studies on open and closed sanitary landfills and open dumps owned by municipalities. The program shall determine the extent of groundwater contamination associated with the sanitary landfills and open dumps and the need for remedial actions on those sites. The department shall determine which landfills and dumps owned by municipalities are to be monitored. In determining the order in which the landfills and dumps owned by municipalities are to be monitored, the department shall consider the potential threat of human exposure to environmental contamination originating from the sanitary landfill or open dump and the likelihood that hazardous waste was accepted at the landfill or dump.

(2) The department shall not expend more than 10% of the total amount in the fund in any state fiscal year for the program to perform hydrogeological monitoring studies. The department shall not expend more than \$50,000.00 for any single hydrogeological monitoring study performed under this section.

Sec. 19118 (1) The department shall establish a sanitary landfill and open dump closure or reclosure matching grant program. The program shall provide up to 75% of the funding for the closure or reclosure of sanitary landfills and open dumps owned or operated by municipalities. In addition, the program shall provide up to 75% reimbursement for the closure of municipally owned sanitary landfills and open dumps or the reclosure of municipally owned sanitary landfills and open dumps that were closed after January 11, 1979, the effective date of former Act No. 641 of the Public Acts of 1978, according to the standards prescribed by that former act, which is currently part 115, but before December 4, 1986. The department shall make the grants described in this section.

(2) The department shall not make a closure or reclosure grant unless all of the following requirements are met:

(a) The sanitary landfill or open dump proposed for closure or reclosure is located in a county that has an approved solid waste management plan.

(b) The grant is for the closure of an operating sanitary landfill or open dump that is not operated according to the standards contained in part 115 and the rules promulgated under that part, or the grant is for the reclosure of a closed sanitary landfill or dump that was not closed according to the standards contained in part 115 and the rules promulgated under that part.

(c) If the grant is reimbursement for the closure or reclosure of a landfill or dump the closure or reclosure was made according to the standards of part 115 and the rules promulgated under that part

(d) The grant shall be used only for a closure or reclosure that is a complete closure of an entire landfill or dump

(e) The closure or reclosure will be accomplished completely within 1 year after receipt of the grant

(3) The department shall consider the following factors in selecting recipients of closure or reclosure grants

(a) The degree of effort demonstrated by the municipality in working toward alternative solutions to solid waste management problems

(b) The degree of the potential threat of groundwater contamination

(c) The likelihood that hazardous waste was accepted

(d) The municipality's willingness to work with adjacent municipalities on alternative solutions

(e) The municipality's commitment to refrain from operating unlicensed disposal areas in the future

(4) The department shall not expend more than 25% of the total amount in the fund in any state fiscal year for the sanitary landfill and open dump closure or reclosure matching grant program. The department shall not expend more than \$600 000 00 for any single grant made under this section.

Sec 19119 Any project of the type for which a grant may be available under section 19111 which produces site separated materials and for which the licenses or permits required by this part and otherwise required by law have been obtained is eligible to receive a grant under this part.

Sec 19120 (1) The department shall administer the studies, assessments, and programs described in this part according to the following:

(a) Within 60 days after enactment of the general appropriations bill for the department of natural resources for a state fiscal year, the department shall issue a request for applications for inclusion in any study or assessment to be conducted that year and for receipt of any grant available during that year.

(b) The department shall not accept any applications after 60 days from the issuance of a request for applications.

(c) Within 135 days after the advisory panel recommendations are made, the department shall complete its review of the application and recommendations and make its determinations.

(2) An application for inclusion in any study or assessment described in this part or for any grant available under this part shall be made on a form prescribed by the department. The department may require the applicant to provide any information reasonably necessary to allow the department to make the determinations required by this part.

(3) Each recipient of a grant and each participant in a study or assessment under this part shall complete and return a project summary on a form developed by the department by a date specified by the advisory panel. A recipient or participant who fails to submit a project summary as required by this section is not eligible to be a recipient or participant under this part for 5 years after the year for which the failure occurs.

(4) The project summary form developed by the department shall not exceed 1 page and shall include the following information:

(a) The name, address, and telephone number of the recipient or participant.

(b) The name of the project.

(c) The amount of money received.

(d) The county in which the project is located.

(e) A brief summary of the activities and accomplishments of the project.

(5) A completed project summary is available to the public under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15 231 to 15 246 of the Michigan Compiled Laws.

Sec 19121 (1) Not later than March 31 of each year, the department shall report the following information regarding the projects financed under this part for that fiscal year to the governor, the standing committees of the senate and the house of representatives that primarily consider issues pertaining to the protection of natural resources and the environment, and the subcommittees of the house of representatives and the senate on appropriations for the department:

(a) The name, address, and telephone number of the recipient or participant.

(b) The nature of the project.

(c) The amount of money received.

(d) The county in which the project is located.

(2) Not later than September 30 of each year the department shall submit to the governor and the legislature a report on the projects financed under this act during the previous fiscal year. The report shall consist of the project summaries described in section 19120 along with an introduction and conclusion.

PART 193 ENVIRONMENTAL PROTECTION BOND AUTHORIZATION

PART 195 ENVIRONMENTAL PROTECTION BOND IMPLEMENTATION

CHAPTER 7 REMEDIATION

PART 201 ENVIRONMENTAL RESPONSE

Sec 20101 As used in this part

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

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

(c) Attorney general means the department of the attorney general.

(d) Commercial lending institution means any of the following:

(i) A state or nationally chartered bank.

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

(iii) A state or federally chartered credit union.

(iv) Any other state or federally chartered lending institution or regulated affiliate or regulated subsidiary of any entity listed in this subparagraph or subparagraphs (i) to (iii).

(v) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956 being sections 500 100 to 500 8302 of the Michigan Compiled Laws.

(vi) A motor vehicle finance company subject to the motor vehicle finance act Act No. 27 of the Extra Session of 1950 being sections 492 101 to 492 141 of the Michigan Compiled Laws with net assets in excess of \$50 000 000 00.

(vii) A foreign bank.

(viii) A retirement fund regulated pursuant to state law or a pension fund regulated pursuant to federal law with net assets in excess of \$50 000 000 00.

(ix) A state or federal agency authorized by law to hold a security interest in real property.

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

(e) Directors means the directors or their designees of the departments of natural resources public health agriculture and state police.

(f) Disposal means the discharge deposit injection dumping spilling leaking or placing of any hazardous substance into or on any land or water so that the hazardous substance or any constituent of the hazardous substance may enter the environment or be emitted into the air or discharged into any groundwater or surface water.

(g) Enforcement costs means court expenses reasonable attorney fees of the attorney general and other reasonable expenses of an executive department that are incurred in relation to enforcement under this part or rules promulgated under this part or both.

(h) Environment or natural resources means any land surface water groundwater subsurface strata air fish wildlife or biota within the state.

(i) Environmental contamination means the release of a hazardous substance or the potential release of a discarded hazardous substance in a quantity which is or may become injurious to the environment or to the public health safety or welfare.

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

(k) Facility means any area place or property where a hazardous substance has been released deposited stored disposed of or otherwise comes to be located

(l) Feasibility study means a process for developing evaluating and selecting appropriate response activities

(m) Fund means the environmental response fund established in section 20108

(n) Hazardous substance means 1 or more of the following

(i) A chemical or other material which is or may become injurious to the public health safety or welfare or to the environment

(ii) Hazardous substance as defined in the comprehensive environmental response compensation and liability act of 1980 Public Law 96 510 94 Stat 2767

(iii) Hazardous waste as defined in part 111

(iv) Petroleum as described in part 213

(o) Interim response activity means the cleanup or removal of a released hazardous substance or the taking of other actions prior to the implementation of a remedial action as may be necessary to prevent minimize or mitigate injury to the public health safety or welfare or to the environment Interim response activity also includes but is not limited to measures to limit access replacement of water supplies and temporary relocation of people as determined to be necessary by the department In addition interim response activity means the taking of other actions as may be necessary to prevent minimize or mitigate a threatened release

(p) Local health department means that term as defined in section 1105 of the public health code Act No 368 of the Public Acts of 1978 being section 333 1105 of the Michigan Compiled Laws

(q) Local unit of government means a county city township or village an agency of a local unit of government an authority or any other public body or entity created by or pursuant to state law Local unit of government does not include the state or federal government or a state or federal agency

(r) Operator means a person that is in control of or responsible for the operation of a facility Operator does not include any of the following

(i) A person that holds indicia of ownership primarily to protect the person s security interest in the facility unless that person participates in the management of the facility as defined under section 20101a

(ii) The state or a local unit of government that acquired ownership or control of the facility involuntarily through bankruptcy tax delinquency abandonment a transfer from a commercial lending institution pursuant to section 20127(9) or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part a local unit of government to which ownership or control of the facility is transferred by the state or the state or a local unit of government that acquired ownership or control of the facility by seizure receivership or forfeiture pursuant to the operation of law or by court order In case of an acquisition described in this subparagraph by the state or a local unit of government operator means a person that was in control of or responsible for operation of the facility immediately before the state or local unit of government acquired ownership or control The exclusion provided in this subparagraph shall not apply to the state or a local unit of government that caused or contributed to the release or threat of a release from the facility

(iii) The operator of an underground storage tank system as defined in part 213 from which there is a release or threat of release if all of the following conditions are met

(A) The operator reported the release or threat of release to the department of state police fire marshal division within 24 hours after confirmation of the release or threat of release

(B) The release or threat of release at the facility is solely the result of a release or threat of release of a regulated substance as defined in part 213 from an underground storage tank system

(C) The operator is in compliance with the requirements of part 213 and any promulgated rules or any order agreement or judgment issued or entered into pursuant to that part

(iv) A state or local unit of government that holds or acquires an easement interest in a facility holds or acquires an interest in a facility by dedication in a plat or by dedication pursuant to Act No 283 of the Public Acts of 1909 being sections 220 1 to 239 6 of the Michigan Compiled Laws The exclusion provided in this subparagraph shall not apply to the state or a local unit of government that holds an easement or dedication if the state or that local unit of government caused or contributed to a release or threat of release or if equipment owned or operated by the state or that local unit of government caused or contributed to the release or threat of release

(v) A person that holds an easement interest in a facility for the purpose of conveying or providing goods or services including but not limited to utilities sewers roads railways and pipelines or a person that acquires access through an easement The exclusion provided in this subparagraph shall not apply to a person that holds an easement if that person caused or contributed to a release or threat of release or if equipment owned or operated by that person caused or contributed to the release or threat of release

(vi) A person that satisfies all of the following

(A) The release was caused solely by a third party that is not an employee or agent of the person or whose action was not associated with a contractual relationship with the person

(B) The hazardous substance was not deposited stored or disposed of on the property upon which the person operates

(C) The person at the time of transfer of the right to operate on the property discloses any knowledge or information concerning the general nature and extent of the release as required in section 20116

(s) Owner means a person that owns a facility Owner does not include any of the following

(i) A person that without participating in the management of the facility holds indicia of ownership primarily to protect the person's security interest in the facility including but not limited to a vendor's interest under a recorded land contract

(ii) The state or a local unit of government that acquired ownership or control of the facility involuntarily through bankruptcy tax delinquency abandonment a transfer from a commercial lending institution pursuant to section 20127(9) or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part a local unit of government to which ownership or control of the facility is transferred by the state or the state or a local unit of government that acquired ownership or control of the facility by seizure receivership or forfeiture pursuant to the operation of law or by court order In case of an acquisition described in this subparagraph by the state or a local unit of government owner means any person that owned or controlled activities at the facility immediately before the state or local unit of government acquired ownership or control The exclusion provided in this subparagraph shall not apply to the state or a local unit of government that caused or contributed to the release or threat of a release from the facility

(iii) A person that satisfies all of the following

(A) The release was caused solely by a third party that is not an employee or agent of the person or whose action was not associated with a contractual relationship with the person

(B) The hazardous substance was not deposited stored or disposed of on that person's property

(C) The person at the time of transfer of the property discloses any knowledge or information concerning the general nature and extent of the release as required in section 20116

(iv) The owner of an underground storage tank system or the property on which an underground storage tank system is located as defined in part 213 from which there is a release or threat of release if all of the following conditions are met

(A) The owner reported the release or threat of release to the department of state police fire marshal division within 24 hours after confirmation of the release or threat of release

(B) The release or threat of release at the facility is solely the result of a release or threat of release of a regulated substance as defined in part 213

(C) The owner is in compliance with the requirements of part 213 and any promulgated rules or any order agreement or judgment issued or entered pursuant to that part

(v) A state or local unit of government that holds or acquires an easement interest in a facility holds or acquires an interest in a facility by dedication in a plat or by dedication pursuant to Act No 283 of the Public Acts of 1909 being sections 220 1 to 239 6 of the Michigan Compiled Laws The exclusion provided in this subparagraph shall not apply to the state or a local unit of government that holds an easement or dedication if that state or local unit of government caused or contributed to a release or threat of release or if equipment owned or operated by the state or that local unit of government caused or contributed to the release or threat of release

(vi) A person that holds an easement interest in a facility for the purpose of conveying or providing goods or services including but not limited to utilities sewers roads railways and pipelines or a person that acquires access through an easement The exclusion provided in this subparagraph shall not apply to a person that holds an easement if that person caused or contributed to a release or threat of release or if equipment owned or operated by that person caused or contributed to the release or threat of release

(vii) A person that holds only subsurface mineral rights to the property and has not caused or contributed to a release on the property

(t) Permitted release means 1 or more of the following

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

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

(iii) A federally permitted release as defined in the comprehensive environmental response compensation and liability act of 1980 Public Law 96 510 94 Stat 2767

(u) Release includes but is not limited to any spilling leaking pumping pouring emitting emptying discharging injecting escaping leaching dumping or disposing of a hazardous substance into the environment or the abandonment

or discarding of barrels containers and other closed receptacles containing a hazardous substance Release does not include any of the following

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

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

(iii) A release of source by product or special nuclear material from a nuclear incident as those terms are defined in the atomic energy act of 1954 chapter 1073 68 Stat 919 if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of the atomic energy act of 1954 chapter 1073 71 Stat 576 42 U S C 2210 or any release of source by product or special nuclear material from any processing site designated under section 102(a)(1) of title I or 302(a) of title III of the uranium mill tailings radiation control act of 1978 42 U S C 7912 and 7942

(iv) If applied according to label directions and according to generally accepted agricultural and management practices the application of a fertilizer soil conditioner agronomically applied manure or a pesticide or a combination of these substances As used in this subparagraph fertilizer and soil conditioner have the meaning given to these terms in the fertilizer act of 1975 Act No 198 of the Public Acts of 1975 being sections 286 751 to 286 767 of the Michigan Compiled Laws and pesticide has the meaning given to that term in part 83

(v) Remedial action includes but is not limited to cleanup removal containment isolation destruction or treatment of a hazardous substance released or threatened to be released into the environment monitoring maintenance or the taking of other actions that may be necessary to prevent minimize or mitigate injury to the public health safety or welfare or to the environment

(w) Remedial action plan means a work plan for performing remedial action under this part

(x) Response activity means evaluation interim response activity remedial action or the taking of other actions necessary to protect the public health safety or welfare or the environment or the natural resources Response activity also includes health assessments or health effect studies carried out under the supervision or with the approval of the department of public health and enforcement actions related to any response activity

(y) Response activity costs or costs of response activity means all costs incurred in taking or conducting a response activity including enforcement costs

(z) Science advisory council means the science advisory council created in section 20123

(aa) Site means the location of environmental contamination

(bb) Threatened release or threat of release means any circumstance that may reasonably be anticipated to cause a release

Sec 20101a (1) For purposes of this part a commercial lending institution holding a security interest in a facility or other person holding a security interest in a facility participates in the management of the facility if that institution or person engages in acts of facility management that constitute actual participation in the management or operational affairs of a facility and that exceed the mere capacity to influence or ability to influence or the unexercised right to control facility operations A commercial lending institution or other person holding a security interest is participating in the management of a facility while the borrower is still in possession of the facility encumbered by the security interest if the commercial lending institution or person holding a security interest does any of the following

(a) Exercises decision making control over the borrower s environmental compliance

(b) Undertakes responsibility for the borrower s hazardous substance handling or disposal practices

(c) Exercises control at a level comparable to that of a manager of the borrower s enterprise such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day to day decision making of the enterprise with respect to either or both of the following

(i) Environmental compliance

(ii) All or substantially all of the operational aspects of the enterprise other than environmental compliance As used in this subparagraph operational aspects of the enterprise includes functions such as that of facility or plant manager operations manager chief operating officer or chief executive officer Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise such as that of credit manager accounts payable or receivable manager personnel manager controller chief financial officer or similar functions

(2) For purposes of this part the following do not constitute participation in the management of a facility by a commercial lending institution or other person holding a security interest in the facility

(a) The mere capacity to influence or ability to influence or the unexercised right to control facility operations

(b) An act or omission prior to the time that indicia of ownership are held primarily to protect a security interest

(c) Undertaking or requiring an environmental inspection of the facility in which indicia of ownership are to be held or requiring a prospective borrower to undertake response activities at a facility or to comply or come into compliance

whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest with any applicable law rule or regulation

(d) Actions that are consistent with holding ownership indicia primarily to protect a security interest. The authority for the commercial lending institution or other person holding a security interest to take such actions may but need not be contained in contractual or other documents specifying requirements for financial environmental and other warranties covenants conditions representations or promises from the borrower. Loan policing and workout activities cover and include all activities up to foreclosure and its equivalents

(e) Engaging in policing activities prior to foreclosure if the commercial lending institution or other person holding a security interest does not by such actions participate in the management of the facility as described in subsection (1)(a) to (c). Permissible actions include but are not limited to requiring the borrower to undertake response activities at the facility during the term of the security interest requiring the borrower to comply or come into compliance with applicable federal state and local environmental and other laws rules and regulations during the term of the security interest and securing or exercising authority to monitor or inspect the facility in which indicia of ownership are maintained including on site inspections or the borrower's business or financial condition during the term of the security interest. A commercial lending institution or other person holding a security interest that engages in workout activities prior to foreclosure and its equivalents will remain within the exemption provided that the commercial lending institution or other person holding a security interest does not by such action participate in the management of the facility

(3) As used in this section workout refers to those actions by which a commercial lending institution or other person holding a security interest at any time prior to foreclosure and its equivalents seeks to prevent cure or mitigate a default by the borrower or obligor or to preserve or prevent the diminution of the value of the security. Workout activities include but are not limited to restructuring or renegotiating the terms of the security interest requiring payment of additional rent or interest exercising forbearance requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor and providing specific or general financial or other advice suggestions counseling or guidance

Sec 20102 The legislature hereby finds and declares

(a) That there exist in this state certain facilities containing hazardous substances that pose a danger to the public health safety or welfare or to the environment of this state

(b) That there is a need to provide for a method of eliminating the danger of environmental contamination caused by the existence of hazardous substances at sites within the state

(c) That it is the purpose of this part to provide for appropriate response activity to eliminate the environmental contamination caused by the presence of hazardous substances at sites within the state

(d) That there is a need for additional administrative and judicial remedies to supplement existing statutory and common law remedies

(e) That the responsibility for the cost of response activities pertaining to a release or threat of release and repairing injury destruction or loss to natural resources caused by a release or threat of release should not be placed upon the public except when funds cannot be collected from or a response activity cannot be undertaken by a person liable under this part in conjunction with an appropriate contribution if applicable from a fund administered by the orphan share administration

(f) That to the extent possible consistent with requirements under this part and rules promulgated under this part response activities shall be undertaken by persons liable under this part

(g) That this part is intended to provide remedies for facilities posing any threat to the public health safety or welfare or to the environment regardless of whether the release or threat of release of a hazardous substance occurred before or after October 13 1982 the effective date of the former environmental response act Act No 307 of the Public Acts of 1982 and for this purpose this part shall be given retroactive application. However criminal and civil penalties provided in the amendatory act that added this subdivision to former Act No 307 of the Public Acts of 1982 shall apply to violations of this part that occur after July 1 1991

(h) That money should be appropriated by the legislature for response activities taking into consideration the order that sites are on the list described in section 20105(1)(d) and applicable provisions of the environmental protection bond implementation act Act No 328 of the Public Acts of 1988 being sections 299 671 to 299 685 of the Michigan Compiled Laws

(i) That a site that is owned by the federal government the state or a local unit of government or a site where a release or threat of release is caused by the federal government the state or a local unit of government should not be treated differently in terms of the expenditure of money for response activities than any other site on the list described in section 20105(1)(d)

(j) That if a person that may be liable under section 20126 is the state or a local unit of government this part should be enforced by the attorney general and the department in the same manner as it would be for any other person that may be liable under section 20126

(k) That prior to expending money to undertake remedial action at a site the department should assure a private or public funding source or a combination of funding sources that is sufficient to assure that the response activities at the site proceed without interruptions caused by insufficient financial resources until the site meets or exceeds the standards established by the department for that site

(l) That this part is not intended to impose penalties or exemplary damages upon parties conducting response activities pursuant to a decree or order to which the United States is a party

(m) That this part is intended to foster the redevelopment and reuse of vacant manufacturing facilities and abandoned industrial sites that have economic development potential if that redevelopment or reuse assures the protection of the public health safety welfare and the environment

Sec 20103 The department shall seek federal assistance for response activities required at facilities in this state

Sec 20104 The department shall coordinate all activities required under this part and shall promulgate rules to provide for the performance of response activities to reflect and effectuate the powers and duties of the department of natural resources under this part and as otherwise necessary to carry out the requirements of this part

Sec 20105 (1) The department shall do all of the following

(a) Upon discovery of a site identify and evaluate the site for the purpose of assigning to the site a priority score for response activities Upon assignment to the site of a priority score for response activity the site shall retain the same score assignment unless a substantial body of data is provided to or available to the department indicating to the department that a substantial change in the score is warranted and a person requests rescoring for a site during the annual public comment period following the publication of the hst or the department determines that rescoring is appropriate

(b) Develop 1 or more numerical risk assessment models for assessing the relative present and potential hazards posed to the public health safety or welfare or to the environment by each site identified pursuant to subdivision (a) The model or models if more than 1 is developed shall provide a fair and objective site specific numerical score designating the relative risk posed to the public health safety or welfare or to the environment of each site

(c) Include in rules promulgated under this part the numerical risk assessment model or models if more than 1 is developed The numerical risk assessment model or models shall be reviewed annually by the department to identify potential improvements

(d) Submit to the legislature in November of each year a list strictly derived from the numerical risk assessment model or models provided for in this section that does all of the following

(i) Includes all sites

(ii) Categorizes sites according to the response activity at the site at the time of listing and according to categories established by rules

(iii) Indicates whether the owner of a site is the federal government the state or a local unit of government

(e) Maintain and make available to the public upon request records regarding sites where remedial actions have been completed including sites where land use restrictions have been imposed if the records are not otherwise protected from disclosure by law

(f) Submit the list for public hearings geographically dispersed throughout the state These hearings shall be completed at least 30 days before the governor's annual budget recommendations to the legislature

(g) Report at least annually to the legislature and the governor those sites that have been removed from the list pursuant to this section and rules promulgated under this part and the source of the funds used to undertake the response activity at each of the sites

(h) Publish a notice annually in the Michigan register of the availability of and submit annually to the standing committees of the senate and the house of representatives that primarily consider issues pertaining to the protection of natural resources and the environment a report describing the response activity that is undertaken at each site where response activity is or has occurred during the reporting year and the nature of the contamination that resulted in the necessity for that response activity

(2) Following July 1 1991 if the department has information identifying the owner of property that may be listed as a site the department shall make reasonable efforts to notify in writing the owner of the property and the local health department and the municipality in which the site is located prior to including the site on the hst This subsection does not provide a defense to liability

(3) A site shall be removed from the list when the department's review of a site shows that the site does not meet the criteria specified in rules promulgated under this part. A site shall not be removed from this list until any necessary response activity that meets the standards specified in rules promulgated under this part is complete.

(4) A person may request that a site be removed from the list by submitting a petition to the department. A petition shall include all of the following information:

(a) A description and history of the site.

(b) A description of the nature and extent of the environmental contamination that existed at the site at the time the site was included on the list.

(c) A description of the response activity undertaken to remedy the release or threat of a release consistent with rules promulgated under this part, or a description of the investigation conducted that supports the person's petition that the site should be removed from the list without further response activity.

(d) An analysis of the effectiveness of the response activity undertaken to remediate the release or threat of release. The analysis shall include site-specific analytical data that documents the effectiveness of the response activity.

(e) Other site-specific information required by the department.

(5) A person seeking the removal of a site from the list shall prepare and submit to the department the documentation required by subsection (4). If response activities have been conducted by the department at the site, the department shall prepare the documentation required by subsection (4).

(6) Within 30 days after receipt of the petition, the department shall determine whether a petition submitted under subsection (4) is administratively complete. Within 60 days after a determination that a petition is administratively complete, the petitioner shall be notified by the department of the department's intent to remove the site from the list, or the petitioner shall be notified that the petition for removal of the site from the list does not meet the criteria for removal of the site from the list as determined by rule. Removal of sites from the list shall be accomplished as part of the process described in rules promulgated under this part. However, if the department concludes pursuant to subsection (3) that the circumstances warrant removal of the site from the list before or at the next regularly scheduled hearing to be held in accordance with rules promulgated under this part, the department shall prepare a notice of intent to remove the site from the list. A notice of intent shall include information considered appropriate by the department and shall be published in at least 1 newspaper of general circulation that serves the area of the site, and the notice of intent shall be provided to the local health department and the municipality in which the site is located. Public comment on the notice of intent to remove the site from the list shall be accepted for a period of not less than 30 days from the date of publication. The department may hold a public hearing on the proposed action.

(7) The department shall make a final determination whether to include the site on the next list. The department shall consider any comments received in response to the notice described in subsection (6).

(8) The department shall notify the person that requested that the site be removed from the list, the local health department, and the municipality in which the site is located of the decision within 45 days of the end of the public comment period provided for in the notice published pursuant to subsection (6).

(9) As used in this section, "list" means the list described in subsection (1)(d).

Sec 20106 (1) The governor shall include in his or her annual budget recommendations to the legislature a recommended level of funding to provide for the activities necessary to implement this part.

(2) The governor's recommendations under this section shall be accompanied by a site-specific description of the extent of known or suspected environmental contamination, the recommended response activities to be undertaken, and an estimate of cost of those response activities.

Sec 20107 A person that willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous substances or marking boundaries of a site subject to response activity under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

Sec 20108 (1) An environmental response fund is established in the department of the treasury. The environmental response fund shall be administered by the governor or the governor's designee.

(2) The fund shall receive as revenue any money from any source as appropriated by the legislature, and the interest and earnings of the fund shall be credited to the fund.

(3) In addition to the money received under subsection (2), the fund shall receive as revenue money collected by the attorney general in actions filed under this part, collected by the state under this part, or collected by a person under section 20135(2).

(4) An unexpended balance within the fund at the close of the fiscal year shall be carried forward to the following fiscal year.

Sec 20109 (1) A Michigan unclaimed bottle fund is established as a separate revolving fund in the state treasury. The money in the Michigan unclaimed bottle fund shall not revert to the general fund. The Michigan unclaimed bottle fund shall be administered by the department of treasury.

(2) The Michigan unclaimed bottle fund shall receive money as disbursed by the department of treasury from the bottle deposit fund under section 3c of the Initiated Law of 1976 being section 445 573c of the Michigan Compiled Laws.

(3) The money deposited in the Michigan unclaimed bottle fund shall be used in the manner and for the purposes described in subsection (5).

(4) The Michigan unclaimed bottle fund shall consist of the following:

(a) Money received from the bottle deposit fund under section 3c of the Initiated Law of 1976.

(b) Any interest earned on the money described in subdivision (a) while that money is in the Michigan unclaimed bottle fund.

(5) During the first 10 years that money is disbursed by the bottle deposit fund under section 3c of the Initiated Law of 1976, the money received by the Michigan unclaimed bottle fund and any interest earned on that money shall remain permanently in the Michigan unclaimed bottle fund and shall not be disbursed except that the legislature may appropriate from the unclaimed bottle fund an amount sufficient to cover the reasonable administrative costs incurred by the long term maintenance trust fund board created in section 20110. After the expiration of those first 10 years, all of the money thereafter deposited annually in the Michigan unclaimed bottle fund, interest earned on the money thereafter deposited annually in the Michigan unclaimed bottle fund, and any interest earned on the money already in that fund shall be disbursed annually by the department of treasury in the following manner:

(a) One third to the environmental response fund created in section 20108.

(b) One third to the long term maintenance trust fund created in section 20111.

(c) One third to the clean Michigan fund created in section 19104.

Sec 20110 (1) Not earlier than July 27, 1997, the long term maintenance trust fund board shall be created within the department of natural resources and shall consist of 5 members, 1 of whom is the director of the department of natural resources or his or her designee as an ex officio voting member, and 4 of whom shall be appointed by the governor with the advice and consent of the senate in the following manner:

(a) One member of the general public representing the interests of persons involved in advancing the cause of conservation in all its phases including natural resources management, environmental education, enhancement of fish and wildlife population, and prevention of environmental degradation.

(b) One member of the general public representing the interests of environmentally concerned citizens and groups.

(c) Two members of the general public who are knowledgeable in scientific and technical areas of study that are relevant to the long term monitoring and maintenance of sites.

(2) The term of each appointed member shall be 4 years, except that of those members first appointed 1 shall be appointed for a term of 4 years, 1 shall be appointed for a term of 3 years, 1 shall be appointed for a term of 2 years, and 1 shall be appointed for a term of 1 year. Vacancies shall be filled for the unexpired term in the same manner as the original appointment.

(3) Members of the long term maintenance trust fund board shall receive per diem compensation and reimbursement for the actual and necessary expenses incurred through the performance of their duties as established annually by the legislature and shall not receive compensation for those expenses from any other source.

(4) The long term maintenance trust fund board shall elect a chairperson and other officers as are necessary for conducting business.

(5) The long term maintenance trust fund board shall promulgate rules setting forth criteria for projects designed to implement the purposes for which the long term maintenance trust fund was established.

(6) The long term maintenance trust fund board shall meet not less than twice per year and shall consider and approve or disapprove recommendations by the department for projects designed to implement the purposes for which the long term maintenance trust fund was established.

(7) The business which the long term maintenance trust fund board may perform shall be conducted at a public meeting held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976 being sections 15 261 to 15 275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in a manner required by Act No. 267 of the Public Acts of 1976.

(8) The long term maintenance trust fund board shall annually file a report with the governor and the legislature summarizing the project proposals reviewed, the amount of expenditures authorized, and the effectiveness of the expenditures in attaining the goals for which the long term maintenance trust fund is established.

Sec 20111 (1) A long term maintenance trust fund is established as a separate revolving fund in the state treasury. The money in the long term maintenance trust fund shall not revert to the general fund. The long term maintenance trust fund shall be administered by the long term maintenance trust fund board.

(2) The long term maintenance trust fund shall receive money as disbursed from the Michigan unclaimed bottle fund created in section 20109.

(3) The money deposited in the long term maintenance trust fund shall be used in a manner and for the purposes described in rules promulgated by the department for 1 or more of the following:

(a) The operation, maintenance, and monitoring of sites where the department determines such activities are necessary.

(b) The enforcement of this part or part 115 or both.

(c) Any project the long term maintenance trust fund board determines by rule as having for its purpose the prevention of environmental contamination.

Sec 20112 By December 27, 1989, the department of management and budget shall enter into a contract for the preparation of a study that analyzes the public and private costs associated with various levels of cleanup standards for response activities under this part. The study shall also include, but is not limited to, an analysis of how quickly various levels of cleanup have been and can be accomplished. The contract shall provide for the study to be completed within 6 months. Prior to entering into the contract, the department of management and budget shall consult with the department and the chairpersons of the standing committees of the senate and the house of representatives responsible for issues pertaining to the protection of natural resources and the environment regarding the design and the scope of the study. The study required under this section may be conducted in conjunction with other related studies. Upon completion of the study, the department of management and budget shall submit copies of the study to the legislature.

Sec 20113 (1) Money required to pay for response activities recommended under this part and to reimburse state departments and agencies for expenditures for those purposes shall be appropriated from the fund and any other source the legislature considers necessary to implement the requirements of this part.

(2) Money from the fund shall be appropriated only for response activities at facilities that have been subjected to the risk assessment process described in section 20105.

(3) The fund may be used for match, operation, and maintenance purposes as required under the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767, and under subtitle I of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i.

(4) The governor shall recommend an annual appropriation for the fund in his or her annual budget recommendations to the legislature.

Sec 20114 (1) Except as provided in subsection (3), an owner or operator of a facility that obtains information that there may be a release at that facility shall immediately take appropriate action, consistent with applicable laws and rules promulgated by the department, to do all of the following:

(a) Confirm the existence of the release.

(b) Determine the nature and extent of the release.

(c) Report the release to the department within 24 hours after obtaining knowledge of the release. The requirements of this subdivision shall apply to reportable quantities of hazardous substances established pursuant to 40 C.F.R. 302.4 (1989), unless the department establishes through rules alternate or additional reportable quantities as necessary to protect the public health, safety, or welfare, or the environment.

(d) Immediately stop or prevent the release at the source.

(e) Immediately identify and eliminate any threat of fire or explosion or any direct contact hazards.

(f) Immediately initiate removal of a hazardous substance that is in a liquid phase, that is not dissolved in water, and that has been released.

(2) Except as provided in subsection (3), a person that holds an easement interest in a portion of a property that has knowledge that there may be a release within that easement shall report the release to the department within 24 hours after obtaining knowledge of the release. Unless the department establishes through rules alternate or additional reportable quantities as necessary to protect the public health, safety, or welfare, or the environment, this subsection shall apply to reportable quantities of hazardous substances established pursuant to 40 C.F.R. 302.4 (1989).

(3) The requirements of subsections (1) and (2) do not apply to a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws.

(4) An owner or operator of a facility or a person notified by the department as potentially liable pursuant to section 20126, upon written request by the department, shall take the following additional actions:

- (a) Provide a plan for and undertake interim response activities
- (b) Provide a plan for and undertake evaluation activities
- (c) Take any other response activity determined by the department to be technically sound and necessary to protect the public health safety welfare or the environment
- (d) Submit to the department for approval a remedial action plan that when implemented will achieve the cleanup levels specified in rules promulgated under this part
- (e) Implement an approved remedial action plan in accordance with a schedule approved by the department pursuant to this part
- (5) Upon a determination by the department that a person has completed all response activity at a facility pursuant to an approved remedial action plan prepared and implemented in compliance with rules promulgated under this part the department upon request of a person shall execute and present a document stating that all response activities required in the approved remedial action plan have been completed
- (6) A person in charge of a facility from which a hazardous substance is released that is determined to be reportable under subsection (1)(c) other than a permitted release that fails to notify the department within 24 hours after obtaining knowledge of the release or that submits in such notification any information that the person knows to be false or misleading is subject to a civil fine of not more than \$25 000 00 for each day in which the violation occurs or the failure to comply continues A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with this subsection
- (7) If a state or local unit of government obtains information that there is a release or threat of release on public property and is requested by the department to undertake response activity or takes emergency action that has been approved by the department and the state or local unit of government incurs expenses in taking the actions the expenses of the state or local unit of government shall be reimbursed from the Michigan environmental assurance fund if enabling legislation creating the fund is enacted into law and if each of the following is established
 - (a) The release or threat of release was not discovered or should not have been discovered pursuant to section 20127(2)(b)(u)
 - (b) The state or local unit of government did not cause or contribute to the release or threat of release
 - (c) The state or local unit of government is not liable under section 20126 for the release or threat of release
- (8) This section does not do either of the following
 - (a) Limit the authority of the department to take or conduct response activities pursuant to this part
 - (b) Limit the liability of a person that may be liable under section 20126

Sec 20115 (1) The department upon confirmation of a release or threat of release of a substance that is regulated by the department of agriculture shall notify the department of agriculture The department shall consult with the department of agriculture in the development of response activities if a release or threat of a release of a substance regulated by the department of agriculture occurs The department of agriculture shall provide to the department information necessary to identify substances regulated by the department of agriculture This information shall include but is not limited to the list of state registered pesticides

(2) As used in this section substance regulated by the department of agriculture means a fertilizer or soil conditioner as defined in the fertilizer act of 1975 Act No 198 of the Public Acts of 1975 being sections 286 751 to 286 767 of the Michigan Compiled Laws or a pesticide as defined in part 83

Sec 20116 (1) A person that has knowledge or information or is on notice through a recorded instrument that a parcel of his or her real property is a facility at which there has been a release in a quantity required to be reported pursuant to section 20114(1)(c) shall not transfer an interest in that real property unless he or she provides written notice to the purchaser or other person to which the property is transferred that the real property is such a facility and discloses the general nature and extent of the release The written notice provided by the transferor shall be a separate instrument and if the instrument conveying the interest in real property is recorded the written notice shall be recorded with the register of deeds in the same county

(2) The owner of real property for which a notice required in subsection (1) has been recorded may upon completion of all response activities for the facility as approved by the department record with the register of deeds for the appropriate county a certification that all response activity required in an approved remedial action plan has been completed

Sec 20117 (1) To determine the need for response activity or selecting or taking a response activity or otherwise enforcing this part or a rule promulgated under this part the directors or their authorized representatives may upon reasonable notice require a person to furnish any information that the person may have relating to any of the following

- (a) The identification nature and quantity of materials that have been or are generated treated stored handled or disposed of at a facility or transported to a facility
- (b) The nature or extent of a release or threatened release at or from a facility
- (2) Upon reasonable notice a person required to furnish information pursuant to subsection (1) shall either
 - (a) Grant the directors or their authorized representatives access at all reasonable times to any place property or location to inspect and copy the related information
 - (b) Copy and furnish to the directors or their authorized representatives the related information
- (3) If there is a reasonable basis to believe that there may be a release or threat of release the directors or their authorized representatives have the right to enter at all reasonable times any public or private property for any of the following purposes
 - (a) Identifying a facility
 - (b) Investigating the existence origin nature or extent of a release or threatened release
 - (c) Inspecting testing taking photographs or videotapes or sampling of any of the following soils air surface water groundwater suspected hazardous substances or any containers or labels of suspected hazardous substances
 - (d) Determining the need for or selecting any response activity
 - (e) Taking or monitoring implementation of any response activity
- (4) A person that enters public or private property pursuant to subsection (3) shall present credentials make a reasonable effort to contact the person in charge of the facility or that person's designee describe the nature of the activities authorized under subsection (3) to be undertaken and inform the person that is in charge of the facility that he or she is entitled to participate in the collection of split samples and is entitled to a copy of the results of any analysis of samples and a copy of any photograph or videotape taken The person in charge or his or her agent may accompany the directors or their authorized representatives during the activities authorized under subsection (3) that take place and may participate in the collection of any split samples on the property The absence or unavailability of the person in charge or that person's agent shall not delay or limit the authority of the directors or their authorized representatives to enter the property or proceed with the activities authorized under subsection (3)
- (5) If the directors or their authorized representatives obtain any samples before leaving the property they shall give to the person in charge of the property from which the samples were obtained a receipt describing the sample A copy of the results of any analysis of the samples shall upon request be furnished promptly to the person in charge A copy of any photograph or videotape taken pursuant to subsection (3)(c) shall upon request be furnished promptly to the person in charge
- (6) All inspections and investigations undertaken by the directors or their authorized representatives under this section shall be completed with reasonable promptness
- (7) If refused entry or information under subsections (1) to (4) for the purposes of enforcing the information gathering and entry authority provided in this section the attorney general on behalf of the state may do either of the following
 - (a) Petition the court of appropriate jurisdiction for a warrant authorizing access to property or information pursuant to this section
 - (b) Commence a civil action to compel compliance with a request for information or entry pursuant to this section to authorize information gathering and entry provided for in this section and to enjoin interference with the exercise of the authority provided in this section
- (8) In a civil action brought pursuant to subsection (7) if there is a reasonable basis to believe there may be a release or a threatened release the court shall in the case of interference or noncompliance with information requests pursuant to subsection (1) or with entry or inspection requests pursuant to subsection (3) enjoin interference with and direct compliance with the requests unless the defendant establishes that under the circumstances of the case the request is arbitrary and capricious an abuse of discretion or otherwise not in accordance with law
- (9) In a civil action brought pursuant to subsection (7) if there is a reasonable basis to believe there may be a release or a threatened release the court may assess a civil fine not to exceed \$25 000 00 for each day of noncompliance against a person that unreasonably fails to comply with subsection (1) (2) or (3)
- (10) Information obtained by the directors or their authorized representatives as authorized under subsection (1) or (2) shall be available to the public to the extent provided by the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws A person that provides information pursuant to subsection (1) or (2) or the person in charge of a facility at which photographs or videotapes are taken pursuant to subsection (3) may designate the information that the person believes to be entitled to protection as if the information was exempt from disclosure as being either trade secrets or information of a personal nature under section 13(1)(a) or (g) of the freedom of information act Act No 442 of the Public Acts of 1976 being section 15 243 of the

Michigan Compiled Laws and submit that specifically designated information separately from other information required to be provided under this section

(11) Notwithstanding subsection (10) the following information obtained by the directors or their authorized representatives as required by this section shall be available to the public

(a) The trade name common name or generic class or category of the hazardous substance

(b) The physical properties of a hazardous substance including its boiling point melting point flash point specific gravity vapor density solubility in water and vapor pressure at 20 degrees Celsius

(c) The hazards to the public health safety or welfare or the environment posed by a hazardous substance including physical hazards such as explosion and potential acute and chronic health hazards

(d) The potential routes of human exposure to the hazardous substance at the facility being investigated entered or inspected under this section

(e) The location of disposal of any waste stream released or threatened to be released from the facility

(f) Monitoring data or analysis of monitoring data pertaining to disposal activities related to the facility

(g) Hydrogeologic data

(h) Groundwater monitoring data

(12) To collect information for the purpose of identifying persons that may be liable under section 20126 or to otherwise enforce this part or a rule promulgated under this part the attorney general may by administrative subpoena require the attendance and testimony of witnesses and production of papers reports documents answers to questions and other information the attorney general considers necessary Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this state If a person fails or refuses to obey the administrative subpoena the circuit court for the county of Ingham or for the county in which that person resides has jurisdiction to order that person to comply with the subpoena A failure to obey the order of the court is punishable by the court as contempt

(13) As used in this section information includes but is not limited to documents materials records photographs and videotapes

Sec 20118 (1) The department may take response activity or approve of response activity proposed by a person that is consistent with rules promulgated under this part relating to the selection and implementation of response activity that the department concludes is necessary and appropriate to protect the public health safety or welfare or the environment

(2) Remedial action undertaken under subsection (1) at a minimum shall accomplish all of the following

(a) Assure the protection of the public health safety welfare and the environment

(b) Attain a degree of cleanup and control of hazardous substances that complies with all applicable or relevant and appropriate requirements rules criteria limitations and standards of state and federal environmental law

(c) Be consistent with any cleanup standards incorporated in any rules promulgated under this part

(3) The cost effectiveness of alternative means of complying with this section shall be considered by the department only in selecting among alternatives that meet all of the criteria of subsection (2)

(4) Remedial actions that permanently and significantly reduce the volume toxicity or mobility of the hazardous substances are to be preferred

(5) The department shall encourage the use of innovative cleanup technologies Before July 1 1995 the department shall undertake 3 pilot projects to demonstrate innovative cleanup technologies at facilities where money from the fund is used

(6) At a facility where state funds will be spent to plan or implement a remedial action plan or where the department determines there is a significant public interest within 30 days after the completion of a remedial investigation for the facility the department shall provide the county and the municipality in which the facility is located a notice of the completion of the remedial investigation a summary of the remedial investigation and notice of an opportunity for the people in the local unit of government to meet with the department regarding the remedial investigation and any proposed feasibility study for the facility Upon a request for a public meeting by the governing body of the local unit of government or by 25 citizens of the local unit of government the department shall within 30 days of the request meet with persons in the local unit of government The person or persons requesting the public meeting shall publicize and provide accommodations for the meeting The meeting shall be held in the local unit of government in which the facility is located The department shall provide copies of the notices and summary required in this subsection to the governing body of the local unit of government to the known persons that may be liable under section 20126 and to the main public library of the local unit of government in which the facility is located The department shall send representatives to the meeting that are familiar with the facility and that are involved with determining the appropriate remedial actions to be taken at the facility Persons that may be responsible under section 20126 for the facility may send representatives to the meeting

(7) Before approval of a proposed remedial action plan at a facility included on the list pursuant to section 20105 that is not an interim response activity if money from the fund is to be used or as specified in rules promulgated under this part the department shall do all of the following

- (a) Publish a notice and brief summary of the proposed remedial action plan
 - (b) Provide for public review and comment pertinent to documents relating to the proposed remedial action plan including if applicable the feasibility study that outlines alternative remedial action measures considered
 - (c) Provide an opportunity for a public meeting at or near the facility if any of the following occur
 - (i) The department determines that there is a significant public interest or that for any other reason a public meeting is appropriate
 - (ii) A municipality in which the facility is located by a majority vote of its governing body requests a public meeting
 - (iii) A local health department with jurisdiction in the area in which the facility is located requests a public meeting
 - (d) Provide a document that summarizes the major issues raised by the public and how they are to be addressed by the final approved remedial action plan
- (8) For purposes of this section publication includes at a minimum publication in a major local newspaper of general circulation in this state In addition the administrative record shall be made available by the department for inspection by members of the public at or near the facility and in Lansing
- (9) The department shall prepare a summary document that explains the reasons for the selection or approval of a remedial action plan In addition the department shall compile an administrative record of the decision process that results in the selection of a remedial action plan The administrative record shall contain all of the following
- (a) Remedial investigation data regarding the facility
 - (b) If applicable a feasibility study and potential remedial actions
 - (c) If applicable a summary document that explains the reasons why a remedial investigation or feasibility study was not conducted
 - (d) Applicable comments and information received from the public if any
 - (e) If applicable a document that summarizes the significant concerns raised by the members of the public and how they are to be addressed
 - (f) Other information appropriate to the facility
- (10) If comments or information are submitted for inclusion in the administrative record that are not included in the administrative record a brief explanation of why the information was not considered relevant shall be sent to the party by the department and included in the record

Sec 20119 (1) In accordance with this section if the department determines that there may be an imminent and substantial endangerment to the public health safety or welfare or the environment because of a release or threatened release the department may require persons that may be liable under section 20126 to take necessary action to abate the danger or threat

(2) The department may issue an administrative order to a person identified by the department as a person that may be liable under section 20126 requiring that person to perform response activity relating to a facility for which that person may be liable or to take any other action required by this part An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance

(3) Within 30 days after issuance of an administrative order under this section a person to which the order was issued shall indicate in writing whether the person intends to comply with the order

(4) A person that without sufficient cause violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following

(a) A civil fine of not more than \$25 000 00 for each day in which the violation occurs or the failure to comply continues A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order

(b) Exemplary damages in an amount at least equal to the amount of any costs of response activity incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs

(5) A person to which an administrative order was issued under this section and that complied with the terms of the order that believes that the order was arbitrary and capricious or unlawful may petition the department within 60 days after completion of the required action for reimbursement from the fund for the reasonable costs of the action plus interest at the rate described in section 20126(4) and other necessary costs incurred in seeking reimbursement under this subsection If the department refuses to grant all or part of the petition the petitioner may within 30 days of receipt of the refusal file an action against the department in the court of claims seeking this relief A failure by the

department either to grant or deny all or any part of a petition within 120 days of receipt constitutes a denial of that part of the petition which denial is reviewable as final agency action in the court of claims To obtain reimbursement the petitioner shall establish by a preponderance of the evidence that the petitioner is not liable under section 20126 or that the action ordered was arbitrary and capricious or unlawful and in either instance that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by and undertaken pursuant to the relevant order

Sec 20120 (1) The department shall develop a proposed schedule for submittal of work plans for undertaking necessary response activity for sites identified on a list prepared pursuant to section 20105 Each work plan submitted shall include a schedule for submittal of a proposed remedial action plan for the site The proposed schedule shall be consistent with any schedule required under part 213 After a public hearing regarding the proposed schedule the department shall establish a schedule The department shall give written notice of the schedule to all identified persons that may be liable under section 20126 and shall publish the schedule in the Michigan register listing each facility by township and range coordinates address and if available common identity The department may grant an extension to a requirement in the schedule only after holding a public hearing in the county in which the facility subject to the schedule is located

(2) The persons that may be liable under section 20126 for a facility may submit a proposed remedial action plan to the department at any time in advance of the date provided in the schedule under subsection (1)

(3) A proposed remedial action plan submitted to the department under this part shall include a schedule for implementation of response activity at the facility Within 6 months after receiving a proposed remedial action plan under this part the department shall review the plan and shall either approve the plan or submit to the persons that may be liable under section 20126 changes to the proposed remedial action plan that would result in approval of the plan If the department submits changes to the proposed remedial action plan within 60 days after the persons that may be liable under section 20126 receive the department's changes the persons that may be liable under section 20126 may incorporate these changes into their proposed remedial action plan and resubmit the proposed remedial action plan to the department Upon receipt of a proposed remedial action plan that meets the requirements of the department the department shall approve the remedial action plan

(4) If the department approves a remedial action plan under subsection (3) the persons that may be liable under section 20126 shall implement the approved remedial action plan

(5) If the participating persons that may be liable under section 20126 reject the department's changes to the proposed remedial action plan under subsection (3) the persons that may be liable under section 20126 shall notify the department within 60 days after receiving the department's changes Within 60 days after the persons that may be liable under section 20126 reject the department's changes the department and the persons that may be liable under section 20126 shall attempt to resolve their differences or identify items of difference between them for submittal to the science advisory council pursuant to section 20122 If the department and the persons that may be liable under section 20126 are unable to jointly agree to the items of difference the department shall notify the office of environmental cleanup facilitation and the list of items of difference shall be prepared as provided in section 20121(2)

(6) The department shall publish a notice in the Michigan register each quarter identifying those sites not in compliance with the schedule for submittal of response activity work plans and those sites in which the department has not acted on a proposed remedial action plan as provided in this section

(7) This section does not preclude the department from taking action as provided in sections 20118 and 20119

(8) This section is repealed effective July 1 1996

Sec 20121 (1) The office of environmental cleanup facilitation is created within the department of management and budget The office of environmental cleanup facilitation shall contract with individuals that are impartial qualified facilitators or contract with an organization that can provide impartial qualified facilitators that are capable of assisting in the resolution of disputes over the development of remedial action plans

(2) Within 14 days after receiving notification of submittal to facilitation from the department under section 20120 the office of environmental cleanup facilitation shall randomly assign a facilitator to prepare a detailed list of items of difference between the department and the persons that may be liable under section 20126 The facilitator assigned to the dispute shall conduct discussions to identify those items of difference and within 30 days after being assigned shall prepare the items of difference and shall forward this list to the science advisory council

(3) Unless otherwise agreed by the department and the persons that may be liable under section 20126 and except as provided in section 20122(3) the department and the persons that may be liable under section 20126 shall each pay their costs associated with facilitation under this section and section 20122 and they shall share equally the costs of the facilitator

(4) This section is repealed effective July 1 1996

Sec 20122 (1) Upon receipt of the items of difference pursuant to section 20120 or 20121 the chairperson of the science advisory council shall give notice of the dispute and of the parties to the dispute to each member of the science advisory council. Upon receipt of this notice the members of the science advisory council shall make full disclosure of any present or past personal contractual financial business or employment interest in matters related to the persons involved in the dispute. After reviewing these disclosures the chairperson shall appoint 3 members of the science advisory council to serve on a panel to provide recommendations for resolving the items of difference and shall give notice of these appointments to the department and the persons that may be liable under section 20126 for that facility. The chairperson shall not appoint a person to serve on a panel that has any present personal contractual financial business or employment interest in a matter related to the persons involved in the dispute before the panel.

(2) Within 60 days after appointment of the science advisory council panel under subsection (1) the department and the persons that may be liable under section 20126 may each submit a written statement not exceeding 20 pages in support of its position. An interested member of the general public may also submit a written statement not exceeding 20 pages in support of a position on any item of difference. The science advisory council panel shall schedule a meeting to deliberate and prepare recommendations on resolving the items of difference. A meeting of the science advisory council panel shall be held pursuant to the open meetings act Act No 267 of the Public Acts of 1976 being sections 15 261 to 15 275 of the Michigan Compiled Laws. The science advisory council panel shall within 90 days of receiving the written statements allowed to be submitted in this subsection forward its recommendations on the items of difference to the department the persons that may be liable under section 20126 and the office of environmental cleanup facilitation. The recommendations of the science advisory council panel are part of the administrative record.

(3) Within 30 days after receipt of the recommendations of the science advisory council panel pursuant to subsection (2) a facilitator assigned by the office of environmental cleanup facilitation shall conduct additional discussions with the department and the persons that may be liable under section 20126 and shall schedule a facilitation conference. Through these discussions the facilitator shall attempt to facilitate an agreement between the department and the persons that may be liable under section 20126 regarding the contents of a remedial action plan. If the department and the persons that may be liable under section 20126 are unable to agree to a remedial action plan at the facilitation conference the department shall approve a remedial action plan that includes the recommendations of the science advisory council panel unless the department prepares and approves an alternative remedial action plan. The department shall approve a remedial action plan pursuant to this subsection within 90 days after the department receives the recommendations from the science advisory council panel. If the department does not approve a remedial action plan during this time period the persons that may be liable under section 20126 may implement a remedial action plan that includes all of the recommendations of the science advisory council panel and is otherwise in compliance with this part and the rules promulgated under this part. This remedial action plan shall be considered an approved remedial action plan.

(4) A person that participates in the allocation process under section 20125 does not have standing in a civil action to challenge the recommendations of the science advisory council panel pursuant to subsection (2) which are included in an approved remedial action plan. Additionally if a court later upholds the contents of the approved remedial action plan the court shall assess against the persons that may be liable under section 20126 for the facility the full costs of facilitation under this section and section 20121 and enforcement costs. If the department approves a remedial action plan that does not contain the recommendations endorsed by a majority of the science advisory council panel and if a court later does not uphold the contents of that remedial action plan the court shall assess against the department the full costs of facilitation under this section and section 20121 court costs and the reasonable attorney fees for the persons that may be liable under section 20126. Additionally if the action is for cost recovery of response activities at a facility in which remedial action has been completed the court shall only assess against the persons that may be liable under section 20126 the cost of remedial action that the court determines should have been undertaken.

(5) In any court proceeding pursuant to this section there is a rebuttable presumption that the recommendations of the science advisory council panel on the items of difference are supported by a preponderance of scientific evidence.

(6) This section does not preclude the department from taking action as provided in sections 20118 and 20119.

(7) This section is repealed effective July 1 1996.

Sec 20123 (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 that 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) The first meeting of the science advisory council shall be called by the governor. At the first meeting, the science advisory council shall elect from among its members a chairperson and other officers as the council considers appropriate. After the first meeting, the science advisory council shall meet at the call of the chairperson or upon request of 4 or more members of the council.

(3) 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 that of the members first appointed 3 shall serve for 3 years, 2 shall serve for 2 years, and 1 shall serve for 1 year.

(4) The governor may remove a member of the science advisory council for incompetency, dereliction of duty, malfeasance in office, or any other good cause.

(5) 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 by a person that has had a dispute before a science advisory council panel in which that individual served, or by a consulting firm associated with the department or a person that has had a dispute before a science advisory council panel in which that individual served.

(6) Three members of the science advisory council that have expertise related to the issues in dispute shall be appointed by the chairperson of the science advisory council on a rotating basis to serve on panels to make recommendations on resolving the items of difference between the department and the persons that may be liable under section 20126 for a facility with regard to the contents of a remedial action plan pursuant to this part. A science advisory council panel need not recommend a position advocated by either the department or the persons that may be liable under section 20126, but may recommend an alternative that is supported by scientific evidence and is consistent with this part and the rules promulgated under this part.

(7) A science advisory council panel shall make recommendations only on the scientific and technical issues in dispute consistent with the rules promulgated under this part, including, but not limited to:

- (a) Risk assessment assumptions and calculations
- (b) Data collection and interpretation
- (c) Technological effectiveness of remedial action alternatives
- (d) Chemical, biological, and physical properties
- (e) Impacts on various media

(8) A science advisory council panel shall not make recommendations on issues that are not primarily scientific or technical in nature, including, but not limited to, any of the following:

- (a) Cost effectiveness of remedial action alternatives
- (b) Current and reasonably foreseeable uses of natural resources
- (c) Reasonably foreseeable uses of the facility

(9) The members of a science advisory council panel that make recommendations regarding the contents of a remedial action plan for a facility shall not have any present personal contractual financial business or employment interest in matters related to the persons that have disputes before the science advisory council panel. Additionally, the members of a science advisory council panel that make recommendations regarding the contents of a remedial action plan for a facility shall make full disclosure of any past personal contractual financial business or employment interest in matters related to persons that have disputes before the science advisory panel.

(10) Upon request of the science advisory council, the department shall provide the science advisory council with all of the information that the department has in its possession related to a facility.

(11) The science advisory council shall prepare a plan of operation for the internal operations and procedures of the science advisory council and may promulgate rules it considers necessary to implement this section.

(12) This section is repealed effective July 1, 1996.

Sec. 20124. By July 1, 1994, the department shall report to the legislature on all of the following with regard to the dispute resolution process under sections 20120 to 20123:

- (a) Whether the dispute resolution process is effectively resolving disputes
- (b) The number of disputes addressed by the dispute resolution process
- (c) The results of disputes subject to the dispute resolution process
- (d) Recommendations regarding legislative action to improve the dispute resolution process
- (e) The cost of the resolution of disputes through the use of the dispute resolution process

Sec. 20125. (1) As used in this section:

(a) Allocation process means a voluntary system for determining the percentage share of response costs pursuant to this section of each person that may be liable under section 20126 and the orphan share, if any.

(b) Allocation review panel or panel means the allocation review panel appointed by the orphan share administration

(c) Orphan share means the percentage share of response costs for a facility that the orphan share administration agrees or the allocation review panel determines is not reasonably allocable to any person that may be liable under section 20126 using the criteria in subsection (10)

(d) Orphan share administration means the orphan share administration created in subsection (21)

(e) Response costs means all costs incurred in taking or conducting a response activity enforcement costs and all costs incurred by the orphan share administration for the services of the allocation review panel

(2) This section only applies to a facility for which 2 or more persons that may be liable under section 20126 are identified by the department. However, if only 1 person that may be liable under section 20126 is identified for a facility by the department, that person may submit a written request within 14 days after the department approves a remedial action plan or a remedial action plan is considered approved under section 20122 to the orphan share administration to commence the allocation process. A facility for which only 1 person that may be liable under section 20126 is identified shall be considered by the allocation review panel as provided in this section in a manner and at a time that will not impede the allocation process for other facilities.

(3) After the department approves a remedial action plan or a remedial action plan is considered approved under section 20122 for a facility pursuant to this part and any rules promulgated under this part, the department shall notify in writing each identified person that may be liable under section 20126 for a facility and the orphan share administration of the approval of the remedial action plan for the facility. The department shall also send the orphan share administration a list of the names and addresses of all identified persons that may be liable under section 20126 and if requested by the orphan share administration, the department shall at any time provide the orphan share administration with all information in the possession of the department that is related to the release. Upon the request of the orphan share administration, the allocation process may commence prior to the approval of the remedial action plan. A person that may be liable under section 20126 may petition the orphan share administration to commence the allocation process prior to the approval of the remedial action plan or the time that the remedial action plan is considered approved under section 20122.

(4) Not later than 7 days after receipt of the notice of approval of a remedial action plan for the facility, the orphan share administration shall notify each of the persons that may be liable under section 20126 in writing of the opportunity to participate in an allocation process. A person that may be liable under section 20126 that intends to participate in the allocation process shall notify the orphan share administration in writing within 14 days of receiving notice from the orphan share administration.

(5) If within the 14 day period during which a person that may be liable under section 20126 may indicate their intention to participate in the allocation process, 1 or more of the persons that may be liable under section 20126 identified in regard to a facility notify the orphan share administration that the person intends to participate in the allocation process, the orphan share administration shall develop a schedule and plan to facilitate negotiations to determine the percentage share of response costs of each person that may be liable under section 20126 and any orphan share. The negotiations shall be completed within 21 days after the last day on which persons that may be liable under section 20126 may notify the orphan share administration of the intent to participate, unless all of the participants agree to extend the negotiations. An extension of the negotiations does not result in an extension of the time limitations provided in subsections (8) and (10).

(6) If during the negotiation period provided in subsection (5), all of the persons that may be liable under section 20126 that are participating in the allocation process and the orphan share administration agree in writing to a complete percentage allocation of response costs related to the facility, the orphan share administration shall, within 3 days of reaching the agreement, send a copy of the agreement to the director and the attorney general.

(7) The attorney general on behalf of the state may enter into a legally enforceable consent order with 1 or more of the participants in the allocation process providing for implementation of the remedial action plan, payment of response costs, and resolution of other potential liability under this part, including liability for damages and civil fines.

(8) If within the negotiation period provided in subsection (5), all of the persons that may be liable under section 20126 for a facility and the orphan share administration do not agree in writing to a complete percentage allocation of response costs related to the facility, the orphan share administration shall convene an allocation review panel to determine an allocation of the percentage share of response costs of each person that may be liable under section 20126, including the orphan share, if any. Regardless of when the allocation process commences, the allocation review panel shall be convened no later than 50 days after notification of the persons that may be liable under section 20126 of the approval of the remedial action plan for a facility. The allocation review panel shall consist of 3 members selected by the orphan share administration. In selecting the members for an allocation review panel, the orphan share administration shall determine that a member selected for a panel does not have a personal or financial interest in the outcome of the allocation process.

(9) According to the procedures established by the orphan share administration each of the participating persons that may be liable under section 20126 and the orphan share administration may submit to the panel documentation and other information as considered relevant by a person that may be liable under section 20126 or the orphan share administration. In addition the department may submit to the panel information related to the facility or allocation process that the department considers relevant.

(10) Not later than 90 days after notification of the persons that may be liable under section 20126 of approval of the remedial action plan for a facility the allocation review panel shall issue a written determination allocating the percentage share of response costs of each person that may be liable under section 20126 and the orphan share if any. In reaching a determination the allocation review panel shall do all of the following:

(a) Consider each of the following as these items relate to each person that may be liable under section 20126 and the orphan share if any:

(i) The volume of hazardous substances transported to the facility. For purposes of determining volume a shipment of a hazardous substance shall be counted 1 time when allocating a percentage share of response costs between a generator and a transporter of a hazardous substance.

(ii) The anticipated impact of the hazardous substance on the cost of response activity at the facility.

(iii) The degree of care exercised in the disposal or treatment or both of the hazardous substance by each person that may be liable under section 20126.

(iv) The manner in which the facility was operated and the degree of care exercised by the owner or operator.

(v) The degree of involvement in facility operations.

(vi) Whether all applicable permits and licenses required by law were obtained and complied with.

(vii) The degree of cooperation by the person with federal, state or local officials to prevent, minimize, respond to or remedy the release or threat of release.

(viii) Any other aggravating or mitigating factor that the allocation review panel determines to be relevant.

(b) Consider the quality of documentation and other information submitted.

(c) If information gaps exist, make reasonable extrapolations from the available information as considered advisable by the allocation review panel.

(11) A copy of the written determination of the allocation review panel shall be forwarded by the panel to the department, the attorney general, and to each of the participants in the allocation process. Within 10 days of receipt of the determination of the allocation review panel, each participant shall notify the orphan share administration of the participant's acceptance or rejection of the panel's determination. The orphan share administration shall notify the allocation review panel, the department, and the attorney general of each participant's decision.

(12) Upon completion of the allocation process under this section, the percentage allocated to the orphan share and the portion allocated to a person that is uncollectible for a facility, if any, shall be funded in full by the other persons that may be liable under section 20126 for that facility in proportion to the percentage that each person was assigned pursuant to the allocation process.

(13) The attorney general on behalf of the state may enter into a legally enforceable consent order with 1 or more of the participants in the allocation process that are in agreement with the determination of the allocation review panel providing for implementation of the remedial action plan, payment of response costs, and resolution of other potential liability under this part, including liability for damages and civil fines.

(14) This section does not limit the authority of the department or the attorney general at any time to enter into an agreement in the public interest to resolve in whole or in part the liability of a person under this part.

(15) Any allocation of percentage shares of response costs under this section shall not be admissible as evidence in any proceeding except to prove, if disputed, the financial obligations under the terms of an allocation agreement pursuant to subsection (6) or (11) of a person that has limited its liability under subsection (16). A court does not have jurisdiction to review an allocation or the procedures used to determine an allocation. The allocation of percentage share of response costs or the procedures used to determine an allocation do not constitute an apportionment or other statement on the divisibility of harm or causation.

(16) The liability under this part of a person that may be liable under section 20126 that accepts and pays its allocated share of response activity costs as determined through a voluntary allocation agreement pursuant to subsection (6) or by the allocation review panel pursuant to subsection (10) and that by consent order or administrative order pays its portion of the orphan share and the uncollectible portion pursuant to subsection (12) which results in implementation of an approved remedial action plan shall, with respect to matters covered by the order, be limited to that person's allocated share of response costs. The department may issue an administrative order pursuant to section 20119 to require a person that may be liable under section 20126 to implement the plan approved by the department. To be enforceable, the order described in this subsection shall not require that the department determine that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment prior to

issuance of the order In an action for reimbursement pursuant to section 20119(5) if the court upholds the order the court shall assess against the petitioner the full costs of defending this proceeding including attorney fees

(17) If a person that may be liable under section 20126 participates in the allocation process set forth in this subsection the department and the attorney general shall not commence an action under section 20119 or 20137 against the participating person for a period of 120 days after the persons that may be liable under section 20126 are notified of the approval of a remedial action plan If the department and the attorney general determine that the parties are bargaining in good faith and that an extension of this moratorium would facilitate an agreement with the persons that may be liable under section 20126 for taking response activity they may extend the moratorium for an additional period of up to 30 days

(18) Notwithstanding subsection (17) this section does not limit the department's authority to undertake response activity at any time or the attorney general's authority to undertake enforcement action against any person that may be liable under section 20126 that does not participate in the allocation process

(19) The attorney general may file an action under section 20137 to recover all costs incurred by the orphan share administration from persons that refuse to participate in the allocation process or in the remedial action on the basis of their allocated share

(20) The orphan share administration shall promulgate rules establishing a loan program to provide loans to small businesses that may be liable under section 20126 A loan shall be provided to assist a small business in fulfilling any of its responsibilities in undertaking a response activity in compliance with this part and the rules promulgated under this part except if the small business is convicted of violating section 20139 A loan shall not be made under this section until rules are promulgated establishing the loan program described in this subsection To be eligible for a loan under this section a small business shall submit to the orphan share administration evidence that is satisfactory to the orphan share administration that the small business has taken or is taking action necessary to prevent future releases and to otherwise comply with this part and applicable state and federal environmental law As used in this subsection small business means a business concern incorporated or doing business in this state that has a net worth of less than \$10 000 000 00 including the affiliates of the business concern that are independently owned and operated

(21) The orphan share administration is created within the department of management and budget The orphan share administration shall administer the allocation process as provided in this section The department of management and budget shall provide the orphan share administration with sufficient staff and services to allow it to carry out its responsibilities under this section

Sec 20126 (1) Notwithstanding any other provision or rule of law and subject only to the defenses set forth in sections 20127 and 20128 if there is a release or threatened release from a facility that causes response activity costs to be incurred the following persons shall be liable under this section

(a) The owner or operator of the facility

(b) The owner or operator of the facility at the time of disposal of a hazardous substance

(c) The owner or operator of the facility since the time of disposal of a hazardous substance not included in subdivision (a) or (b)

(d) A person that by contract agreement or otherwise arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of a hazardous substance owned or possessed by the person by any other person at the facility owned or operated by another person and containing the hazardous substance

(e) A person that accepts or accepted any hazardous substance for transport to the facility selected by that person

(2) A person described in subsection (1) is liable for all of the following

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part

(b) Any other necessary costs of response activity incurred by any other person consistent with rules relating to the selection and implementation of response activity promulgated under this part

(c) Damages for the full value of injury to destruction of or loss of natural resources including the reasonable costs of assessing the injury destruction or loss resulting from the release

(3) The costs of response activity recoverable under subsection (2) shall also include

(a) All costs of response activity reasonably incurred by the state prior to the date upon which rules were promulgated relating to the selection and implementation of response activity under former Act No 307 of the Public Acts of 1982 excepting those cases where cost recovery actions have been filed before July 11 1990 A person challenging the recovery of costs under this subdivision has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred Recoverable costs include costs incurred reasonably consistent with the rules relating to the selection and implementation of response activity in effect on July 11 1990

(b) Any other necessary costs of response activity reasonably incurred by any other person prior to June 26 1990 the date upon which rules were promulgated relating to the selection and implementation of response activity under former Act No 307 of the Public Acts of 1982 A person seeking recovery of these costs has the burden of establishing that the costs were reasonably incurred under the circumstances that existed at the time the costs were incurred

(4) The amounts recoverable in an action under this section include interest on the amounts recoverable under subsections (2) and (3) This interest accrues from the date payment is demanded in writing or the date of the expenditure or damage whichever is later The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section is the same rate as is specified in section 6013(5) of the revised judicature act of 1961 Act No 236 of the Public Acts of 1961 being section 600 6013 of the Michigan Compiled Laws

(5) A person shall not be required under this part to undertake response activity for a permitted release Recovery by any person for response activity costs or damages resulting from a permitted release shall be pursuant to other applicable law in lieu of this part This subsection does not affect or modify in any way the obligations or liability of any person under any other state law including common law for damages injury or loss resulting from a release of a hazardous substance or for response activity or the costs of response activity

(6) If the department determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release from a facility the attorney general may bring an action against any person described in subsection (1) or any other appropriate person to secure the relief that may be necessary to abate the danger or threat The court has jurisdiction to grant such relief as the public interest and the equities of the case may require

(7) In establishing liability under this section the department bears the burden of proof If the department proves a prima facie case against a person the person shall bear the burden of showing by a preponderance of the evidence that they are not liable under this section

Sec 20127 (1) A person is not liable under section 20126 if that person establishes by a preponderance of the evidence that the release or threat of release was caused solely by

(a) An act of God

(b) An act of war

(c) An act or omission of a third party other than an employee or agent of the person that may be liable under section 20126 or other than one whose act or omission occurs in connection with a contractual relationship existing directly or indirectly with the person that may be liable under section 20126 if the person that may be liable under section 20126 establishes by a preponderance of the evidence both of the following

(i) That he or she exercised due care with respect to the hazardous substance taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances

(ii) That he or she took reasonable precautions against reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions

(d) Any combination of subdivision (a) (b) or (c)

(2) The term contractual relationship as used in subsection (1)(c) includes but is not limited to land contracts deeds or other instruments transferring title or possession unless both of the following are established

(a) The real property on which the facility is located was acquired by the person that may be liable under section 20126 after the disposal or placement of the hazardous substance on in or at the property

(b) The person that may be liable under section 20126 by a preponderance of the evidence proves 1 or more of the following

(i) At the time the person that may be liable under section 20126 acquired the property that person did not know and had no reason to know that a hazardous substance that is the subject of the release or threat of a release was disposed of on in or at the facility

(ii) The person that may be liable under section 20126 is a state or local unit of government that acquired the property by purchase gift transfer dedication or condemnation and for property acquired after July 1 1991 the state or local unit of government does all of the following

(A) Conducts or causes to be conducted a visual inspection of the property and a review of the ownership and use history of the property to determine whether a probability exists that the property is a facility If the visual inspection or the ownership and use history or both show that there may be a release or threat of release the state or local unit of government shall conduct or cause to be conducted an environmental assessment of the property that includes an on site evaluation of the nature and extent if any of the release or threat of release and an inspection of all permanent structures on the property for the presence of a hazardous substance

(B) Prior to final acquisition if the environmental assessment required in subparagraph (ii)(A) discloses a release or threat of release the state or local unit of government shall do all of the following

(I) Provide a report of the findings and conclusions of the environmental assessment to the governing body of the unit of government

(II) Provide a public notice of the availability of the report of the findings and conclusions of the environmental assessment

(III) Submit the report and the environmental assessment to the department

(C) After final acquisition if the environmental assessment required in subparagraph (u)(A) disclosed a release or threat of release the state or local unit of government shall provide the department with a right of entry to the property at all reasonable times for any of the purposes listed in section 20117(3)(a) through (e)

(D) After final acquisition unless waived by the department through the exercise of its discretion if the environmental assessment required in subparagraph (u)(A) disclosed a release or threat of release the state or local unit of government shall not transfer any legal interest or any equitable or possessory interest that relinquishes control over that property for more than 45 days unless the state or local unit of government does all of the following

(I) Provides any transferee with a copy of the environmental assessment required in subparagraph (u)(A) prior to the transfer of the property

(II) Includes in any contract for transfer of the property a statement that absent a covenant not to sue from the state as provided by section 20133 the transferee will be a person that may be liable under section 20126

(III) Includes as a condition to the transfer in any contract for the transfer of the property that the transferee agrees to provide the department with a right of entry to the property at all reasonable times for any of the purposes listed in section 20117(3)(a) through (e) related to a release or threat of release disclosed in the environmental assessment required in subparagraph (u)(A)

(IV) Provides the department with a copy of the contract for transfer of the property and a description of the intended use of the property by the transferee within 14 days of the execution of the transfer

(u) The person that may be liable under section 20126 acquired the property by inheritance

(3) In addition to establishing 1 or more of the circumstances described in subsection (2)(b)(i) (u) or (u) the person that may be liable under section 20126 shall establish that he or she has satisfied the requirements of subsection (1)(c)(i) and (u)

(4) To establish that the person that may be liable under section 20126 had no reason to know as required under subsection (2)(b)(i) the person that may be liable under section 20126 shall have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability For purposes of this subsection the court shall take into account any specialized knowledge or experience on the part of the person that may be liable under section 20126 the relationship of the purchase price to the value of the property if uncontaminated by a hazardous substance commonly known or reasonably ascertainable information about the property the obviousness of the presence or likely presence of a release or threat of release at the property and the ability to detect a release or threat of release by appropriate inspection

(5) This section shall not diminish the liability of a previous owner or operator of a facility that would otherwise be liable under this part Notwithstanding this section if the person that may be liable under section 20126 obtained actual knowledge of the release or threat of release at the facility when that person owned the real property and then transferred ownership of the property to another person without disclosing this knowledge the person is liable under section 20126 and a defense under this section is not available to that person This section does not affect the liability under this part of a person that may be liable under section 20126 that by an act or omission caused or contributed to the release or threat of release that is the subject of a response activity at the facility

(6) The state or a local unit of government is not liable under this part for costs or damages as a result of response activity taken in response to a release or threat of release This subsection shall not preclude liability for costs or damages as a result of gross negligence including reckless willful or wanton misconduct or intentional misconduct by the state or a local unit of government

(7) A commercial lending institution that has not participated in the management of a facility prior to taking title and that acquires a property that is a facility through foreclosure or through acceptance of a deed in lieu of foreclosure for the sole purpose of realizing on a security interest is not liable under this part if 1 or more of the following are true

(a) The property is a residential property

(b) The property is an agricultural property

(c) The commercial lending institution acquired ownership or control of the property involuntarily through a court order or other involuntary circumstance

(d) The commercial lending institution would otherwise be liable solely under section 20126(1)(c) and the commercial lending institution acquired ownership or control of the property prior to August 1 1990

(8) If a commercial lending institution that has not participated in the management of a facility prior to taking title other than those properties described in subsection (7)(a) or (b) conducts within 180 days before or after taking title to the property a valid foreclosure environmental assessment prior to disposition of that property and if that foreclosure environmental assessment does not indicate that there was a release or threat of release on the property there is a rebuttable presumption that the commercial lending institution has satisfied the criteria specified in subsection (1)(c) with respect to that property. The defense to liability in this subsection does not apply to a release that started after the date on which the commercial lending institution acquired title to the property and during the time the commercial lending institution held title to the property.

(9) If a commercial lending institution that prior to taking title of a property through foreclosure or through acceptance of a deed in lieu of foreclosure has not participated in the management of property other than a property described in subsection (7)(a) or (b) performs a foreclosure environmental assessment on the property within 180 days before or after taking title to the property and if that foreclosure environmental assessment indicates that there is a release or threat of release on that property the commercial lending institution shall not dispose of that property unless the commercial lending institution provides the department with a complete copy of the results of the foreclosure environmental assessment and the commercial lending institution enters into an agreement with the department regarding disposition of the property. If a commercial lending institution submits a proposal to the department regarding disposition of the property the department shall within 6 months review the proposal and either approve the proposal or submit changes to the commercial lending institution that would result in approval of the proposal. However if the commercial lending institution and the department are unable to reach an agreement pertaining to disposition of the property the commercial lending institution shall not transfer the property other than to the state. A commercial lending institution that establishes that it has met the requirements of this subsection is not liable under section 20126 with respect to that property. After meeting all the provisions of this subsection a commercial lending institution may immediately transfer to the state property on which there has been a release or a threat of a release if the commercial lending institution complies with all of the following:

(a) Within 9 months following foreclosure and for a period of at least 120 days the commercial lending institution either lists the facility with a broker, dealer, or agent that deals with the type of property in question or advertises the facility as being for sale or disposition on at least a monthly basis in a real estate publication, a trade or other publication suitable for the facility in question, or a newspaper of general circulation of over 10,000 covering the area where the property is located.

(b) The commercial lending institution takes and has taken reasonable care in maintaining and preserving the real estate and permanent fixtures.

(c) The commercial lending institution provides to the department a complete copy of the foreclosure environmental assessment and all other environmental information related to the facility that is available to the commercial lending institution.

(d) If the department has issued an order pursuant to section 20119 the commercial lending institution has complied with the order to the department's satisfaction.

(e) If conditions on the property pose a threat of fire or explosion or present an imminent hazard through direct contact with hazardous substances the commercial lending institution has undertaken appropriate response activities to abate the threat or hazard.

(10) A commercial lending institution or other person that has not participated in the management of a property prior to assuming ownership or control of the property as a fiduciary as defined by section 5 or in a representative capacity for a disabled person under section 495 of the revised probate code, Act No. 642 of the Public Acts of 1978 being sections 700.5 and 700.495 of the Michigan Compiled Laws and that is acting or has acted in a capacity permitted by the revised probate code, Act No. 642 of the Public Acts of 1978 being sections 700.1 to 700.993 of the Michigan Compiled Laws is not personally liable as an owner or operator of the property under this part. This subsection shall not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability or negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent claims against the assets that are part of or all of the estate or trust that contains the facility, any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the commercial lending institution or other person, or any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such claims may be asserted against the fiduciary in its representative capacity whether or not the fiduciary is personally liable.

(11) A commercial lending institution that has not participated in the management of a property prior to assuming ownership or control of the property in a fiduciary capacity and pursuant to a fiduciary agreement entered into on or before August 1, 1990, owns or controls the property in a fiduciary capacity that is not regulated by Act No. 642 of the Public Acts of 1978 but is authorized by the banking code of 1969, Act No. 319 of the Public Acts of 1969 being sections

487 301 to 487 598 of the Michigan Compiled Laws or the national bank act chapter 106 13 Stat 99 is not personally liable as an owner or operator of the property under this part This subsection does not do either of the following

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability negligence gross negligence or reckless willful or intentional misconduct

(b) Prevent claims against the assets that are part of or all of the estate or trust that contains the facility any other estate or trust of the decedent grantor ward or other person whose estate or trust contains the facility that is administered by the commercial lending institution or any other estate or trust of the decedent grantor ward or other person whose estate or trust contains the facility Such claims may be asserted against the fiduciary in its representative capacity whether or not the fiduciary is personally liable

(12) A commercial lending institution that has not participated in the management of a property prior to assuming ownership or control of the property in a fiduciary capacity and pursuant to a fiduciary agreement entered into after August 1 1990 owns or controls the property in a fiduciary capacity that is not regulated by Act No 642 of the Public Acts of 1978 but is authorized by Act No 319 of the Public Acts of 1969 or the national bank act chapter 106 13 Stat 99 that has served only in an administrative custodial or financial capacity with respect to the property and that has not exercised sufficient involvement to control the owner's or operator's handling of a hazardous substance is not personally liable as an owner or operator of the property under this part This subsection does not do either of the following

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability negligence gross negligence or reckless willful or intentional misconduct

(b) Prevent claims against the assets that are part of or all of the estate or trust that contains the facility any other estate or trust of the decedent grantor ward or other person whose estate or trust contains the facility that is administered by the commercial lending institution or any other estate or trust of the decedent grantor ward or other person whose estate or trust contains the facility Such claims may be asserted against the fiduciary in its representative capacity whether or not the fiduciary is personally liable

(13) The defenses to liability under section 20126 in subsections (7) to (12) in regard to a facility do not apply when a commercial lending institution its agent or employee or a person retained by the commercial lending institution caused or contributed to a release or threat of release

(14) As used in subsections (8) and (9) foreclosure environmental assessment means to conduct or cause to be conducted a visual inspection of property and a review of the ownership and use history of the property to determine whether there is a release or threat of release If a visual inspection or the ownership and use history or both show that there may be a release or threat of release a site specific on site evaluation of the nature and extent if any of the release or threat of release shall be conducted and an inspection of all permanent structures on the property to determine the presence of a hazardous substance shall be conducted

Sec 20128 (1) Except as otherwise provided in this section a person that is a response activity contractor for any release or threatened release is not liable to any person for injuries costs damages expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death personal injuries illness or loss of or damages to property or economic loss that result from the release or threatened release This subsection does not apply if a release or threatened release is caused by conduct of the response activity contractor that is negligent grossly negligent or that constitutes intentional misconduct

(2) Subsection (1) does not affect the liability of a person under any warranty under federal state or common law This subsection does not affect the liability of an employer that is a response activity contractor to any employee of the employer under law including any law relating to worker's compensation

(3) An employee of this state or a local unit of government that provides services relating to a response activity while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the response activity contractor under subsection (1)

(4) The defense provided by section 20127(1)(c) is not available to any person that may be liable under section 20126 with respect to any costs or damages caused by any act or omission of a response activity contractor Except as provided in this section this section does not affect the liability under this part or under any other federal or state law of any person

(5) As used in subsections (1) to (4)

(a) Response activity contract means a written contract or agreement entered into by a response activity contractor with 1 or more of the following

(i) The department

(ii) The department of public health

(iii) A person that may be liable under section 20126 that is carrying out an agreement to undertake a response activity under this part

(b) Response activity contractor means 1 or both of the following

(i) A person that enters into a response activity contract with respect to a release or threatened release and is carrying out the terms of a contract

(ii) A person that is retained or hired by a person described in subparagraph (i) to provide any service relating to a response activity

(6) Notwithstanding any other provision of law a person is not liable for response activity costs or damages that result from an act or a failure to act in the course of rendering care assistance or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on scene coordinator or the director This subsection does not apply to any of the following

(a) A person that may be liable under section 20126 that is a responsible party

(b) An action with respect to personal injury or wrongful death

(c) A person that is grossly negligent or engages in willful misconduct

(7) A person that may be liable under section 20126 that is a responsible party is liable for any response activity costs and damages that another person is relieved of under subsection (6)

(8) As used in this subsection and subsections (6) and (7)

(a) Damages means damages of any kind for which liability may exist under the laws of this state resulting from arising out of or related to the release or threatened release of petroleum

(b) Federal on scene coordinator means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan or the official designated by the lead agency to coordinate and direct response activity under the national contingency plan

(c) National contingency plan means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act chapter 758 86 Stat 844 33 U S C 1321

(d) Petroleum means that term as it is defined in part 213

(e) Responsible party means a responsible party as defined under section 1001 of title I of the oil pollution act of 1990 Public Law 101 380 33 U S C 2701

(9) This section does not affect a plaintiff's burden of establishing liability under this part

Sec 20129 (1) If 2 or more persons acting independently cause a release or threat of release that results in response activity costs or damages for injury to destruction of or loss of natural resources and there is a reasonable basis for division of harm according to the contribution of each person each person is subject to liability under section 20126 only for the portion of the total harm that the person caused However a person seeking to limit its liability on the ground that the entire harm is capable of division has the burden of proof as to the divisibility of the harm and as to the apportionment of liability

(2) If 2 or more persons cause or contribute to an indivisible harm that results in response activity costs or damages for injury to destruction of or loss of natural resources each person is subject to liability under section 20126 for the entire harm

(3) A person may seek contribution from any other person that is liable or may be liable under section 20126 during or following a civil action brought under this part However a person that is participating in the allocation process described in section 20125 is not subject to a contribution action during the pendency of that allocation process This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action by the state under this part The court shall consider all of the following factors in allocating response activity costs and damages among liable persons

(a) Each person's relative degree of responsibility in causing the release or threat of release

(b) The principles of equity pertaining to contribution

(c) The degree of involvement of and care exercised by the person with regard to the hazardous substance

(d) The degree of cooperation by the person with federal state or local officials to prevent minimize respond to or remedy the release or threat of release

(e) Whether equity requires that the liability of some of the persons should constitute a single share

(4) If in an action for contribution under subsection (3) the court determines that all or part of a person's share of liability is uncollectible from that person then the court may reallocate any uncollectible amount among the other persons according to the factors listed in subsection (3) A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state

(5) A person that has resolved its liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 20126 unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) If the state obtains less than complete relief from a person that has resolved its liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 20126 that has not resolved its liabilities.

(7) A person that has resolved its liability to the state for some or all of a response activity in an administrative or judicially approved consent order may seek contribution from any person that is not a party to the consent order described in subsection (5).

(8) In an action for contribution under this section, the rights of any person that has resolved its liability to the state shall be subordinate to the rights of the state if the state files an action under this part.

Sec 20130 (1) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer from a person that may be liable under section 20126 to the state for evaluation or response activity costs or damages for a release or threat of release to any other person the liability imposed under this part. This section does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this part.

(2) This part does not bar a cause of action that a person subject to liability under this part or a guarantor has or would have by reason of subrogation or otherwise against any person.

Sec 20131 (1) Except as provided in subsection (2), the liability under this part for each release or threat of release shall not exceed the total of all the costs of response activities, fines, and exemplary damages, plus \$50,000,000 damages for injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(2) Notwithstanding the limitations in subsection (1), the liability of a person under this part shall be the full and total costs and damages listed in subsection (1) in either of the following circumstances:

(a) The release or threatened release of a hazardous substance was the result of willful misconduct or gross negligence of the party.

(b) The primary cause of the release or threat of release was a knowing violation of applicable safety, construction, or operating standards or regulations.

Sec 20132 (1) The state may provide a person with a covenant not to sue concerning any liability to the state under this part, including future liability, resulting from a release or threatened release addressed by response activities, whether that action is on a facility or off a facility, if each of the following is met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue would expedite response activity consistent with rules promulgated under this part.

(c) There is full compliance with a consent order under this part for response to the release or threatened release concerned.

(d) The response activity has been approved by the department.

(2) The state shall provide a person to which the department is authorized under subsection (1) to issue a covenant not to sue for the portion of response activity described in subdivision (a) or (b) with a covenant not to sue with respect to future liability to the state under this part for a future release or threatened release, and a person provided the covenant not to sue is not liable to the state under section 20126 with respect to that release or threatened release at a future time. The portion of response activity to which the covenant not to sue pertains is either of the following:

(a) The transport and secure disposition off site of hazardous substances in a facility meeting the requirements of sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6924 and 6925, if the department has required off site disposition and has rejected proposed remedial action that is consistent with the rules promulgated under this part and that does not include off site disposition.

(b) The treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of the substances, so that, in the judgment of the department, the substances no longer present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment, nor by product of the treatment or destruction process presents any significant hazard to the public health, safety, or welfare, or the environment, and all by products are themselves treated, destroyed, or contained in a manner that assures that the by products do not present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment.

(3) A covenant not to sue concerning future liability to the state shall not take effect until the department certifies that remedial action has been completed in accordance with the requirements of this part at the facility that is the subject of the covenant

(4) In assessing the appropriateness of a covenant not to sue granted under subsection (1) and any condition to be included in a covenant not to sue under subsection (1) or (2) the state shall consider whether the covenant or condition is in the public interest on the basis of factors such as the following

(a) The effectiveness and reliability of the remedial action in light of the other alternative remedial actions considered for the facility concerned

(b) The nature of the risks remaining at the facility

(c) The extent to which performance standards are included in the consent order

(d) The extent to which the response activity provides a complete remedy for the facility including a reduction in the hazardous nature of the substances at the facility

(e) The extent to which the technology used in the response activity is demonstrated to be effective

(f) Whether the fund or other sources of funding would be available for any additional response activities that might eventually be necessary at the facility

(g) Whether response activity will be carried out in whole or in significant part by persons that may be liable under section 20126

(5) A covenant not to sue under this section is subject to the satisfactory performance by a person of its obligations under the agreement concerned

(6) Except for the portion of the remedial action that is subject to a covenant not to sue under subsection (2) or under section 20125 a covenant not to sue a person concerning future liability to the state shall include an exception to the covenant that allows the state to sue that person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown at the time the department certifies under subsection (3) that remedial action has been completed at the facility concerned

(7) In extraordinary circumstances the state may determine after assessment of relevant factors such as those referred to in subsection (4) and volume toxicity mobility strength of evidence ability to pay litigative risks public interest considerations precedential value and inequities and aggravating factors not to include the exception in subsection (6) if other terms conditions or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that the public health and the environment will be protected from any future releases at or from the facility

(8) The state may include any provisions providing for future enforcement action under section 20119 or 20137 that in the discretion of the department are necessary and appropriate to assure protection of the public health safety welfare and the environment

Sec 20133 (1) The state may provide a person that proposes to redevelop or reuse a facility including a vacant manufacturing or abandoned industrial site with a covenant not to sue concerning liability under section 20126 if all of the following conditions are met

(a) The covenant not to sue is in the public interest

(b) The covenant not to sue will yield new resources to facilitate implementation of response activity

(c) The covenant not to sue would expedite response activity consistent with the rules promulgated under this part

(d) Based upon available information the department determines that the redevelopment or reuse of the facility is not likely to do any of the following

(i) Exacerbate or contribute to the existing release or threat of release

(ii) Interfere with the implementation of response activities

(iii) Pose health risks related to the release or threat of release to persons that may be present at or in the vicinity of the facility

(e) The proposal to redevelop or reuse the facility has economic development potential

(2) A person that requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction of the state all of the following

(a) That the person is financially capable of redeveloping and reusing the facility in accordance with the covenant not to sue

(b) That the person is not affiliated in any way with any person that may be liable under section 20126 for a release or threat of release at the facility

(c) That the redevelopment or reuse of the facility by the person will not result in a release or threat of release

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a facility and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the facility including but not limited to those claims arising from any of the following

(a) The release or threat of release of any hazardous substance resulting from the redevelopment or reuse of the facility

(b) Exacerbation or contribution of the existing release or threat of release

(c) Interference with or failure to cooperate with the department its contractors or other persons conducting response activities approved by the department

(d) Failure to exercise due care with respect to any release or threat of release at the facility

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department its contractors or other persons performing response activity related to the release or threat of release addressed by the covenant not to sue for the purposes listed in section 20117(3)(a) through (e) and for monitoring compliance with the covenant not to sue

Sec 20134 (1) The department and the attorney general may enter into a consent order with a person liable under section 20126 or any group of persons liable under section 20126 to perform a response activity if the department and the attorney general determine that the persons liable under section 20126 will properly implement the response activity and that the consent order is in the public interest will expedite effective response activity and will minimize litigation The consent order may as determined appropriate by the department and the attorney general provide for implementation by a person or any group of persons liable under section 20126 of any portion of response activity at the facility A decision of the attorney general not to enter into a consent order under this part is not subject to judicial review

(2) Whenever practicable and in the public interest as determined by the department the department and the attorney general shall as promptly as possible reach a final settlement with a person in an administrative or civil action under this part if this settlement involves only a minor portion of the response costs at the facility concerned and in the judgment of the department and the attorney general the conditions in either of the following are met

(a) Both of the following are minimal in comparison to other hazardous substances at the facility

(i) The amount of the hazardous substances contributed by that person to the facility

(ii) The toxic or other hazardous effects of the substances contributed by that person to the facility

(b) Except as provided in subsection (3) the person meets all of the following conditions

(i) The person is the owner of the real property on or in which the facility is located

(ii) The person did not conduct or permit the generation transportation storage treatment or disposal of any hazardous substance at the facility

(iii) The person did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission

(3) A settlement shall not be made under subsection (2)(b) if the person purchased the real property with actual or constructive knowledge that the property was used for the generation transportation storage treatment or disposal of a hazardous substance

(4) A settlement under subsection (2) may be set aside if information obtained after the settlement indicates that the person settling does not meet the conditions set forth in subsection (2)(a) or (b)

Sec 20134a (1) The state or a local unit of government that is exempt from the definition of owner under section 20101(s)(ii) and the definition of operator under section 20101(r)(ii) for a specific facility may transfer its exempt status for that facility to a subsequent purchaser of the facility or a person that obtains control of the facility through a lease or other instrument if all of the following exist

(a) At the time of transfer the person to which the facility is to be transferred is not a person that may be liable under section 20126 for a release or threat of release at the facility

(b) The state or local unit of government conducts or causes to be conducted an environmental assessment of the property that includes all of the following

(i) An evaluation of the nature and extent of the release or threat of release at the facility and an inspection of all permanent structures on the property for the presence of a hazardous substance

(ii) An estimate of total response activity costs at the facility necessary to implement remedial action under this part and the rules promulgated under this part

(iii) Adequate information to establish use restrictions for the facility that assure protection of public health and safety

(c) The state or local unit of government establishes that the purchaser or person to which the facility may be transferred proposes to develop the facility pursuant to an economic development plan approved by the governing body of the local unit of government in which the facility is located and in a manner that is not inconsistent with response activities that would need to be performed at the site to complete a remedial action as provided for in this part

(d) The state or local unit of government documents that sufficient funds will be generated from the sale of the facility or from other identified sources to pay for response activity at the facility that is consistent with the proposed use of the facility and at a minimum assures protection of public health and safety. If these revenues are not sufficient to pay for complete remedial action as provided in this part and the rules promulgated under this part, the state or local unit of government shall propose deed restrictions on future uses of the facility and any institutional controls necessary to assure the protection of public health and safety.

(e) The department approves the transfer pursuant to subsection (2).

(2) If a state agency or a local unit of government decides to transfer an exemption from liability pursuant to this section, the state agency or local unit of government shall submit a written proposal for transfer to the department documenting compliance with this section. Upon submittal of a proposal for transfer, the state agency or local unit of government shall at a minimum publish notice of the proposal for transfer, the proposed use of the facility, and the opportunity for a public meeting in a newspaper of general circulation in the area in which the facility is located. Upon written request, the department shall hold a public meeting regarding the proposal for transfer. If a public meeting is requested, the state agency or local unit of government proposing the transfer shall provide a location for holding the public meeting and shall provide notice of the time, date, and place of the public meeting. Within 45 days following publication of the notice or the holding of a public meeting, if required, the department shall determine whether the proposed transfer is consistent with the requirements of this section and shall notify in writing the state agency or local unit of government proposing the transfer of its determination and any required actions to restrict future property uses.

(3) Following the transfer of an exemption from liability under this section, the exemption from liability may be transferred to a subsequent purchaser if all of the following conditions are met:

(a) The person transferring the facility complies with section 20116.

(b) The response activities that were proposed for the facility at the time of the original transfer of the exemption from liability have been completed.

(c) Any required deed restrictions on future uses of the facility are recorded with the register of deeds for the county in which the facility is located.

(4) The transfer of an exemption under this section does not protect an owner or operator from liability for either a subsequent release or for activities or uses prohibited by deed restrictions required under this section.

(5) Notwithstanding any other provision of this section, a written proposal for transfer under subsection (2) shall be submitted to the department prior to December 28, 1996. A transfer of an exemption from liability is invalid if the proposal for its transfer was not submitted in compliance with this subsection.

Sec 20135 (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from a facility or threat of release from a facility, other than a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare, or the environment from a release or threatened release in relation to that facility.

(b) A person that is alleged to be in violation of this part or a rule promulgated or order issued under this part in relation to that facility.

(c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part.

(2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare, or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned.

(3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist:

(a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following:

- (i) The department
- (ii) The attorney general
- (iii) The proposed defendants

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the facility or to require compliance with this part or a rule or an order under this part

(4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days notice to the directors of the plaintiff's intent to sue the basis for the suit and the relief to be requested

(5) In issuing a final order in an action brought pursuant to this section the court may award costs of litigation including reasonable attorney and expert witness fees to the prevailing or substantially prevailing party if the court determines that an award is appropriate

(6) This section does not affect or otherwise impair the rights of any person under federal state or common law

(7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release threatened release or other violation occurred An action under subsection (1)(c) shall be brought in the circuit court for Ingham county

Sec 20136 (1) The department may promulgate rules to establish a grant program to provide grants to individuals that may be adversely affected by hazardous substances from a site that is listed under section 20105 and that live within 2 miles of the listed site The grants shall be provided only to enable individuals to obtain expert advice and technical assistance regarding the response activities at sites that affect them Grants shall not be issued under this section until the department promulgates rules to establish criteria for the issuing of grants In determining which applicants receive grants the department shall consider the potential health impacts of the site on the applicant the complexity and scope of the necessary remedial action at the site and the ability of the applicant to obtain expert advice and technical assistance in the absence of the grant

(2) Persons that may be liable under section 20126 are not eligible for grants under this section

(3) Grants shall be provided under this section subject to the availability of appropriations from the general fund

Sec 20137 (1) In addition to other relief authorized by law the attorney general may on behalf of the state commence a civil action seeking 1 or more of the following

(a) Temporary or permanent injunctive relief necessary to protect the public health safety or welfare or the environment from the release or threat of release

(b) Recovery of state response activity costs pursuant to section 20126

(c) Damages for the full value of injury to destruction of or loss of natural resources resulting from the release or threat of release including the reasonable costs of assessing the injury destruction or loss resulting from the release or threat of release

(d) A declaratory judgment on liability for future response costs and damages

(e) A civil fine of not more than \$1 000 00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(4) A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with the request of the department

(f) A civil fine of not more than \$10 000 00 for each day of violation of this part or a rule promulgated under this part A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part or a rule promulgated under this part

(g) A civil fine of not more than \$25 000 00 for each day of violation of a judicial order or an administrative order issued pursuant to section 20119 including exemplary damages pursuant to section 20119

(h) Enforcement of an administrative order issued pursuant to section 20119

(i) Enforcement of information gathering and entry authority pursuant to section 20117

(j) Enforcement of the reporting requirements under section 20114(2) and (6)

(k) Any other relief necessary for the enforcement of this part

(2) If an action is brought under this part by a plaintiff other than the attorney general the plaintiff shall at the time of filing provide a copy of the complaint to the attorney general

(3) Except as otherwise provided in this part an action brought under this part may be brought in the circuit court for the county of Ingham in the county in which the defendant resides has a place of business or in which the registered office of a defendant corporation is located or in the county where the release occurred

(4) A state court does not have jurisdiction to review challenges to a response activity selected or approved by the department under this part or to review an administrative order issued under this part in any action except an action that is 1 of the following

(a) An action to recover response costs damages or for contribution

(b) An action by the state to enforce an administrative order under this part or by any other person under section 20135(1)(b) to enforce an administrative order or to recover a fine for violation of an order

(c) An action pursuant to section 20119(5) for review of a decision by the department denying or limiting reimbursement

(d) An action pursuant to section 20135 challenging a response activity selected or approved by the department if the action is filed after the completion of the response activity

(e) An action by the state pursuant to section 20126(6) to compel response activity

(5) In any judicial action under this part judicial review of any issues concerning the selection or adequacy of a response activity taken ordered or agreed to by the state are limited to the administrative record If the court finds that the record is incomplete or inadequate the court may consider supplemental material in the action In considering objections raised in a judicial action under this part the court shall uphold the state's decision in selecting a response activity unless the objecting party can demonstrate based on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with law In reviewing alleged procedural errors the court may disallow costs or damages only to the extent the errors were so serious and related to matters of such central importance that the activity would have been significantly changed had the errors not been made

(6) In an action commenced under this part any person may intervene as a matter of right if that person claims an interest relating to the subject matter of the action and is situated so that the disposition of the action may as a practical matter impair or impede the person's ability to protect that interest unless the court finds the person's interest is adequately represented by an existing party

Sec 20138 (1) All unpaid costs and damages for which a person is liable under section 20126 constitute a lien in favor of the state upon a facility that has been the subject of response activity by the state and is owned by that person A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded A lien under this subsection arises when the state first incurs costs for response activity at the facility for which the person is responsible

(2) If the attorney general determines that the lien provided in subsection (1) is insufficient to protect the interest of the state in recovering response costs at a facility the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following

(a) A lien upon the facility subject to response activity that takes priority over all other liens and encumbrances that are or have been recorded on the facility

(b) A lien upon real or personal property or rights to real or personal property other than the facility owned by the person described in subsection (1) having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded However the following are not subject to the lien provided for in this subdivision

(i) Assets of a qualified pension plan or individual retirement account under the internal revenue code

(ii) Assets held expressly for the purpose of financing a dependent's college education

(iii) Up to \$500,000.00 in nonbusiness real or personal property or rights to nonbusiness real or personal property except that not more than \$25,000.00 of this amount may be cash or securities

(3) A petition submitted pursuant to subsection (2) shall set forth with as much specificity as possible the type of lien sought the property that would be affected and the reasons the attorney general believes the lien is necessary Upon receipt of a petition under subsection (2) the court shall promptly schedule a hearing to determine whether the petition should be granted Notice of the hearing shall be provided to the attorney general the property owner and any persons holding liens or perfected security interests in the real property subject to response activity

(4) In addition to the lien provided in subsections (1) and (2) if the state incurs costs for response activity that increases the market value of real property that is the location of a release or threatened release the increase in value caused by the state funded response activity to the extent the state incurred unpaid costs and damages constitutes a lien in favor of the state upon the real property This lien has priority over all other liens or encumbrances that are or have been recorded upon the property

(5) A lien provided in subsection (1) (2) or (4) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located A lien upon personal property provided in subsection (2) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property In addition the department shall at the time of the filing of the notice of lien provide a copy of the notice of lien to the owner of that property by certified mail

(6) A lien under this section continues until the liability for the costs and damages is satisfied or resolved or becomes unenforceable through the operation of the statute of limitations provided in section 20140

(7) Upon satisfaction of the liability secured by the lien the department shall file a notice of release of lien in the same manner as provided in subsection (5)

(8) If the department at the time or prior to the time of filing the notice of release of lien pursuant to subsection (7) has made a determination that the person liable under section 20126 has completed all of the response activity at the real property pursuant to the approved remedial action plan the department shall execute and file with the notice of release of lien a document stating that all response activities required in the approved remedial action plan have been completed

Sec 20139 (1) The penalties provided in this section only apply to a release that occurs after July 1 1991

(2) A person that knowingly releases or causes the release of a hazardous substance contrary to applicable federal state or local requirements or contrary to any permit or license held by that person and that knew or should have known that the release could cause personal injury or property damage or that intentionally makes a false statement representation or certification in any application record report plan or other document filed or required to be maintained under this part and rules promulgated under this part or that intentionally renders inaccurate any monitoring device or record required to be maintained under this part or a rule promulgated under this part is guilty of a felony and shall be fined not less than \$2 500 00 or more than \$25 000 00 for each violation The court may impose an additional fine of not more than \$25 000 00 for each day during which the release occurred If the conviction is for a violation committed after a first conviction of the person under this subsection the court shall impose a fine of not less than \$25 000 00 and not more than \$50 000 00 per day of violation Upon conviction in addition to a fine the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part With the exception of the issuance of criminal complaints issuance of warrants and the holding of an arraignment the circuit court for the county in which the violation occurred has exclusive jurisdiction

(3) Upon a finding by the court that the action of a criminal defendant poses or posed a substantial endangerment to public health safety or welfare the court shall impose in addition to the penalties set forth in subsection (2) a fine of not less than \$1 000 000 00 and in addition to a fine a sentence of 5 years imprisonment

(4) To find a defendant criminally liable for substantial endangerment under subsection (3) the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following has occurred

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

(b) The defendant acted in gross disregard of the standard of care that any reasonable person would observe in similar circumstances

(5) Knowledge possessed by a person other than the defendant under subsection (4) may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information

(6) The department may pay an award of up to \$10 000 00 to an individual that provides information leading to the arrest and conviction of a person for a violation of this section The department shall promulgate rules that prescribe criteria for granting awards under this section An award shall not be made under this section until rules are promulgated prescribing the criteria for making awards Awards under this subsection may be paid from the Michigan environmental assurance fund if enabling legislation creating the fund is enacted into law

(7) Serious bodily injury means bodily injury that involves a substantial risk of death unconsciousness extreme physical pain protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member organ or mental faculty

Sec 20140 (1) Except as provided in subsection (2) the limitation period for filing actions under this part is as follows

(a) For the recovery of response activity costs and natural resources damages pursuant to section 20126(2)(a) (b) or (c) within 6 years of initiation of physical on site construction activities for the remedial action selected or approved by the department at a facility except as provided in subdivision (b)

(b) For 1 or more subsequent actions for recovery of response activity costs pursuant to section 20126 at any time during the response activity if commenced not later than 3 years after the date of completion of all response activity at the facility

(c) For civil fines under this part within 3 years after discovery of the violation for which the civil fines are assessed

(2) For recovery of response activity costs and natural resources damages that accrued prior to July 1 1991 the limitation period for filing actions under this part is July 1 1994

Sec 20141 (1) By July 1 1993 a citizens review board shall be established The review board shall consist of 6 members of the general public and the director of the legislative service bureau division of science and technology that shall serve as the nonvoting chairperson The public members of the review board shall reflect a cross section of small business large corporate business local units of government and environmental organizations Specifically the review board shall have 3 members representative of the environmental community and 3 members representative of business interests or local units of government or both

(2) Two members of the review board shall be appointed by the governor 2 members shall be appointed by the speaker of the house of representatives and 2 members shall be appointed by the senate majority leader

(3) The review board shall submit to the standing committees of the senate and the house of representatives that primarily consider issues pertaining to the protection of natural resources and the environment a report that contains a full review of the operation of the amendments to former Act No 307 of the Public Acts of 1982 that became effective July 1 1991 The report shall include a summary of the effectiveness of those amendments recommendations for amendments to this part and other information that the legislative committees described in this subsection may request at the time of the establishment of the review board

(4) The department shall provide the review board with both of the following

(a) The department's recommendations regarding amendments to this part that the department concludes would improve this part

(b) The department's evaluation of the effectiveness of this part

(5) Within 6 months after the establishment of the review board the review board shall issue its report as provided in this section and the review board shall be disbanded Funding for the review board shall be provided from the fund and shall not exceed \$100 000 00 Members of the review board shall receive as compensation a per diem allotment equal to the per diem received by the commission and shall receive actual and necessary expenses incurred by review board members in carrying out their responsibilities under this section

PART 203 VOLUNTEER IMMUNITY

Sec 20301 As used in this part

(a) Hazardous material means a chemical or other material which is or may become injurious to the public health safety or welfare or to the environment

(b) Remedial action means an activity to protect the public health safety welfare or the environment and includes but is not limited to cleanup removal containment or isolation of spills

(c) Spill means any leaking pumping pouring emptying emitting discharging escaping leaching or disposing of a hazardous material in a quantity which is or may become injurious to the public health safety welfare or to the environment

(d) Volunteer means an individual who is designated as a volunteer by the public entity designated by the governor and is acting solely on behalf of that entity without remuneration beyond reimbursement for out of pocket expenses in connection with the assistance

(e) Waters of the state means all groundwaters lakes rivers streams and other watercourses including the Great Lakes and their connecting waterways within the jurisdiction of the state

Sec 20302 (1) A volunteer who assists in remedial actions associated with a spill of a hazardous material into the waters of the state following a declaration by the governor pursuant to section 3 of the emergency preparedness act Act No 390 of the Public Acts of 1976 being section 30 403 of the Michigan Compiled Laws that the spill has caused a state of disaster is not liable in a civil action for damages resulting from an act or omission arising out of and in the course of the volunteer's good faith rendering of that assistance

(2) Subsection (1) does not apply to a volunteer whose act or omission was the result of the volunteer's gross negligence or willful misconduct

CHAPTER 8 UNDERGROUND STORAGE TANKS

PART 211 UNDERGROUND STORAGE TANK REGULATIONS

Sec 21101 As used in this part

(a) Department means the department of natural resources underground storage tank division

(b) Fund means the underground storage tank regulatory enforcement fund created in section 21104

(c) Local unit of government means a municipality county or governmental authority or any combination of municipalities counties or governmental authorities

(d) Natural gas means natural gas synthetic gas and manufactured gas

(e) Operator means a person who is presently or was at the time of a release in control of or responsible for the operation of an underground storage tank system

(f) Owner means a person who holds or at the time of a release who held a legal equitable or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located including but not limited to a trust vendor vendee lessor or lessee However owner does not include a person or a regulated financial institution who without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production refining or marketing relating to the underground storage tank system is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located This exclusion does not apply to a grantor beneficiary remainderman or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust

(g) Regulated substance means any of the following

(i) A substance defined in section 101(14) of title I of the comprehensive environmental response compensation and liability act of 1980 Public Law 96 510 42 U S C 9601 but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act title II of Public Law 89 272 42 U S C 6921 to 6931 and 6933 to 6939b

(ii) Petroleum including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute) Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances and petroleum based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation conversion upgrading or finishing such as motor fuels jet fuels distillate fuel oils residual fuel oils lubricants and petroleum solvents

(iii) A substance listed in section 112 of part A of title I of the clean air act chapter 360 84 Stat 1685 42 U S C 7412

(h) Release means any spilling leaking emitting discharging escaping leaching or disposing from an underground storage tank system into groundwater surface water or subsurface soils

(i) Underground storage tank system means a tank or combination of tanks including underground pipes connected to the tank or tanks which is was or may have been used to contain an accumulation of regulated substances and the volume of which including the volume of the underground pipes connected to the tank or tanks is 10% or more beneath the surface of the ground An underground storage tank system does not include any of the following

(i) A farm or residential tank of 1 100 gallons or less capacity used for storing motor fuel for noncommercial purposes

(ii) A tank used for storing heating oil for consumptive use on the premises where the tank is located

(iii) A septic tank

(iv) A pipeline facility including gathering lines regulated under either of the following

(A) The natural gas pipeline safety act of 1968 Public Law 90 481 49 U S C Appx 1671 to 1677 1679a to 1682 and 1683 to 1687

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979 title II of Public Law 96 129 49 U S C Appx 2001 to 2015

(v) A surface impoundment pit pond or lagoon

(vi) A storm water or wastewater collection system

(vii) A flow through process tank

(viii) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations

(ix) A storage tank situated in an underground area such as a basement cellar mineworking drift shaft or tunnel if the storage tank is situated upon or above the surface of the floor

(x) Any pipes connected to a tank that is described in subparagraphs (i) to (xvi)

(xi) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act title II of Public Law 89 272 42 U S C 6921 to 6931 and 6933 to 6939b or a mixture of such hazardous waste and other regulated substances

(xii) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act 33 U S C 1317 and 1342

(xiii) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks

- (xv) An underground storage tank system with a capacity of 110 gallons or less
- (xv) An underground storage tank system that contains a de minimis concentration of regulated substances
- (xvi) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use

Sec 21102 (1) A person who is the owner of an underground storage tank system shall register and annually renew the registration on the underground storage tank system with the department. However, the owner or operator of an underground storage tank closed prior to January 1, 1974, in compliance with the fire prevention code Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, and the rules promulgated under that act, is exempt from the registration requirements of this section.

(2) A person who is the owner of an underground storage tank system shall register the underground storage tank system with the department prior to bringing the underground storage tank system into use. Additionally, an installation registration form containing the information required by the department shall be submitted to the department at least 45 days prior to the installation of the underground storage tank system.

(3) The department shall accept the registration or renewal of registration of an underground storage tank system under this section only if the owner of the underground storage tank system pays the registration fee specified in subsection (8).

(4) Except as otherwise provided in subsections (5) and (6), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) shall notify the department of any change in the information required under section 3 or of the removal of an underground storage tank system from service.

(5) A person who is the owner of an underground storage tank system, the contents of which are changed routinely, may indicate all the materials that are stored in the underground storage tank system on the registration form described in section 21103. A person providing the information described in this subsection is not required to notify the department of changes in the contents of the underground storage tank system unless the material to be stored in the system differs from the information provided on the registration form.

(6) Except as otherwise provided in section 21103(2), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) is not required to notify the department of a test conducted on the tank system but shall furnish this information upon the request of the department.

(7) Upon the request of a local unit of government in which an underground storage tank system is located, the department shall forward a copy of registration or notification of change to the local unit of government where the underground storage tank system is located.

(8) Except as provided in section 21104(3), the owner of an underground storage tank system shall, upon registration or renewal of registration, pay a registration fee of \$100.00 for each underground storage tank included in that underground storage tank system. The department shall deposit all registration fees it collects into the fund.

(9) The department may promulgate rules that require proof of registration under this part to be attached to the underground storage tank system or to the property where the underground storage tank system is located.

(10) Except as otherwise provided in this subsection, an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed pursuant to rules promulgated under this part is exempt from the requirements of this section. However, the owner of an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed shall notify the department of the closure or removal pursuant to rules promulgated by the department. The owner of an underground storage tank system shall continue to pay registration fees on underground storage tanks that have been closed or removed until notification of the closure or removal is provided on the required form pursuant to these rules.

Sec 21103 (1) The registration required by section 21102(1) and (2) shall be provided either

(a) On a form provided by the department and in compliance with section 9002 of the solid waste disposal act, 42 U.S.C. 6991a

(b) On a form approved by the department and in compliance with section 9002 of the solid waste disposal act

(2) If there is a suspected or confirmed release from an underground storage tank system, the owner or operator of the underground storage tank system shall notify the department within 24 hours and, if requested by the department, shall file the following supplementary information, if known:

(a) The owner of the property where the underground storage tank system is located

(b) A history of the current and previous contents of the underground storage tank system, including the generic chemical name, chemical abstract service number, or trade name, whichever is most descriptive of the contents, and including the date or dates on which the contents were changed or removed

(c) A history of the monitoring procedures and leak detection tests and methods employed with respect to the underground storage tank system and the resulting findings

Sec 21104 (1) The underground storage tank regulatory enforcement fund is created in the state treasury. The fund may receive money as provided in this part and as otherwise provided by law. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used only by the department to enforce this part and the rules promulgated under this part and the rules promulgated under the fire prevention code Act No. 207 of the Public Acts of 1941 being sections 29.1 to 29.33 of the Michigan Compiled Laws pertaining to the delivery and dispensing operations of regulated substances.

(3) Notwithstanding section 21102(8), if at the close of any fiscal year the amount of money in the fund exceeds \$8,000,000.00, the department shall not collect a registration fee for the following year from existing underground storage tank systems. After the registration fee has been suspended under this subsection, it shall only be reinstated if at the close of any succeeding fiscal year the amount of money in the fund is less than \$4,000,000.00.

(4) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

Sec 21105 The department shall collect and evaluate the information obtained through the registration of underground storage tanks required by section 21102. Not later than September 30, 1987, the department shall provide to the legislature a report containing a compilation of the underground storage tank registration data and an assessment of the actual and potential environmental hazard posed by the tanks.

Sec 21106 The department shall promulgate rules relating to underground storage tank systems that are at least as stringent as the rules promulgated by the United States environmental protection agency under subtitle I of title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i. These rules shall include a requirement that the owner or operator of an underground storage tank system provide financial responsibility in the event of a release from the underground storage tank system.

Sec 21107 A person who installs or removes underground storage tank systems shall maintain pollution liability insurance with limits of not less than \$1,000,000.00 per occurrence.

Sec 21108 (1) The department shall enforce this part and the rules promulgated under this part.

(2) The department may delegate the authority to enforce this part and the rules promulgated under this part to a local unit of government that has sufficient employees who are certified by the department under subsection (3) as underground storage tank system inspectors. A local unit of government may apply for delegation under this section by submitting a resolution of the governing body of the local unit of government and an application containing the information required by the department. The department may revoke a delegation under this section for a violation of this part, the rules promulgated under this part, or a contract entered between the department and the local unit of government.

(3) The department may certify individuals who are qualified to enforce this part and the rules promulgated under this part as underground storage tank system inspectors. The department may revoke an individual's certification under this section for violating this part or rules promulgated under this part.

(4) If the department elects to delegate enforcement authority under subsection (2), the department shall promulgate rules that do both of the following:

(a) Establish criteria for delegation under subsection (2).

(b) Establish qualifications for certification of individuals as underground storage tank system inspectors under subsection (3).

(5) The department may contract with a local unit of government for the purpose of enforcing this part and the rules promulgated under this part.

(6) The department or a certified underground storage tank system inspector within his or her jurisdiction, at the discretion of the department or inspector and without a complaint and without restraint or liability for trespass, may at an hour reasonable under the circumstances involved enter into and upon real property including a building or premises where regulated substances may be stored for the purpose of inspecting and examining the property, buildings, or premises and their occupancies and contents to determine compliance with this part and the rules promulgated under this part.

(7) The department shall enhance its audit and inspection program to monitor the installation and operation of new underground storage tank systems or components to ensure that equipment meets minimum quality standards, that the installation is done properly, and that the monitoring systems are properly utilized.

(8) The department shall conduct a study regarding the causes of underground storage tank leaks and prepare a report making recommendations regarding upgrading underground storage tank system standards, establishing

timetables for the replacement of equipment and instituting any other practices or procedures which will minimize releases of regulated substances into the environment. The report shall be submitted by July 1, 1995 to the members of the legislature who are members of committees dealing with natural resource issues.

Sec 21109 (1) The department may, upon resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank system is being installed, require additional safeguards other than those specified in rules when the public health, safety, or welfare, or the environment is endangered.

(2) A local unit of government shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part.

(3) A local unit of government shall not enact or enforce a provision of an ordinance that requires a permit, license approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.

Sec 21110 (1) A person shall not knowingly deliver a regulated substance into an underground storage tank system that is not registered under this part.

(2) A person shall not repair or test an underground storage tank system that is not registered under this part.

Sec 21111 The following are deferred from regulation under this part until such time as the department determines that they should be regulated:

(a) Wastewater treatment tank systems

(b) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(c) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(d) Airport hydrant fuel distribution systems

(e) Underground storage tank systems with field constructed tanks

Sec 21112 (1) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$500.00 or both.

(2) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is subject to a civil fine of not more than \$5,000.00 for each underground storage tank system for each day of violation. A civil fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with this part and the rules promulgated under this part.

(3) A civil fine collected under subsection (2) shall be deposited into the fund.

Sec 21113 This part is repealed upon the expiration of 12 months after part 215 becomes invalid pursuant to section 21546(3).

PART 213 LEAKING UNDERGROUND STORAGE TANKS

Sec 21301 For purposes of this part, the words and phrases defined in sections 21302 and 21303 have the meanings ascribed to them in those sections.

Sec 21302 (1) Cleanup standards means the degree of cleanup required under R 299.5701 to R 299.5727 of the Michigan administrative code which are hereby incorporated by reference.

(2) Consultant means a person on the list of qualified underground storage tank consultants prepared pursuant to section 21542.

(3) Contamination means the presence of a regulated substance in soil or groundwater in a concentration that exceeds the higher of the following:

(a) Type A cleanup levels

(b) Type B cleanup levels

(4) Corrective action means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment or the taking of such other actions as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(5) De minimis spill means a spill of petroleum as that term is described in section 21303(3)(b) that contaminates not more than 20 cubic yards of soil per underground storage tank or 50 cubic yards of soil per location in which groundwater has not been affected by the spill and which is abated pursuant to section 21306

(6) Department means the department of natural resources underground storage tank division

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

(8) Local unit of government means a municipality county fire department or local health department as defined in section 1105 of the public health code Act No 368 of the Public Acts of 1978 being section 333 1105 of the Michigan Compiled Laws

Sec 21303 (1) Operator means a person who is presently or was at the time of a release in control of or responsible for the operation of an underground storage tank system

(2) Owner means a person who holds or at the time of a release who held a legal equitable or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located including but not limited to a trust vendor vendee lessor or lessee However owner does not include a person or a regulated financial institution who without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production refining or marketing relating to the underground storage tank system is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located This exclusion does not apply to a grantor beneficiary remainderman or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust

(3) Regulated substance means any of the following

(a) A substance defined in section 101(14) of title I of the comprehensive environmental response compensation and liability act of 1980 Public Law 96 510 42 U S C 9601 but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act title II of Public Law 89 272 42 U S C 6921 to 6931 and 6933 to 6939b

(b) Petroleum including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute) Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances and petroleum based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation conversion upgrading or finishing such as motor fuels jet fuels distillate fuel oils residual fuel oils lubricants and petroleum solvents

(c) A substance listed in section 112 of part A of title I of the clean air act chapter 360 84 Stat 1685 42 U S C 7412

(4) Release means any spilling leaking emitting discharging escaping or leaching from an underground storage tank system into groundwater surface water or subsurface soils Release does not include a de minimis spill

(5) Type A cleanup level means compliance with R 299 5707 of the Michigan administrative code

(6) Type B cleanup level means compliance with R 299 5709 to R 299 5715 of the Michigan administrative code

(7) Type C cleanup means a degree of cleanup that assures that a regulated substance does not pose an unacceptable risk considering a site specific assessment of risk as provided for in section 21317

(8) Underground storage tank system means a tank or combination of tanks including underground pipes connected to the tank or tanks which is was or may have been used to contain an accumulation of regulated substances and the volume of which including the volume of the underground pipes connected to the tank or tanks is 10% or more beneath the surface of the ground An underground storage tank system does not include any of the following

(a) A farm or residential tank of 1 100 gallons or less capacity used for storing motor fuel for noncommercial purposes

(b) A tank used for storing heating oil for consumptive use on the premises where the tank is located

(c) A septic tank

(d) A pipeline facility including gathering lines regulated under either of the following

(i) The natural gas pipeline safety act of 1968 Public Law 90 481 49 U S C Appx 1671 to 1677 1679a to 1682 and 1683 to 1687

(ii) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979 title II of Public Law 96 129 49 U S C Appx 2001 to 2015

(e) A surface impoundment pit pond or lagoon

- (f) A storm water or wastewater collection system
- (g) A flow through process tank
- (h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations
- (i) A storage tank situated in an underground area such as a basement cellar mineworking drift shaft or tunnel if the storage tank is situated upon or above the surface of the floor
- (j) Any pipes connected to a tank that is described in subdivisions (a) to (i)
- (k) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act title II of Public Law 89 272 42 U S C 6921 to 6931 and 6933 to 6939b or a mixture of such hazardous waste and other regulated substances
- (l) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act 33 U S C 1317 and 1342
- (m) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks
- (n) An underground storage tank system with a capacity of 110 gallons or less
- (o) An underground storage tank system that contains a de minimis concentration of regulated substances
- (p) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use
- (9) Vadose zone means the zone between the land surface and the water table or zone of saturation also known as unsaturated zone and zone of aeration

Sec 21304 (1) Actions taken by a consultant pursuant to this part do not limit or remove the liability of an owner or operator except as specifically provided for in this part

(2) Notwithstanding any other provision in this part if an owner or operator is a consultant or employs a consultant this part does not require the owner or operator to retain an outside consultant to perform the responsibilities required under this part Those responsibilities may be performed by an owner or operator who is a consultant or by a consultant employed by the owner or operator

Sec 21305 The department shall promulgate rules that provide for reporting of suspected releases from underground storage tank systems and confirmation of releases from underground storage tank systems

Sec 21306 (1) If a de minimis spill occurs the owner or operator or a consultant retained by the owner or operator may remove and properly dispose of the contaminated soils Following removal and disposal of contaminated soils a consultant retained by the owner or operator shall conduct sampling and testing of soils in the vicinity of the de minimis spill pursuant to the rules promulgated by the department If upon removal of not more than 20 cubic yards of soil per underground storage tank or 50 cubic yards of soil per location the sampling and testing of soils shows the presence of contamination the spill shall be reported as a release under section 21307 and corrective action shall be implemented as otherwise provided in this part If the results of the soil tests show no evidence of contamination the results shall be submitted to the department along with other information required by the department on a de minimis spill closure report provided by the department not later than 45 days after discovery of the de minimis spill

(2) A de minimis spill is not eligible to receive funding pursuant to part 215

Sec 21307 (1) Upon confirmation of a release from an underground storage tank system the owner or operator shall report the release and whether free product has been discovered to the department within 24 hours after its discovery Upon receipt of a release report under this subsection the department may investigate the release However an investigation by the department does not relieve the owner or operator of any responsibilities related to the release provided for in this part

(2) After a release has been reported under subsection (1) the owner or operator or a consultant retained by the owner or operator shall immediately begin and expeditiously perform all of the following initial response actions

- (a) Identify and mitigate fire explosion and vapor hazards
- (b) Take action to prevent further release of the regulated substance into the environment including removing the regulated substance from the underground storage tank system that is causing a release
- (c) Identify and recover free product If free product is identified do all of the following

(i) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the conditions at the site and in a manner that properly treats discharges or disposes of recovery by products as required by law

(ii) Use abatement of free product migration as a minimum objective for the design of the free product removal system

(iii) Handle any flammable products in a safe and competent manner to prevent fires or explosions

(iv) If a discharge is necessary in conducting free product removal obtain all necessary permits or authorization as required by law

(d) Excavate and contain treat or dispose of soils above the water table that are visibly contaminated with a regulated substance if the contamination is likely to cause a fire hazard or spread and increase the cost of corrective action

(e) Take any other action necessary to abate an immediate threat to public health safety or welfare or the environment

(f) If free product is discovered after the release was reported under subsection (1) report the free product discovery to the department within 24 hours of its discovery

(3) Within 20 days after a release has been reported under this section the consultant retained by the owner or operator shall submit an initial abatement report to the department that describes the conditions on the property in which the release occurred the status of free product and any actions taken pursuant to this section This report shall include the following information

(a) The facility address

(b) The name of the facility

(c) The name address and telephone number of facility compliance contact person

(d) The time and date of release discovery

(e) The time and date the release was reported to the department

(f) A site map that includes all of the following

(i) The location of each underground storage tank in the leaking underground storage tank system

(ii) The location of any other underground storage tank system on the site

(iii) The location of fill ports dispensers and other pertinent system components

(iv) Soil and groundwater sample locations if applicable

(v) The locations of nearby buildings roadways paved areas or other structures

(g) A description of how the release was discovered

(h) A list of the regulated substances the underground storage tank system contained when the release occurred

(i) A list of the regulated substances the underground storage tank system contained in the past other than those listed in subdivision (h)

(j) The location of nearby surface waters

(k) The location of nearby underground sewers and utility lines

(l) The component of the underground storage tank system from which the release occurred (e.g. piping underground storage tank overflow)

(m) Whether the underground storage tank system was emptied to prevent further release

(n) A description of what other steps were taken to prevent further migration of the regulated substance into the soil or groundwater

(o) Whether vapors or free product were found and what steps were taken to abate those conditions and the current levels of vapors or free product in nearby structures

(p) The extent to which all or part of the underground storage tank system or soil or both were removed

(q) Data from analytical testing of soil and groundwater samples

(r) A description of the free product investigation and removal if free product was present including all of the following

(i) A description of the actions taken to remove any free product

(ii) The name of the person or persons responsible for implementing the free product removal measures

(iii) The estimated quantity type and thickness of free product observed or measured in wells boreholes and excavations

(iv) The type of free product recovery system used

(v) Whether any discharge will take place on site or off site during the recovery operation and where this discharge will be located

(vi) The type of treatment applied to and the effluent quality expected from any discharge

(vii) The steps that have been or are being taken to obtain necessary permits for any discharge

(viii) The quantity and disposition of the recovered free product

(s) Identification of any other contamination on the site not resulting from the release and the source if known

(4) Immediately following initiation of initial response actions under this section the consultant retained by the owner or operator shall do all of the following

(a) Visually inspect the areas of any aboveground releases or exposed areas of belowground releases and prevent further migration of the released substance into surrounding soils groundwater and surface water

(b) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the underground storage tank system excavation zone and entered into subsurface structures

(c) If free product is discovered at any time at a location not previously identified under subsection (2)(c) report the discovery within 24 hours to the department and initiate free product recovery in compliance with subsection (2)(c) Within 20 days after discovery of free product submit a report to the department that includes the information required in subsection (4)(a) to (s)

Sec 21308 Within 60 days after a release has been reported under section 21307 the consultant retained by the owner or operator shall complete an initial assessment of the release In conducting the initial assessment the consultant shall do all of the following

(a) Using quantitative field screening techniques estimate the horizontal and vertical extent of on site soil contamination and if possible estimate the extent of off site contamination

(b) Determine the depth to groundwater via any of the following methods

(i) Utilizing an interface probe/water meter in a hole made by hydraulically driven equipment

(ii) Utilizing an interface probe/water meter in a hole made by drilling equipment

(iii) Measuring the stabilized groundwater depth in an excavation

(c) Identify potential migration and exposure pathways and receptors

(d) Estimate the amount of soil in the vadose zone that is contaminated

(e) Upon completion of subdivisions (a) through (d) submit a report of the findings to the department

(f) If the on site initial assessment under this section indicates that off site soil or groundwater may be affected submit a plan that identifies the steps that have been taken or will be taken including an implementation schedule to expeditiously secure access to off site properties to complete the delineation of the extent of the release

Sec 21309 Within 75 days after a release has been reported under section 21307 if the estimated volume of soil affected by a release identified in the initial assessment under section 21308 is not more than 100 cubic yards per underground storage tank and not more than 500 cubic yards per location the initial assessment indicates groundwater has not been affected by a release and the owner or operator intends to implement a type A or type B cleanup the consultant retained by the owner or operator shall submit to the department a report that describes the corrective action that will be undertaken including a proposed schedule for completion of corrective action If the requirements of this section are met the contaminated soil may be removed and disposed of in a landfill if appropriate as provided by law

Sec 21310 (1) If the total estimated volume of soil affected by a release as identified in the initial assessment under section 21308 exceeds 100 cubic yards per underground storage tank system or 500 cubic yards per location and groundwater is not affected the consultant retained by the owner or operator shall prepare within 150 days after a release has been reported under section 21307 a soil feasibility analysis that conforms to R 299 5701 to R 299 5715 and R 299 5721 to R 299 5727 of the Michigan administrative code and does all of the following

(a) Identifies technically feasible and reasonably practical on site and off site corrective action alternatives to remediate contaminated soils including alternatives that permanently and significantly reduce the volume toxicity and mobility of the regulated substances

(b) Describes the costs associated with each corrective action alternative

(c) Describes the effectiveness and feasibility of each corrective action alternative in meeting cleanup standards

(d) Identifies the time necessary to implement and complete each corrective action alternative

(e) Identifies the preferred corrective action alternative based upon subdivisions (a) through (d) and includes an implementation schedule for completion of the corrective action

(2) For sites in which a soil feasibility analysis was prepared in accordance with subsection (1) within 210 days after a release has been reported under section 21307 the consultant retained by the owner or operator shall prepare a soil remediation corrective action plan including a schedule to implement the soil feasibility analysis recommendation of subsection (1)(e)

(3) If the preferred corrective action alternative is a type A or type B cleanup a consultant retained by the owner or operator shall implement the corrective action plan prepared under this section in accordance with the schedule included in the plan. If the preferred corrective action alternative is a type C cleanup a consultant retained by the owner or operator shall prepare and submit a type C corrective action plan to the department pursuant to section 21317

Sec 21311 (1) If the initial assessment under section 21308 indicates that a release of a regulated substance may have contaminated groundwater within 150 days after the release was reported under section 21307 a consultant retained by the owner or operator shall complete a phase I hydrogeological study to verify groundwater contamination including the installation of 1 monitoring well downgradient of the source of the release 1 monitoring well hydraulically up gradient of the source of the release and 1 monitoring well hydraulically downgradient in the vicinity of the release unless the consultant determines that more monitoring wells are needed. If the source of the release is more than 100 feet from the border of the property in which the underground storage tank system is located up to 3 additional wells may be installed hydraulically downgradient near the property line to establish whether contamination has migrated off of the property. The phase I hydrogeological study shall include all of the following

(a) A determination of groundwater flow rate and direction

(b) Laboratory analytical data sufficient to confirm if groundwater is contaminated based upon the regulated substance involved in the release

(c) The vertical distribution of contaminants

(2) If the phase I hydrogeological study under subsection (1) has not delineated the horizontal and vertical extent of the contamination a consultant retained by the owner or operator shall prepare and submit within 210 days after the release was reported under section 21307 a work plan including an implementation schedule for conducting a phase II hydrogeological study to determine the vertical and horizontal extent of the contamination. Upon completion of the phase II work plan a consultant retained by the owner or operator shall implement the phase II hydrogeological study in accordance with the completion schedule in the work plan. Within 90 days after delineating the horizontal and vertical extent of the contaminant plume the consultant shall prepare a soil and groundwater feasibility analysis that does all of the following

(a) Identifies on site and off site corrective action alternatives to remediate contaminated soil and groundwater for each cleanup type including alternatives that permanently and significantly reduce the volume toxicity and mobility of the regulated substances

(b) Describes the costs associated with each corrective action alternative including alternatives that permanently and significantly reduce the volume toxicity and mobility of the regulated substances

(c) Describes the effectiveness and feasibility of each corrective action alternative in meeting cleanup standards

(d) Identifies the time necessary to implement and complete each corrective action alternative

(e) Identifies the preferred corrective action alternative based upon subdivisions (a) through (d) and includes an implementation schedule for completion of the corrective action

(3) For sites in which a soil and groundwater feasibility analysis was prepared in accordance with subsection (2) within 90 days of completion of the soil and groundwater feasibility analysis a consultant retained by the owner or operator shall prepare a soil and groundwater remediation corrective action plan in accordance with the soil and groundwater feasibility analysis recommendation of subsection (2)(e). A corrective action plan prepared under this section shall include a schedule for implementation that is designed to implement the preferred corrective action alternative identified in the soil and groundwater feasibility analysis. The corrective action plan shall propose corrective action measures that conform with R 299 5701 to R 299 5727 of the Michigan administrative code. If the preferred corrective action alternative is a type A or type B cleanup a consultant retained by the owner or operator shall immediately implement the corrective action plan prepared under this section in accordance with the schedule included in the plan. If the preferred corrective action alternative is a type C cleanup a consultant retained by the owner or operator shall prepare and submit a type C corrective action plan to the department pursuant to section 21317

(4) Upon completion the consultant retained by the owner or operator shall immediately submit a copy of each of the following to the department

(a) The soil feasibility analysis

(b) The phase I hydrogeological study

(c) The phase II hydrogeological work plan and phase II hydrogeological study

(d) The soil and groundwater feasibility analysis

(e) The corrective action plan

Sec 21312 (1) An owner or operator of a petroleum underground storage tank system may delay initiation of corrective action measures at 1 or more lower priority sites for a period of 12 months after the horizontal and vertical extent of the soil and groundwater contamination has been delineated if all of the following additional conditions are met

(a) Corrective action measures are being implemented in accordance with this part at all high priority sites for which the owner or operator is responsible

(b) The owner or operator or a consultant retained by the owner or operator has provided notice to the owners of all off site property onto which contamination has migrated. This notice shall inform the owner of the property of the existence, type, and extent of the contamination; that the owner or operator has designated the site a low priority site pursuant to this section; the month and year corrective action to remediate the contamination is projected to begin; the name, address, and telephone number of the contact person; and that during this period prior to conducting any activities that require excavation of soil or well installation, the off site property owner should exercise appropriate precautions and shall contact the owner or operator. If it is anticipated that corrective action will not begin within 60 days of the date provided in the notice, the owner or operator or a consultant retained by the owner or operator shall provide an updated notice of when corrective action is projected to begin.

(c) No contamination has migrated off site or, if contamination has migrated off site, potable water for all users within a 1/2 mile radius of the furthest extent of migration of a regulated substance from the release are supplied by a type I public water supply and any source for the type I public water supply, either a well or surface water intake, is not located within 1/2 mile of the furthest extent of migration of a regulated substance from the release.

(2) Corrective action may be deferred under this section for only one 12 month period unless groundwater sampling during this 12 month period shows evidence of natural attenuation. If a consultant retained by the owner or operator determines that groundwater sampling shows evidence of natural attenuation, corrective action may be extended for an additional 12 months.

(3) An owner or operator who delays initiation of corrective action measures under this section shall monitor the groundwater at the lower priority site and off site property, if applicable, on a quarterly basis and if monitoring shows that concentrations of regulated substances in groundwater exceed 1 or more type B criteria and the conditions in subsection (1)(c) are not met, the owner or operator shall immediately retain a consultant to implement corrective action measures as otherwise required under this part.

(4) This section does not limit the ability of the department to take any actions as otherwise provided by law.

(5) As used in this section:

(a) Exposure point means any location at which it is likely that exposure to regulated substances may occur under the current use of the property including, but not limited to, groundwater wells, locations where groundwater discharges to surface water, and a basement or other confined space.

(b) High priority site means a site which has free product or which meets any of the following conditions:

(i) An exposure point is present off site less than 100 feet from the furthest extent of migration of a regulated substance from the release.

(ii) Contaminated soil is present off site at a depth of 2 feet or less on property that is not commercial or industrial.

(iii) Hydraulic conductivity at the site as determined by a phase II hydrogeological study pursuant to section 21311 is equal to or greater than 1×10^{-5} centimeters per second.

(iv) For sites that are eligible for funding under part 215, a delay in the initiation of corrective action will result in increased corrective action costs to the Michigan underground storage tank financial assurance fund created in part 215. To assure that the Michigan underground storage tank financial assurance fund does not incur increased costs, the owner or operator may agree to pay for any increased costs associated with the delay.

(v) The department determines that delaying corrective action poses a threat to the public health, safety, or welfare or the environment.

(c) Lower priority site means a site that does not meet the conditions of a high priority site under subdivision (b).

Sec 21313 (1) Following completion of corrective action measures under section 21309, 21310, or 21311 in which a type A or type B cleanup was implemented, the owner or operator shall retain a consultant to demonstrate through sampling and testing of soils and groundwater that all soils and groundwater affected by the release have been remediated to the respective cleanup standards.

(2) If the sampling and testing conducted under subsection (1) demonstrates that cleanup standards have been met, the consultant shall submit a release closure report to the department. The release closure report shall include adequate soil and groundwater data to show that cleanup standards have been met at all points in the affected media.

(3) Within 60 days after receipt of a release closure report under subsection (2), the department shall, prior to its next publication, remove the site or portion of the site that has been remediated pursuant to this part from any list of the department that identifies sites of contamination and shall notify the owner or operator that this action has been

taken. However, if a subsequent audit under section 21315 determines that the contamination has not been remediated to the cleanup standards, the department shall place the site back on any such list and require further corrective action as otherwise provided in this part.

Sec. 21314 (1) Notwithstanding any other provision of this part, except as provided in subsection (2), unless directed to do otherwise by the department:

(a) An owner or operator who, on October 26, 1993, has prepared a corrective action plan may implement that corrective action plan without retaining a consultant. However, the owner or operator shall retain a consultant to perform the activities described in section 21313.

(b) An owner or operator who has not, on October 26, 1993, prepared a corrective action plan shall retain a consultant to carry out the activities provided in this part. The consultant shall make use of all relevant information that has been obtained prior to being retained, and, unless material new information is discovered, the consultant shall not repeat activities that have been performed prior to October 26, 1993.

(2) Until December 26, 1993, an owner or operator may perform or cause to be performed any activity that is required under this part to be performed by a consultant.

Sec. 21315 (1) The department shall design and implement a program to selectively audit or oversee all aspects of corrective actions undertaken pursuant to this part to assure compliance with this part.

(2) If the department conducts a complete audit of the release and the audit confirms that corrective action has been conducted in compliance with this part and that the cleanup standards have been met, the department shall provide the owner or operator with a letter that describes the audit and its results.

(3) If an audit under subsection (2) does not confirm that corrective action has been conducted in compliance with this part or that cleanup standards have been met, the department may require an owner or operator to do any of the following:

(a) Provide additional information related to any requirement of this part.

(b) Retain a consultant to implement corrective actions, hydrogeological studies, or remediation alternatives studies on an accelerated implementation schedule.

(c) Retain a consultant to take additional corrective actions necessary to comply with this part or to protect public health, safety, or welfare, or the environment.

Sec. 21316 The department may create and require the use of forms to assist in the reporting requirements provided in this part.

Sec. 21317 (1) If the soil feasibility analysis or the soil and groundwater feasibility analysis prepared under section 21310 or 21311 identifies the preferred corrective action alternative to be a type C cleanup, the owner or operator shall retain a consultant to submit a risk assessment and a type C corrective action plan for responding to contaminated soils, groundwater, and surface water to the department within 60 days of completion of the feasibility analysis. The type C corrective action plan shall provide for adequate protection of public health, safety, and welfare, and the environment as determined by the department.

(2) The risk assessment required to be submitted under subsection (1) may be submitted in a short form format specified by the department. The department may limit the applicability of the short form risk assessment to corrective action plans that address a release of an unused and uncontaminated petroleum fuel or lubricant. The risk assessment short form specified by the department shall address all of the following:

(a) Potential exposure of human and natural resource targets.

(b) Environmental media affected by contamination.

(c) All of the following with respect to the physical setting of the site:

(i) Geology.

(ii) Hydrology.

(iii) Soils.

(iv) Hydrogeology.

(v) Other aspects of the physical setting of the site which may have a bearing on the appropriateness of the proposed corrective action.

(d) Potential pathways of regulated substance migration.

(e) All of the following with regard to the regulated substances in the material released at the site:

(i) Amount.

(ii) Concentration

(iii) Form

(f) The extent to which regulated substances have migrated or are expected to migrate from the area of the release

(g) The uncertainties of the risk assessment The discussion of the uncertainties of the risk assessment need not include uncertainties associated with the hazard identification or dose response assessment for each regulated substance The discussion of the uncertainties shall address the exposure estimates and overall risk characterization

(h) Other factors appropriate to the site Department requests for information pursuant to this subdivision shall be limited to factors not adequately addressed by information required by subdivisions (a) to (g) and shall be accompanied by an explanation of the need for such information

(3) The risk assessment portion of a corrective action plan for sites that do not meet the criteria for a short form risk assessment as specified in subsection (2) shall address all of the factors identified in subsection (2)(a) through (h) The risk assessment shall be presented in a manner that facilitates efficient review by the department

(4) In addition to the risk assessment specified in subsection (2) or (3) the type C corrective action plan shall include all of the following

(a) A description of the proposed corrective action including a demonstration that the proposed corrective action is appropriate for the site considering the reasonably foreseeable uses of the site and natural resources in question

(b) Information about the cost of what is believed by the consultant to be the lowest cost technically feasible corrective action alternative that would comply with type B cleanup levels

(c) Identification of any limitations on the ability to monitor remedial performance including the limitations of analytical methods

(d) Other factors appropriate to the site Department requests for information pursuant to this subdivision shall be limited to factors not adequately addressed by information required by subdivisions (a) to (c) and shall be accompanied by an explanation of the need for such information

(5) Any corrective action plan submitted under this section to address surface water or sediments shall include cleanup criteria established by the department on the basis of sound scientific principles and considering the need to eliminate or mitigate the following use impairments as appropriate to the site

(a) Restrictions on fish or wildlife consumption

(b) Degraded fish or wildlife populations

(c) Fish tumors or other deformities

(d) Bird or animal deformities or reproductive problems

(e) Degradation of benthos

(f) Restrictions on dredging activities

(g) Eutrophication or undesirable algae

(h) Restrictions on drinking water consumption or taste or odor problems

(i) Beach closings

(j) Degradation of aesthetics

(k) Degradation of phytoplankton or zooplankton populations

(l) Loss of fish or wildlife habitat

(6) If the department determines that the risk assessment submitted pursuant to subsection (2) or (3) is complete accurately reflects available information about the site and satisfies the requirements of subsection (4) the department may approve of the type C corrective action plan if a consultant retained by the owner or operator demonstrates that all of the following conditions are met

(a) The corrective action plan provides for monitoring of the site sufficient to assure the integrity and effectiveness of the remedy

(b) If the corrective action relies on land use restrictions in order to prohibit exposures that could result in unacceptable risk such restrictions shall be described in a restrictive covenant that is executed by the property owner and recorded with the register of deeds for the county in which the site is located Such restrictions shall run with the land and be binding on the owner's successors and assigns The restrictive covenant shall be subject to approval by the state and shall accomplish all of the following

(i) Prohibit activities on the site that may interfere with a corrective action operation and maintenance long term monitoring or other measures necessary to assure the integrity of the corrective action

(ii) Prohibit activities that may result in human exposures above those specified in R 299 5709 to R 299 5715 of the Michigan administrative code or that would result in the release of a regulated substance that was contained as part of the corrective action

(iii) Require notice to the department of the owner's intent to convey any interest in the site. A conveyance of title, an easement, or other interest in the property shall not be consummated by the property owner without adequate and complete provision for the continued operation and maintenance of the remedy and the prevention of releases and exposures as described in subparagraph (ii).

(iv) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the corrective action plan, including the right to take samples, inspect the operation of corrective action measures, and inspect records.

(v) Allow the state to enforce the restrictions set forth in the covenant by legal action in a court of appropriate jurisdiction.

(c) If the department determines that it is necessary to assure the continued adequacy of a corrective action that includes containment measures, the owner or operator shall, through a financial mechanism that is acceptable to the department other than the Michigan underground storage tank financial assurance fund created in part 215, provide funding to pay for monitoring, operation and maintenance, oversight, and other costs necessary to assure the effectiveness and integrity of the containment measures.

(7) The department shall approve or disapprove a corrective action plan submitted under this section within 120 days after it has been received. If the department disapproves the corrective action plan, he or she shall provide the owner or operator and the consultant retained by the owner or operator with an explanation as to why a type C corrective action is not appropriate or a list of deficiencies and modifications that if incorporated would result in the plan's approval, along with a schedule for resubmittal. A consultant retained by the owner or operator shall submit an amended corrective action plan according to the schedule specified by the department.

(8) Upon approval of the type C corrective action plan or as directed by the department, a consultant retained by the owner or operator shall implement the plan, including modifications to the plan required by the department. The consultant retained by the owner or operator shall monitor, evaluate, and report the results of implementing the plan in accordance with a schedule approved by the department.

(9) The owner or operator may, in the interest of minimizing environmental contamination and promoting more effective cleanup, retain a consultant to begin cleanup of soil and groundwater before the corrective action plan under this section is approved, provided that they do all of the following:

(a) Notify the department of their intention to begin cleanup at least 48 hours before beginning the cleanup.

(b) Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities.

(c) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the department for approval.

(d) Assure that the initial cleanup is not inconsistent with the anticipated corrective action.

(10) After the department approves a type C corrective action plan under this section and the owner or operator or a consultant retained by the owner or operator has completed in full all corrective actions required in the plan and is in compliance with this part, the department shall execute a document stating that the corrective actions have been completed. If an owner or operator or a consultant retained by the owner or operator delivers to the department a written statement certifying that all corrective actions have been completed and includes with this statement documentation sufficient to show full compliance with the approved type C corrective action plan and this part, the department shall respond within 60 days of receipt of that statement either by executing a document stating that based upon the representations made by the owner or operator or a consultant retained by the owner or operator, the corrective actions have been completed, or by executing a document indicating what corrective actions remain to be completed. Failure to respond shall be considered as if it were a response that corrective action remains to be completed, and the owner or operator may request a hearing before the commission in the same manner as provided in section 21319.

(11) The department may issue corrective action orders pursuant to section 21319 to the owner or operator as necessary to carry out the purposes of this part.

Sec 21318 (1) For each confirmed release in which a type C corrective action plan under section 21317 is proposed to be implemented, the owner or operator or a consultant retained by the owner or operator shall provide notice to the public by means designed to reach those members of the public directly affected by the release and the proposed type C corrective action. The notice shall include the name, address, and telephone number of a contact person. A copy of the notice and proof of providing the notice shall be submitted to the department.

(2) The department shall ensure that site release information and a corrective action plan prepared under section 21317 are made available to the public for inspection upon request.

Sec 21319 (1) The department may issue a corrective action order requiring compliance with this part. A corrective action order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(2) Within 14 days after issuance of a corrective action order, the owner or operator may do either of the following:

(a) Consent in writing to the corrective action order.

(b) Request an opportunity for hearing before the commission.

(3) A hearing requested under subsection (2)(b) shall be held at the next regular meeting of the commission that is scheduled at least 10 days after issuance of the order. At the hearing, the commission may do any of the following:

(a) Make a final decision with respect to the order.

(b) Refer the matter to a hearings officer for contested case proceedings pursuant to 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.

(c) Take other actions as may be necessary to protect the public health, safety, or welfare, or the environment.

(4) If the commission has not taken 1 of the actions provided in subsection (3) within 30 days after a request made pursuant to subsection (2), then the owner or operator may request a contested case hearing pursuant to Act No. 306 of the Public Acts of 1969.

(5) A final decision in an administrative proceeding pursuant to subsection (3) or (4) may be reviewed by a circuit court for the county of Ingham or the county where the release occurred or where the owner or operator resides.

(6) The pendency of any administrative or judicial proceeding on a corrective action order shall not preclude the department from taking corrective action pursuant to section 21320.

Sec 21320 If the department learns of a suspected or confirmed release from an underground storage tank system, the department may undertake corrective actions necessary to protect the public health, safety, or welfare, or the environment.

Sec 21321 (1) Except as provided in subsection (3), if a report required to be submitted under section 21307(4), 21307(5)(c), 21308(e), or 21309 is not submitted during the time required by this part, the department shall impose a penalty according to the following schedule:

(a) \$100.00 per day for the first 7 days that the report is late.

(b) \$500.00 per day for days 8 through 14 that the report is late.

(c) \$1,000.00 per day for each day beyond day 14 that the report is late.

(2) For purposes of this section, in computing a period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday.

(3) The department may, upon request, grant an extension to a reporting deadline provided in this part for good cause.

(4) The owner or operator may, by contract, transfer the responsibility for paying fines under this section to a consultant retained by the owner or operator.

(5) The department shall forward all money collected pursuant to this section to the state treasurer for deposit in the emergency response fund created in section 21507 of part 215.

(6) An appeal of a penalty imposed under this section may be taken pursuant to section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600 631 of the Michigan Compiled Laws.

Sec 21322 (1) Except as otherwise provided in this section, liability imposed upon an owner or operator under this part shall be strict and without regard to fault, as applied to either or both of the following:

(a) The obligation to carry out all corrective action requirements pursuant to this part.

(b) Any liability for other relief provided in section 21323(1).

(2) An owner or operator shall not be liable under this part if any of the following occur:

(a) The owner or operator proves that the release was caused solely by any of the following:

(i) An act of God.

(ii) An act of war.

(iii) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

(iv) Any combination of subparagraphs (i) to (iii).

(b) The owner would otherwise be liable solely as the owner of the real property on which the underground tank system is or was located the owner acquired that property after the release of a regulated substance and the owner can establish 1 or more of the following circumstances by a preponderance of the evidence

(i) At the time the owner acquired the property the owner did not know and had no reason to know that any release of a regulated substance had occurred on in or at the property

(ii) The owner is a government entity that acquired the property through an involuntary transfer or acquisition

(iii) The owner acquired the property by inheritance or devise

(iv) The owner is a government entity that acquired the property from the state by statutory transfer pursuant to Act No 73 of the Public Acts of 1970 being sections 259 801 to 259 823 of the Michigan Compiled Laws

(3) To establish that the owner had no reason to know as provided in subsection (2)(b)(i) the owner must have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability For purposes of this subsection the court shall take into account any specialized knowledge or experience on the part of the owner the relationship of the purchase price to the value of the property if uncontaminated commonly known or reasonably ascertainable information about the property the obviousness of the presence or likely presence of contamination at the property and the ability to detect such contamination by appropriate investigation

(4) Notwithstanding subsection (2) if the owner obtained actual knowledge of the release of a regulated substance at such property when the owner owned the property and then subsequently transferred ownership of the property to another person without disclosing this knowledge the owner shall be treated as liable under this part and a defense under subsection (2)(b) is not available to the owner

(5) This section does not affect the liability under this part of a person who by any act or omission caused or contributed to the release of a regulated substance that is the subject of the action relating to the property

(6) No indemnification hold harmless or similar agreement or conveyance is effective to transfer from the owner or operator or from any person who may be liable for a release or threat of release under this part to any other person the liability imposed under this part This subsection does not bar any agreement to insure hold harmless or indemnify a party to the agreement for any liability under this part

(7) This part does not bar a cause of action that an owner or operator or any other person subject to liability under this part or a guarantor has or would have by reason of subrogation or otherwise against any person

(8) The owner or operator or both are liable to the state for costs incurred by the state for taking corrective action or enforcement action pursuant to this part

(9) Unpaid costs incurred by the state for taking corrective action constitute a lien in favor of the state against the land on which the underground storage tank system is located and the tank system itself and have priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this part is recorded This lien arises when the agency first incurs costs for taking corrective action

(10) The lien provided in subsection (9) is perfected against real property when a notice of lien is recorded with the register of deeds in the county in which real property is located Subject to subsection (9) recording of the notice of lien relates back to the date on which the lien arose and perfects the lien as of that date The recording of the notice of lien relates only to those unpaid costs arising during the 12 months immediately preceding the recording date unless this provision is specifically waived in writing by the owner as part of an approved corrective action plan

Sec 21323 (1) The attorney general may on behalf of the department commence a civil action seeking any of the following

(a) A temporary or permanent injunction

(b) Recovery of all costs incurred by the state for taking corrective action

(c) Damages for the full injury done to the natural resources of this state along with enforcement and litigation costs incurred by the state

(d) A civil fine of not more than \$10 000 00 for each underground storage tank system for each day of noncompliance with a requirement of this part or a rule promulgated under this part A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the part or rule

(e) A civil fine of not more than \$25 000 00 for each day of noncompliance with a corrective action order issued pursuant to this part A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the corrective action order

(f) Recovery of funds provided to the state from the United States environmental protection agency's leaking underground storage tank trust fund

(g) Recovery of penalties imposed under section 21321

(2) A civil action brought under subsection (1) may be brought in the circuit court for the county of Ingham for the county where the release occurred or for the county where the defendant resides

(3) The state may when appropriate return to the United States environmental protection agency any federal funds recovered under this part The state may also retain any federal funds recovered under this part in a separate account for use in implementing this part with such use subject to approval of the United States environmental protection agency

Sec 21324 (1) Beginning April 25 1994 a person who makes or submits or causes to be made or submitted either directly or indirectly a statement report confirmation certification proposal or other information under this part knowing that the statement report confirmation certification proposal or other information is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50 000 00 or both In addition to any penalty imposed under this subsection a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection For purposes of this subsection a submission includes transmittal by any means and each such transmittal constitutes a separate submission

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly a statement report confirmation certification proposal or other information under this part knowing that the statement report confirmation certification proposal or other information is false misleading or fraudulent or who commits a fraudulent practice is subject to a civil fine of \$50 000 00 for each submission or fraudulent practice In addition to any civil fine imposed under this subsection a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection The legislature intends that this subsection be given retroactive application For purposes of this subsection a submission includes transmittal by any means and each such transmittal constitutes a separate submission

(3) As used in subsection (2) fraudulent or fraudulent practice includes but is not limited to the following

(a) Representing that services were done or work was provided that was not done or provided

(b) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site

(c) Returning a load of contaminated soil to its original site for reasons other than remediation of the soil

(d) Causing damage intentionally or as the result of gross negligence to an underground storage tank system which damage results in a release at a site

(e) Placing an underground storage tank system at a contaminated site where an underground storage tank system did not previously exist for the purpose of disguising the source of contamination

(f) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site

(g) Submitting a false or misleading laboratory report or misrepresenting or falsifying any test result analysis or investigation

(h) Conducting sampling testing monitoring or excavation that is not justified by the site condition

(i) Falsifying a signature on a statement report confirmation certification proposal or other document provided under this part

(j) Misrepresenting or falsifying the source of data regarding site conditions

(k) Misrepresenting or falsifying the date upon which a release occurred

(l) Falsely characterizing the contents of an underground storage tank system or reporting regulated substances or parameters other than the substance that was in the underground storage tank system

(m) Failing to report subsequent suspected or confirmed releases from sites that have had a previously reported release

(n) Falsifying the date on which an underground storage tank system or any of its components were removed from the ground and site

(o) Any other act or omission of a false fraudulent or misleading nature undertaken to gain compliance or the appearance of compliance with this part

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession custody or control of any documents or records however stored or embodied or tangible object relevant to an investigation for violation of this part the attorney general or county prosecutor may before bringing any action make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the documents records or objects for inspection and copying or both Service may be accomplished by any means described in the Michigan court rules Requests made by the attorney general may be brought in Ingham county

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5) an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring them to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than \$25 000.00 for each day of continued noncompliance.

(9) This section does not preclude prosecutions under the laws of this state including, but not limited to, section 157a 218, 248, 249, 280, or 422 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750 157a, 750 218, 750 248, 750 249, 750 280, and 750 422 of the Michigan Compiled Laws. /

(10) All civil fines collected pursuant to this section shall be apportioned in the following manner:

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.

(b) Twenty five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by such office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department entitled to payment under this subsection, the money shall be deposited into the emergency response fund established in section 21507.

Sec. 21325 (1) A person who provides information that materially contributes to the imposition of a civil fine against or the criminal conviction of any person under section 21324 shall be paid a reward pursuant to rules adopted by the department under subsection (6). The reward shall be the greater of 10% of the amount of the civil fine collected or \$1 000.00.

(2) A person is not eligible for a reward under this section for a violation previously known to the investigating agency unless the information materially contributes to the civil judgment or criminal conviction.

(3) If there is more than 1 person who provides information pursuant to subsection (1) for a single violation, the first person to notify the investigating agency is eligible for the reward. If more than 1 notification is received on the same day, the reward shall be divided equally among those persons providing the information.

(4) Public officers and employees of the United States, the state of Michigan, the states of Wisconsin, Illinois, Indiana, and Ohio, or counties and cities in Michigan, Wisconsin, Illinois, Indiana, and Ohio are not eligible for the reward under this section unless reporting those violations does not relate in any manner to their responsibilities as public officers or employees.

(5) An employee of a business who provides information that the business violated this part is not eligible for a reward if the employee intentionally caused the violation.

(6) The department shall promulgate rules that establish procedures for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for an award and the materiality of the provided information shall be made pursuant to these rules. In each case brought under section 21324, whichever office prosecuted the action shall determine whether the information materially contributed to the imposition of a civil fine or a criminal conviction.

(7) The department shall periodically publicize the availability of the rewards to the public.

(8) A claim for a reward under this section may be submitted only for information provided on or after October 26, 1993.

Sec. 21326 (1) Upon request of the department for the purpose of developing or assisting in the development of a rule, conducting an investigation, taking corrective action, or enforcing this part, the owner or operator shall furnish the department with all information about all of the following:

(a) The underground storage tank system and its associated equipment.

(b) The past or present contents of the underground storage tank system.

(c) Any releases and investigations of releases.

(2) The department has the right to enter at all reasonable times on or upon any private or public property for any of the following purposes:

(a) Inspecting an underground storage tank system.

- (b) Obtaining samples of any substance from an underground storage tank system
- (c) Requiring and supervising the conduct of monitoring or testing of an underground storage tank system its associated equipment or contents
- (d) Conducting monitoring or testing of an underground storage tank system in cases where there is no identified responsible party
- (e) Conducting monitoring or testing or taking samples of soils air surface water or groundwater
- (f) Taking corrective action
- (g) Inspecting and copying any records related to an underground storage tank system
- (3) All inspections and investigations undertaken by the department under this section shall be commenced and completed with reasonable promptness
- (4) The attorney general on behalf of the department may do either of the following
 - (a) Petition a court of appropriate jurisdiction for a warrant to authorize access to any private or public property to implement this part
 - (b) Commence a civil action pursuant to section 21323 for an order authorizing the department to enter any private or public property as necessary to implement this part

Sec 21327 The department may promulgate rules as necessary to implement this part

Sec 21328 The department may enter into an agreement with a local unit of government or a state or federal agency to aid in the implementation or enforcement of this part and to obtain financial assistance

Sec 21329 The department shall coordinate and integrate the provisions of this part with appropriate state and federal law for purposes of administration and enforcement The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part

Sec 21330 This part does not prohibit the department of state police state fire marshal division from taking action in any situation in which it is otherwise authorized by law to act

Sec 21331 This part is repealed upon the expiration of 12 months after part 215 becomes invalid pursuant to section 21546

PART 215 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE

Sec 21501 For purposes of this part the words and phrases defined in sections 21502 and 21503 have the meanings ascribed to them in those sections

Sec 21502 As used in this part

- (a) Administrator means the fund administrator provided for in section 21513
- (b) Approved claim means a claim that is approved pursuant to section 21515
- (c) Authority means the Michigan underground storage tank financial assurance authority created in section 21523
- (d) Board means the Michigan underground storage tank financial assurance policy board created in section 21541
- (e) Board of directors means the board of directors of the authority
- (f) Bond proceeds account means the account or fund to which proceeds of bonds or notes issued under this part have been credited
- (g) Bonds or notes means the bonds notes commercial paper other obligations of indebtedness or any combination of these issued by the authority pursuant to this part
- (h) Claim means the submission by the owner or operator or his or her representative of documentation on an application requesting payment from the fund A claim shall include at a minimum a completed and signed claim form and the name address telephone number and federal tax identification number of the consultant retained by the owner or operator to carry out responsibilities pursuant to part 213
- (i) Consultant means a person on the list of qualified underground storage tank consultants prepared pursuant to section 21542
- (j) Co pay amount means the co pay amount provided for in section 21514
- (k) Corrective action means the investigation assessment cleanup removal containment isolation treatment or monitoring of regulated substances released into the environment or the taking of such other actions as may be

necessary to prevent minimize or mitigate injury to the public health safety or welfare the environment or natural resources

(l) Financial responsibility requirements means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from an underground storage tank system that the owner or operator of an underground storage tank system must demonstrate under part 211 and the rules promulgated under that part

(m) Fund means the Michigan underground storage tank financial assurance fund created in section 21506

(n) Heating oil means petroleum that is No 1 No 2 No 4—light No 4—heavy No 5—light No 5—heavy and No 6 technical grades of fuel oil other residual fuel oils including navy special fuel oil and bunker C and other fuels when used as substitutes for 1 of these fuel oils

(o) Indemnification means indemnification of an owner or operator for a legally enforceable judgment entered against the owner or operator by a third party or a legally enforceable settlement entered between the owner or operator and a third party compensating that third party for bodily injury or property damage or both caused by an accidental release as those terms are defined in R 29 2163 of the Michigan administrative code

(p) Location means a facility or parcel of property where petroleum underground storage tank systems are registered pursuant to part 211

(q) Operator means a person who was at the time of discovery of a release in control of or responsible for the operation of a petroleum underground storage tank system or a person to whom an approved claim has been assigned or transferred

(r) Owner means a person other than a regulated financial institution who at the time of discovery of a release held a legal equitable or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located including but not limited to a trust vendor vendee les or or lessee Owner includes a person to whom an approved claim is assigned or transferred Owner does not include a person or a regulated financial institution who without participating in the management of an underground storage tank system and without being otherwise engaged in petroleum production refining or marketing relating to the underground storage tank system is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located This exclusion does not apply to a grantor beneficiary remainderman or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust

(s) Oxygenate means an organic compound containing oxygen and having properties as a fuel that are compatible with petroleum including but not limited to ethanol methanol or methyl tertiary butyl ether (MTBE)

Sec 21503 (1) Payment voucher means a form prepared by the department that specifies payment authorization by the department to the department of treasury

(2) Petroleum means crude oil crude oil fractions and refined petroleum fractions including gasoline kerosene heating oils and diesel fuels

(3) Petroleum underground storage tank system means an underground storage tank system used for the storage of petroleum

(4) Refined petroleum means aviation gasoline middle distillates jet fuel kerosene gasoline residual oils and any oxygenates that have been blended with any of these

(5) Regulated financial institution means a state or nationally chartered bank savings and loan association or savings bank credit union or other state or federally chartered lending institution or a regulated affiliate or regulated subsidiary of any of these entities

(6) Regulatory fee means the environmental protection regulatory fee imposed under section 21508

(7) Release means any spilling leaking emitting discharging escaping or leaching from a petroleum underground storage tank system into groundwater surface water or subsurface soils

(8) Underground storage tank system means an existing tank or combination of tanks including underground pipes connected to the tank or tanks which is or was used to contain an accumulation of regulated substances and is not currently being used for any other purpose and the volume of which including the volume of the underground pipes connected to the tank or tanks is 10% or more beneath the surface of the ground An underground storage tank system includes an underground storage tank that is properly closed in place pursuant to part 211 and rules promulgated under that part An underground storage tank system does not include any of the following

(a) A farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes

(b) A tank used for storing heating oil for consumptive use on the premises where the tank is located

- (c) A septic tank
- (d) A pipeline facility including gathering lines regulated under either of the following
 - (i) The natural gas pipeline safety act of 1968 Public Law 90 481 49 U S C Appx 1671 to 1677 1679a to 1682 and 1683 to 1687
 - (ii) Sections 201 to 215 217 and 219 of the hazardous liquid pipeline safety act of 1979 title II of the pipeline safety act of 1979 Public Law 96 129 49 U S C Appx 2001 to 2015
- (e) A surface impoundment pit pond or lagoon
- (f) A storm water or wastewater collection system
- (g) A flow through process tank
- (h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations
- (i) A storage tank situated in an underground area such as a basement cellar mineworking drift shaft or tunnel if the storage tank is situated upon or above the surface of the floor
- (j) Any pipes connected to a tank described in subdivisions (a) to (i)
- (k) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act title II of Public Law 89 272 42 U S C 6921 to 6939e or a mixture of such hazardous waste and other regulated substances
 - (l) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act 33 U S C 1317 and 1342
 - (m) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks
 - (n) An underground storage tank system with a capacity of 110 gallons or less
 - (o) An underground storage tank system that contains a de minimis concentration of regulated substances
 - (p) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use
 - (q) A wastewater treatment tank system
 - (r) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954 chapter 1073 68 Stat 919
 - (s) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C F R part 50 appendix A to part 50 of title 10 of the code of federal regulations
 - (t) Airport hydrant fuel distribution systems
 - (u) Underground storage tank systems with field constructed tanks
- (9) Work invoice means an original billing acceptable to the administrator and signed by the owner or operator and a consultant that includes all of the following
 - (a) The name address and federal tax identification number of each contractor who performed work
 - (b) The name and social security number of each employee who performed work
 - (c) A specific itemized list of the work performed by each contractor and an itemized list of the cost of each of these items
 - (d) A statement that the consultant employed a documented sealed competitive bidding process for any contract award exceeding \$5 000 00
 - (e) If the consultant did not accept the lowest responsive bid received a specific reason why the lowest responsive bid was not accepted
 - (f) Upon request of the administrator a list of all bids received
 - (g) Proof of payment of the co pay amount as required under section 21514
 - (h) Authorization by the owner or operator as to whether the state treasurer should make payment to the owner or operator or to the consultant

Sec 21504 The objectives of this part are to assist persons in this state in meeting the financial responsibility requirements provided for in subtitle I of the solid waste disposal act title II of Public Law 89 272 42 U S C 6991 to 6991i to address certain problems associated with releases from petroleum underground storage tank systems and to promote compliance with parts 211 and 213

Sec 21505 The legislature finds that leaking underground storage tanks are a significant cause of contamination of the natural resources water resources and groundwater in this state It is hereby declared to be the purpose of this part and of the authority created by this part to preserve and protect the water resources of the state and to prevent abate or control the pollution of water resources and groundwater to protect and preserve the public health safety and welfare to assist in the financing of repair and replacement of petroleum underground storage tanks and to improve property damaged by any petroleum releases from those tanks and to preserve jobs and employment opportunities or improve the economic welfare of the people of the state

Sec 21506 (1) The Michigan underground storage tank financial assurance fund is created

(2) The state treasurer shall direct the investment of the fund Interest and earnings from fund investments shall be credited to the fund

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

(4) Money in the fund shall be expended only as follows and in the following order of priority

(a) To pay off bonds or notes pursuant to this part plus any amount necessary to maintain a fully funded debt reserve or other reserve intended to secure the principal and interest on the bonds or notes as may be required by resolution indenture or other agreement of the authority

(b) For the reasonable administrative cost of implementing this part by the department the department of treasury the department of attorney general and the authority as annually appropriated by the legislature Administrative costs include the actual and necessary expenses incurred by the board and its members in carrying out the duties imposed by this part Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any year Costs incurred by the authority for the issuance of bonds or notes which may also be payable from the proceeds of the bonds or notes shall not be considered administrative costs in making such a determination

(c) For payment of rewards under section 21549

(d) For the interest subsidy program established in section 21522 The money expended under this subdivision shall not exceed 10% of the fund's projected revenues in any year However 10% of the revenue of the fund during the first year of the fund's operation shall be expended on the interest subsidy program If this money is not expended during the first year this money shall be carried over for expenditure in the succeeding years of the fund's operation Additional fund revenue shall not be set aside for the interest subsidy program until all of the first year revenue is expended

(e) For corrective action and indemnification including both of the following

(i) Payments for approved work invoices pursuant to this part

(ii) Payments for approved requests for indemnification pursuant to this part

(5) The board shall make recommendations to the appropriations committees in the senate and house of representatives on the distribution and amount of administrative costs under subsection (4)(b) The board shall provide a copy of these recommendations to each affected department

Sec 21507 (1) The emergency response fund is created

(2) The state treasurer shall direct the investment of the emergency response fund Interest and earnings of the emergency response fund shall remain in the emergency response fund

(3) Money in the emergency response fund at the close of the fiscal year shall remain in the emergency response fund and shall not lapse to the general fund

(4) Money in the emergency response fund shall not exceed \$1 000 000 00

(5) Money in the emergency response fund shall be expended by the department to undertake corrective actions to address releases from petroleum underground storage tank systems pursuant to part 213

(6) Not more than \$1 000 000 00 shall be expended from the emergency response fund in any year

(7) If money in the emergency response fund is expended under subsection (5) the person or persons responsible for the corrective action shall be liable to the state for all such expenditures

Sec 21508 (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state The regulatory fee shall be used pursuant to section 21506(4) for the cleanup and prevention of environmental contamination resulting from releases of refined petroleum products from underground storage tank systems and to pay off bonds or notes pursuant to this part The regulatory fee shall be charged for capacity utilization of underground storage tanks measured on a per gallon basis The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in an underground tank at any point after the petroleum is refined The regulatory fee shall be 7/8 cent per gallon for each gallon of refined petroleum sold for resale in this state or

consumption in this state with the per gallon charge being a direct measure of capacity utilization of an underground storage tank system

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale in this state or consumption in this state. The department of treasury shall collect regulatory fees that can be collected at the same time as the sales tax under section 6a of the general sales tax act, Act No. 167 of the Public Acts of 1933, being section 205 56a of the Michigan Compiled Laws at that time. The remainder of the regulatory fees shall be collected in the manner determined by the state treasurer.

(3) A public utility with more than 500 000 customers in this state is exempt from any fee or assessment imposed under this part if that fee or assessment is imposed on petroleum used by that public utility for the generation of steam or electricity.

(4) All regulatory fees collected pursuant to this part shall be deposited into the emergency response fund created in section 21507 until the emergency response fund reaches \$1 000 000 00. When the emergency response fund is at \$1 000 000 00, all regulatory fees shall be deposited into the fund.

(5) Each quarter, the administrator shall determine if fund revenues will be sufficient to pay expected expenditures from the fund. If expected expenditures are anticipated to exceed fund revenues, the state treasurer shall notify the advisory board and, with the advice of the board, shall advise the legislature of the estimated increase in the regulatory fee that would be necessary to pay expected expenditures or recommend other revisions to this part that would improve the security of the fund. If anticipated expenditures are significantly below anticipated revenues, the state treasurer shall notify the advisory board and, with the advice of the board, shall recommend to the legislature a reduction of the regulatory fee.

(6) If the state treasurer determines that fund revenues will not be sufficient to pay expected expenditures from the fund, the state treasurer shall notify the administrator, and 90 days after this notification has been given, the administrator shall not accept any new work invoices or requests for indemnification. Upon receiving this notification from the state treasurer, the administrator shall notify by certified mail the owners and operators of petroleum underground storage tank systems registered under part 211 that funding under this part will no longer be available for new claims after the 90 day period has expired. However, work invoices and requests for indemnification that were submitted to the administrator prior to or during this 90 day period may be paid to the extent money is available in the fund as provided in this part.

(7) The department of treasury may audit, enforce, collect, and assess the fee imposed by this part in the same manner and subject to the same requirements as revenues collected pursuant to Act No. 122 of the Public Acts of 1941, being sections 205 1 to 205 31 of the Michigan Compiled Laws.

Sec. 21509 (1) Notwithstanding any other provision in this part, regulatory fees shall be calculated and paid upon gross or metered gallons with respect to all light petroleum products. With respect only to heavy petroleum products (No. 4, No. 5, No. 6 residual oils), regulatory fees shall be calculated and paid upon net or temperature corrected gallons.

(2) Notwithstanding any other provision in this part, if a person receives refined petroleum products in this state for resale in this state or consumption in this state pursuant to a product exchange agreement, the department of treasury shall collect the regulatory fees from that person. As used in this subsection, product exchange agreement means an agreement between buyers and sellers of refined petroleum products in which refined petroleum products in bulk quantity are made available to a person solely in consideration of that person making available a like volume of refined petroleum products to the other party at some other location.

Sec. 21510 (1) Except as provided in section 21521, an owner or operator is eligible to receive money from the fund or bond proceeds account for corrective action or indemnification only if all of the following requirements are satisfied and the owner or operator otherwise complies with this part:

(a) The release from which the corrective action or indemnification arose was discovered and reported on or after July 18, 1989.

(b) The petroleum underground storage tank from which the release occurred was, at the time of discovery of the release, and is presently in compliance with the registration and fee requirements of part 211 and the rules promulgated under that part.

(c) The owner or operator or a consultant retained by the owner or operator reported the release within 24 hours after its discovery as required by part 211 and the rules promulgated under that part.

(d) The owner or operator is not the United States government.

(e) The claim or request for indemnification is submitted to the administrator pursuant to this part and the rules promulgated under this part on or before December 22, 1998.

(f) Until January 1 1997 the claim is not for a release from an underground storage tank closed prior to January 1 1974 in compliance with the fire prevention code Act No 207 of the Public Acts of 1941 being sections 29 1 to 29 33 of the Michigan Compiled Laws and the rules promulgated under that act

(2) The owner or operator may receive money from the fund or bond proceeds account for corrective action or indemnification due to a release that originates from an aboveground piping and dispensing portion of a petroleum underground storage tank system if all or the following requirements are satisfied

(a) The owner or operator is otherwise in compliance with this part and the rules promulgated under this part

(b) The release is sudden and immediate

(c) The release is of a quantity exceeding 25 gallons and is released into groundwater surface water or soils

(d) The release is reported to the department of natural resources underground storage tank division within 24 hours of discovery of the release

(3) Either the owner or the operator may receive money from the fund or bond proceeds account under this part for an occurrence but not both

(4) An owner or operator who is a public utility with more than 500 000 customers in this state is ineligible to receive money from the fund or bond proceeds account for corrective action or indemnification associated with a release from a petroleum underground storage tank system used to supply petroleum for the generation of steam electricity

(5) If an owner or operator has received money from the fund or bond proceeds account under this part for a release at a location the owner and operator are not eligible to receive money from the fund or bond proceeds account for a subsequent release at the same location unless the owner or operator has done either or both of the following

(a) Discovered the subsequent release pursuant to corrective action being taken on a confirmed release and included this subsequent release as part of the corrective action for the confirmed release

(b) Upgraded replaced removed or properly closed in place all underground storage tank systems at the location of the release so as to meet the requirements of part 211 and the rules promulgated under that part

(6) An owner or operator who discovers a subsequent release at the same location as an initial release pursuant to subsection (5)(a) may receive money from the fund or bond proceeds account to perform corrective action on the subsequent release if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part However the subsequent release shall be considered as part of the claim for the initial release for purposes of determining the total amount of expenditures for corrective action and indemnification under section 21512

(7) An owner or operator who discovers a subsequent release at the same location as an initial release following compliance with subsection (5)(b) may receive money from the fund or bond proceeds account to perform corrective action on the subsequent release if there have been not more than 2 releases at the location if the owner or operator pays the subsequent release co pay amount pursuant to section 21514 and if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part The subsequent release shall be considered a separate claim for purposes of determining the total amount of expenditures for corrective action and indemnification under section 21512

Sec 21511 (1) Subject to subsection (2) a regulated financial institution or land contract vendor may receive money from the fund for corrective action or indemnification if prior to the discovery of a release the regulated financial institution makes a loan to an owner or operator or makes a loan to an approved claimant under the interest subsidy program or a land contract vendor enters into a land contract with the owner and subsequently the regulated financial institution or the land contract vendor takes title or assumes ownership of the petroleum underground storage tank system or the property on which it is located by foreclosure acceptance of a deed in lieu of foreclosure or forfeiture

(2) A regulated financial institution or land contract vendor that meets the requirements of subsection (1) may receive money from the fund if the release was discovered on or after July 18 1989 and upon taking title to or assuming ownership of the petroleum underground storage tank system or the property on which it is located the regulated financial institution or land contract vendor meets all of the following requirements

(a) Within 24 hours of taking title or assuming ownership reports the release to the department of natural resources underground storage tank division if it has not already been reported

(b) Within 7 days of taking title or assuming ownership comes into compliance with the registration and fee requirements of part 211 and the rules promulgated under that part

(c) Is not the United States government

(d) Meets the requirements of section 21510(1)(e) and (2) through (6)

(e) Meets the requirements of section 21515

(3) A regulated financial institution or land contract vendor meeting the requirements of subsections (1) and (2) may do 1 or more of the following

- (a) Receive money from the fund for corrective action or indemnification
- (b) Accept a transfer or assignment of an approved claim
- (c) Utilize any co pay amount provided by the owner or operator or pay the co pay amount specified in section 21514

(4) The state or a local unit of government that involuntarily acquires ownership or control of an underground storage tank system or the property on which it is located through bankruptcy tax delinquency abandonment or other circumstances in which the state or local unit of government involuntarily acquires title or control by virtue of its governmental function may receive money from the fund as an owner or operator if the state or local unit of government meets all of the following requirements

- (a) Within 24 hours of taking title or assuming ownership reports the release to the department of natural resources underground storage tank division if it has not already been reported
- (b) Within 7 days of taking title or assuming ownership comes into compliance with the registration and fee requirements of part 211 and the rules promulgated under that part
- (c) Is not the United States government
- (d) Meets the requirements of section 21510(1)(e) and (2) through (6)
- (e) Meets the requirements of section 21515

However the state or a local unit of government that seeks to receive money from the fund pursuant to this subsection is not responsible for the co pay amount

(5) At any time after obtaining title to property pursuant to this section a regulated financial institution or land contract vendor may sell the property on which a claim has been approved in a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method manner and time shall be at a price that takes into account the property's fair market value and the costs associated with holding the property and other such relevant factors Upon sale a regulated financial institution or land contract vendor may retain the loan balance plus interest and reasonable costs of obtaining title and maintaining or repairing the property and 10% of the sale price as a brokerage fee minus the co pay amount Upon sale by a local unit of government the local unit of government may retain 10% of the sale price as a brokerage fee

(6) A regulated financial institution land contract vendor or local unit of government that applies for reimbursement under this section shall enter into an agreement to repay the state out of any excess proceeds of a sale if any pursuant to subsection (5) Upon a sale of the property the new owner shall be able to accept an assignment of the approved claim pursuant to section 21516

Sec 21512 (1) Except as provided in subsection (4) the administrator shall approve expenditures for corrective action and indemnification on behalf of an owner or operator of not more than a total of the following amounts per claim submitted if the owner or operator has met the requirements of this part and the rules promulgated under this part

(a) For underground storage tank systems that on October 26 1993 have been upgraded pursuant to part 211 and the rules promulgated under that part

(i) Claims submitted through December 31 1994	\$1 000 000 00
(ii) Claims submitted from January 1 1995 to December 31 1995	\$ 800 000 00
(iii) Claims submitted from January 1 1996 to December 31 1996	\$ 600 000 00
(iv) Claims submitted from January 1 1997 to December 31 1997	\$ 400 000 00
(v) Claims submitted from January 1 1998 to December 22 1998	\$ 200 000 00

(b) For underground storage tank systems that on October 26 1993 have not been upgraded pursuant to part 211 and the rules promulgated under that part

(i) Claims submitted through December 31 1996	\$1 000 000 00
(ii) Claims submitted from January 1 1997 through December 31 1997	\$ 800 000 00
(iii) Claims submitted from January 1 1998 through December 22 1998	\$ 600 000 00

(2) Beginning December 23 1998 the fund will not be available to provide any portion of an owner's or operator's financial responsibility requirements

(3) The approved expenditure under subsection (1) shall be reduced by the amount of the interest subsidy paid to an owner or operator who has defaulted on a loan subsidized through the interest subsidy program established in this section

(4) If upon review of the study conducted under section 21547 the director in consultation with the insurance commissioner determines that insurance is not available to meet the owner's and operator's portion of financial responsibility requirements or that the insurance that is available is not available for a reasonable cost then the director may delay implementation of the schedule provided in subsection (1) Upon making such a determination the department shall publish notice of the revised schedule However the revised implementation schedule shall not require

the fund to provide any portion of an owner's or operator's financial responsibility requirements after December 22 1998

Sec 21513 The department shall employ a person to serve as the fund administrator. The administrator shall be responsible for processing requests for payments from the fund and approving those requests as provided in this part. Beginning February 15 1990 the fund shall begin operating and the administrator shall begin to accept work invoices and requests for indemnification.

Sec 21514 (1) Except as provided in subsection (2) and section 21511 an owner or operator who is eligible under section 21510 or 21511 to receive money from the fund in the event of a release is responsible for the payment of 10% of each work invoice submitted up to a maximum of \$15 000 00 of corrective action or indemnification costs associated with the release. This amount or the amount provided for in subsection (2) may be referred to as the co pay amount. An owner or operator who has paid \$10 000 00 of corrective action costs on October 26 1993 for a release in which a claim has been submitted is exempt from any additional co pay amounts for that release.

(2) An owner or operator who is eligible to receive money from the fund in the event of a second release at a location is responsible for the payment of 30% of each work invoice up to a maximum of \$45 000 00 of corrective action or indemnification costs associated with the release.

(3) An owner or operator is not eligible to receive money from the fund for more than 2 releases at a location.

(4) Upon transfer or sale of any legal, equitable, or possessory interest in property which at the time of transfer is otherwise in compliance with this part and the rules promulgated under this part, or upon which an approved claim and the corresponding corrective action is in progress, any co pay amount paid by written agreement may be transferred.

Sec 21515 (1) To receive money from the fund or bond proceeds account for corrective action, the owner or operator or a consultant retained by the owner or operator shall follow the procedures outlined in this section and shall submit reports, work plans, feasibility analyses, hydrogeological studies, and corrective action plans prepared under part 213 and rules promulgated under that part to the department, and shall provide other information required by the administrator relevant to determining compliance with this part.

(2) To receive money from the fund for corrective action, an owner or operator shall submit a claim to the administrator. An owner or operator shall not submit a claim until work invoices in excess of \$5 000 00 of the costs of corrective action have been incurred.

(3) Upon receipt of a completed claim pursuant to subsection (2), the administrator shall make all of the following determinations:

(a) Whether the department of natural resources, underground storage tank division has objected to payment on the claim because the work performed or proposed to be performed is not consistent with the requirements of part 213 and rules promulgated under that part.

(b) Whether the work performed is necessary and appropriate considering conditions at the site of the release.

(c) Whether the cost of performing the work is reasonable.

(d) Whether the owner or operator is eligible to receive funding under this part.

(e) Whether the consultant retained by the owner or operator has complied with section 21517.

(4) If the administrator fails to make the determinations required under this section within 30 days after receipt of certification from the department of natural resources, underground storage tank division that the owner or operator has met the requirements of section 21510(1)(b) and (c), the claim is considered to be approved.

(5) If the administrator determines under subsection (3) that the work invoices included with the claim are necessary and appropriate considering conditions at the site of the release and reasonable in terms of cost and the owner or operator is eligible for funding under this part, the administrator shall approve the claim and notify the owner or operator who submitted the claim of the approval. If the administrator determines that the work described on the work invoices submitted was not necessary or appropriate or the cost of the work is not reasonable, or that the owner or operator is not eligible for funding under this part, the administrator shall deny the claim or any portion of the work invoices submitted and give notice of the denial to the owner or operator who submitted the claim.

(6) The owner or operator may submit additional work invoices to the administrator after approval of a claim under subsection (5). Within 45 days after receipt of a work invoice, the administrator shall make the following determinations:

(a) Whether the work invoice complies with subsection (3).

(b) Whether the owner or operator is currently in compliance with the registration and fee requirements of part 211 and the rules promulgated under that part for the underground storage tank system from which the release occurred.

(7) If the administrator determines that the work invoice does not meet the requirements of subsection (6), he or she shall deny the work invoice and give written notice of the denial to the owner or operator who submitted the work invoice.

(8) The administrator shall keep records of approved work invoices. If the owner or operator has not exceeded the allowable amount of expenditure provided in section 21512, the administrator shall forward payment vouchers to the state treasurer within 45 days of making the determinations under subsection (6).

(9) The administrator may approve a reimbursement for a work invoice that was submitted by an owner or operator for corrective action taken if the work invoice meets the requirements of this part for an approved claim and an approved work invoice.

(10) Except as provided in subsection (11), upon receipt of a payment voucher, the state treasurer or the authority shall make a payment to the owner or operator or the consultant as authorized in the work invoice within 30 days if sufficient money exists in the fund or a bond proceeds account.

(11) Upon direction of the administrator, the state treasurer or the authority may withhold partial payment of money on payment vouchers if there is reasonable cause to believe that there are suspected violations of section 21548 or if necessary to assure acceptable completion of the proposed work.

(12) The department shall prepare and make available to owners and operators and consultants standardized claim and work invoice forms.

Sec 21516 (1) An owner or operator with a claim approved pursuant to section 21515 for which corrective action is in progress who sells or transfers the property that is the subject of the approved claim to another person may assign or transfer the approved claim to that other person. The person to whom the assignment or transfer is made is eligible to receive money from the fund as an owner or operator for the release which is the subject of the approved claim. Allowable outstanding approved or paid work invoices of the owner or operator making the assignment or transfer may be counted toward the co-pay amount of the person to whom the assignment or transfer is made.

(2) An owner or operator assigning or transferring an approved claim pursuant to this section shall notify the administrator of the proposed assignment or transfer at least 10 days before the effective date of the assignment or transfer.

Sec 21517 (1) In order to receive money from the fund, an owner or operator shall retain a consultant to perform the responsibilities required under part 213, and the consultant shall comply with all of the following requirements:

(a) The consultant shall submit the following items for competitive bidding in accordance with procedures established by the department:

(i) Well drilling, including monitoring wells.

(ii) Laboratory analysis.

(iii) Construction of treatment systems.

(iv) Removal of contaminated soil.

(v) Operation of treatment systems.

(b) All bids received by the consultant shall be submitted on a standardized bid form prepared by the department.

(c) A consultant may perform work activities only if the consultant bids for the work activity and the consultant's bid is the lowest responsive bid. A consultant who intends to submit a bid must submit the bid to the administrator prior to receiving bids from contractors.

(d) Upon receipt of bids, the consultant shall submit to the administrator a copy of all bid forms received and the bid accepted. If the lowest responsive bid was not accepted, the consultant shall provide a specific reason why the lowest responsive bid was not accepted.

(2) Bids are not required for initial response actions under section 21307.

(3) An owner or operator may request that the consultant retained by the owner or operator add qualified bidders to the list for requests for bids.

(4) After the consultant employs the competitive bidding process described in this section, the owner or operator may hire contractors directly.

(5) Upon hiring a contractor, a consultant may mark up the contractor's work invoice only if the consultant pays the contractor and does the billing.

(6) Removal of underground storage tank systems is not eligible for funding under this part. If a release is discovered during the removal, the consultant shall allow the contractor removing the underground storage tank system to complete the underground storage tank system removal.

(7) An owner or operator may receive funding under this part to implement a corrective action alternative that is not the preferred corrective action alternative only if the owner or operator pays the difference between the selected corrective action alternative and the preferred corrective action alternative.

Sec 21518 (1) To receive money from the fund for indemnification the owner or operator shall submit to the administrator a request for indemnification containing the information required by the administrator including a copy of the judgment obtained by a third party from a court of law against the owner or operator or the settlement entered into between the owner or operator and the third party all documentation supporting the reasonableness of and justification for the judgment or settlement and work invoices which conform to the requirements of section 21503(9)(a) to (e) If the administrator determines that the owner or operator is eligible for funding under this part is eligible for the amount requested has paid the co pay amount and has not exceeded the allowable amount of expenditure provided in section 21512 and that the work invoices are reasonable in terms of cost the administrator shall forward a copy of the request for indemnification along with all supporting documentation to the attorney general The attorney general shall approve the request for indemnification if there is a legally enforceable judgment against or settlement with the owner or operator that was caused by an accidental release and that is reasonable and consistent with the purposes of this part The attorney general may raise as a defense to the request any rights or defenses that were or are available to the owner or operator and in the case of a judgment that were not heard and ruled upon by the court If a request for indemnification is approved by the attorney general the administrator shall forward the approved request for indemnification to the department of treasury

(2) The administrator shall keep records of all approved requests for indemnification

(3) The state treasurer shall make a payment to an owner or operator for an approved indemnification request within 30 days if sufficient money exists in the fund

Sec 21519 (1) The state treasurer shall pay payment vouchers in the order in which they are received If there is insufficient money in the fund to make a payment then a payment shall not be made However payment vouchers that are not funded may be paid if revenues of the fund become available

(2) The fund and the state are not liable for work invoices or requests for indemnification if money in the fund is insufficient to meet these claims

Sec 21520 The department shall establish an audit program to monitor compliance with this part As part of the audit program the department shall employ or contract with qualified individuals to provide on site inspections of locations where there has been a release The on site inspectors shall assure that the preferred corrective action alternative selected by the consultant and the work performed on sites eligible for funding under this part are necessary and appropriate considering conditions at the location and that work is performed in a cost effective manner The department shall annually evaluate the need for on site inspectors and if the department determines that they are unnecessary due to other cost containment procedures implemented by the department the department may discontinue the on site inspections

Sec 21521 (1) If the administrator denies a claim or work invoice or a request for indemnification the owner or operator who submitted the claim work invoice or request for indemnification may within 14 days following the denial request review by the department Upon receipt of a request for review under this subsection the department shall forward the request to the board for a preliminary review The board shall conduct a review of the denial and shall submit a recommendation to the department as to whether the claim work invoice or request for indemnification substantially complies with this part Following review by the board the department shall approve the claim work invoice or request for indemnification if the department determines that the claim work invoice or request for indemnification substantially complies with the requirements of this part In making its determination the department shall give substantial consideration to the recommendations of the board However the department shall not approve a claim work invoice or request for indemnification for a release that was discovered prior to July 18 1989

(2) If the department approves a claim based upon substantial compliance pursuant to subsection (1) the department may refuse to pay for costs incurred during the time the owner or operator was not in strict compliance with this part

(3) A person who is denied approval by the department after review under subsection (1) may appeal the decision directly to the circuit court for the county of Ingham

Sec 21522 (1) The department of treasury in cooperation with the board shall establish an interest subsidy program through rules This program shall provide for interest subsidies upon application to the owner or operator of a petroleum underground storage tank system who meets the applicable requirements of section 21510(1) Money in the fund shall not be used for loans but shall be used to provide interest subsidies to lenders on loans for the replacement of a petroleum underground storage tank system

(2) Interest subsidies shall be made under this section upon application for the replacement of existing petroleum underground storage tank systems with petroleum underground storage tank systems that meet the requirements of subtitle I of title II of the solid waste disposal act Public Law 89 272 42 U S C 6991 to 6991i for new underground storage tank systems installed after January 1 1989 and the rules promulgated under part 211

(3) Applications for the interest subsidy program under this section shall be submitted prior to December 22 1998

(4) Beginning August 1 1993 the department of treasury shall provide all applicants who otherwise qualify for the interest subsidy program an interest rate subsidy 1% above the 6 month United States treasury bill rate in effect at the beginning of the calendar quarter in which an owner or operator is eligible but no more than the actual interest rate paid The maximum loan amount that an interest rate subsidy will be provided for is \$200 000 00 The maximum loan period is 10 years

Sec 21523 The Michigan underground storage tank financial assurance authority is created as a body corporate within the department of management and budget and shall exercise its prescribed statutory power financial duties and financial functions independently of the director of the department of management and budget or any other department Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds or notes

Sec 21524 (1) The authority shall be governed by a board of directors consisting of the director of the department of management and budget the director of the department of state police and 3 residents of the state appointed by the governor with the advice and consent of the senate The 3 appointed members shall serve terms of 3 years However in making the initial appointments the governor shall designate 1 appointed member to serve for 3 years 1 appointed member to serve for 2 years and 1 appointed member to serve for 1 year

(2) Upon appointment to the board of directors under subsection (1) and upon the taking and filing of the constitutional oath of office a member of the board of directors shall enter office and exercise the duties of the office to which he or she is appointed

(3) A vacancy on the board of directors shall be filled in the same manner as the original appointment A vacancy shall be filled for the balance of the unexpired term A member of the board of directors shall hold office until a successor is appointed and qualified

(4) Members of the board of directors and officers and employees of the authority are subject to Act No 317 of the Public Acts of 1968 being sections 15 321 to 15 330 of the Michigan Compiled Laws and Act No 318 of the Public Acts of 1968 being sections 15 301 to 15 310 of the Michigan Compiled Laws as applicable A member of the board of directors or an officer employee or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner with good faith and with the degree of diligence care and skill that an ordinarily prudent person would exercise under similar circumstances in a like position In discharging his or her duties a member of the board of directors or an officer employee or agent of the authority when acting in good faith may rely upon any of the following

(a) The opinion of counsel for the authority

(b) The report of an independent appraiser selected with reasonable care by the board of directors

(c) Financial statements of the authority represented to the member of the board of directors officer employee or agent to be correct by the officer of authority having charge of its books or account or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants to fairly reflect the financial condition of the authority

(5) The board of directors shall organize and make its own policies and procedures The board of directors shall conduct all business at public meetings held in compliance with the open meetings act Act No 267 of the Public Acts of 1976 being sections 15 261 to 15 275 of the Michigan Compiled Laws Public notice of the time date and place of each meeting shall be given in the manner required by Act No 267 of the Public Acts of 1976 Three members of the board of directors constitute a quorum for the transaction of business An action of the board of directors shall be by a majority of the votes cast A state officer who is a member of the board of directors may designate a representative from his or her department to serve instead of that state officer as a voting member of the board of directors for 1 or more meetings

(6) The board of directors shall elect a chairperson from among its members and may elect any other officers the board of directors considers appropriate

Sec 21525 (1) The governor shall designate the executive director of the authority The authority may employ on a permanent or temporary basis legal and technical experts and other officers agents or employees to be paid from the funds of the authority The authority shall determine the qualifications duties and compensation of those it employs but an employee shall not be paid a higher salary than the director of the department of management and budget The authority may delegate to 1 or more members officers agents or employees any of the powers or duties of the authority as the authority considers proper

(2) The budgeting procurement and related functions of the authority shall be performed under the direction and supervision of the director of the department of management and budget

(3) The authority may contract with the department of management and budget for the purpose of maintaining and improving the rights and interests of the authority

(4) The authority shall annually file with the legislature a written report on its activities of the last year This report shall be submitted not later than 270 days following the end of the fiscal year This report shall specify the amount and source of revenues received the status of investments made and money expended with proceeds of bonds or notes sold under this part

(5) The accounts of the authority are subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general Records shall be maintained according to generally accepted accounting principles

Sec 21526 Except as otherwise provided in this part the board of directors may do all things necessary or convenient to implement this part and the purposes objectives and powers delegated to the board of directors by other laws or executive orders including but not limited to all of the following

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws

(b) Sue and be sued in its own name and plead and be impleaded

(c) Borrow money and issue negotiable revenue bonds and notes pursuant to this part

(d) Enter into contracts and other instruments necessary incidental or convenient to the performance of its duties and the exercise of its powers

(e) With the prior consent of the director of the department of management and budget solicit and accept gifts grants loans and other aid from any person or the federal state or local government or any agency of the federal state or local government or participate in any other way in a federal state or local government program

(f) Procure insurance against loss in connection with the property assets or activities of the authority

(g) Invest money of the authority at the board of directors discretion in instruments obligations securities or property determined proper by the board of directors and name and use depositories for its money

(h) Contract for goods and services and engage personnel as necessary and engage the services of private consultants managers legal counsel and auditors for rendering professional financial assistance and advice payable out of any money of the authority

(i) Indemnify and procure insurance indemnifying members of the board of directors from personal loss or accountability from liability asserted by a person on bonds or notes of the authority or from any personal liability or accountability by reason of the issuance of the bonds or notes or by reason of any other action taken or the failure to act by the authority

(j) Do all other things necessary or convenient to achieve the objectives and purposes of the authority this part rules promulgated under this part or other laws that relate to the purposes and responsibilities of the authority

Sec 21527 (1) The authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the fund under section 21508 Bonds or notes of the authority are not a debt or liability of the state and do not create or constitute any indebtedness liability or obligation of the state or be or constitute a pledge of the faith and credit of the state All authority bonds and notes are payable solely from revenues or funds pledged or available for their payment as authorized in this part Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or from funds of the authority pledged for such payment and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note

(2) All expenses incurred in implementing this part are payable solely from revenues or funds provided or to be provided under this part This part does not authorize the authority to incur any indebtedness or liability on behalf of or payable by the state

Sec 21528 (1) The authority may issue from time to time bonds or notes in principal amounts the authority considers necessary to provide funds for any purpose including but not limited to all of the following

(a) The purposes described in section 21506(4)(a) and (d)

(b) The payment funding or refunding of the principal of interest on or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or refunded have or have not become due

(c) The establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes

(d) The payment of interest on the bonds or notes for a period determined by the authority

(e) The payment of all other costs or expenses of the authority incident to and necessary or convenient to implement its purposes and powers

(2) The bonds or notes of the authority are not a general obligation of the authority but are payable solely from the revenues or funds or both pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note

(3) The bonds or notes of the authority

(a) Shall be authorized by resolution of the authority

(b) Shall bear the date or dates of issuance

(c) May be issued as either tax exempt bonds or notes or taxable bonds or notes for federal income tax purposes

(d) Shall be serial bonds term bonds or term and serial bonds

(e) Shall mature at such time or times not exceeding 20 years from the date of issuance

(f) May provide for sinking fund payments

(g) May provide for redemption at the option of the authority for any reason or reasons

(h) May provide for redemption at the option of the bondholder for any reason or reasons

(i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest

(j) Shall be registered bonds coupon bonds or both

(k) May contain a conversion feature

(l) May be transferable

(m) Shall be in the form denomination or denominations and with such other provisions and terms as is determined necessary or beneficial by the authority

(4) If a member of the board of directors or any officer of the authority whose signature or facsimile of his or her signature appears on the note bond or coupon ceases to be a member or officer before the delivery of that bond or note the signature continues to be valid and sufficient for all purposes as if the member or officer had remained in office until the delivery

(5) Bonds or notes of the authority may be sold at a public or private sale at the time or times at the price or prices and at a discount as the authority determines. An authority bond or note is not subject to the municipal finance act Act No 202 of the Public Acts of 1943 being sections 131 1 to 139 3 of the Michigan Compiled Laws. The bond or note shall not require the approval of the state treasurer under Act No 202 of the Public Acts of 1943 and shall not be required to be registered. The bond or note of the authority shall not be required to be filed under the uniform securities act Act No 265 of the Public Acts of 1964 being sections 451 501 to 451 818 of the Michigan Compiled Laws

Sec 21529 (1) The authority may provide for the issuance of bonds or notes in the amounts the authority considers necessary for the purpose of refunding bonds or notes of the authority then outstanding including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption purchase or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date and pending such applications may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the authority. Pending such application and subject to agreements with noteholders or bondholders the escrowed proceeds may be invested and reinvested in the manner the authority determines maturing at the date or times as appropriate to assure the prompt payment of the principal interest and redemption premium if any on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out the balance of the proceeds and interest income and profits if any earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner authorized under this part

(2) In the resolution authorizing bonds or notes to refund bonds or notes the authority may provide that the bonds or notes to be refunded are considered paid when there has been deposited in escrow money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded as that principal and interest become due whether by maturity or prior redemption and that upon the deposit of the money or investment obligations the obligations of the authority to the holders of the bonds or notes to be refunded are terminated except as to the rights to the money or investment obligations deposited in trust

Sec 21530 (1) The authority may authorize and approve an insurance contract an agreement for a line of credit a letter of credit a commitment to purchase bonds or notes an agreement to remarket bonds or notes an agreement to

manage payment revenue or interest rate exposure and any other transaction to provide security to assure timely payment of a bond or note

(2) The authority may authorize payment from the proceeds of the bonds or notes or other funds available of the cost of issuance including but not limited to fees for placement charges for insurance letters of credit lines of credit remarketing agreements agreements to manage payment revenue or interest rate exposure reimbursement agreements or purchase or sales agreements or commitments or agreements to provide security to assure timely payment of bonds or notes

Sec 21531 Within limitations that are contained in the issuance or authorization resolution of the authority the authority may authorize a member of the board of directors the executive director or any other officer of the authority to do 1 or more of the following

- (a) Sell and deliver and receive payment for bonds or notes
- (b) Refund bonds or notes by the delivery of new bonds or notes whether or not the bonds or notes to be refunded are mature or subject to redemption
- (c) Deliver bonds or notes partly to refund bonds or notes and partly for any other authorized purpose
- (d) Buy issued bonds or notes and resell those bonds or notes
- (e) Approve interest rates or methods for fixing interest rates prices discounts maturities principal amounts denominations dates of issuance interest payment dates redemption rights at the option of the authority or the holder the place of delivery and payment and other matters and procedures necessary to complete the transactions authorized
- (f) Direct the investment of any and all funds of the authority
- (g) Approve the terms of an insurance contract an agreement for a line of credit a letter of credit a commitment to purchase notes or bonds an agreement to remarket bonds or notes or any other transaction to provide security to assure timely payment of a bond or note or an agreement to manage payment revenue or interest rate exposure
- (h) Execute any power duty function or responsibility of the authority

Sec 21532 A resolution authorizing bonds or notes may provide for all or any portion of the following that shall be part of the contract with the holders of the bonds or notes

- (a) A pledge to any payment or purpose of all or any part of the fund or authority revenues or assets to which its right then exists or may later come to exist and of money derived from the revenues or assets and of the proceeds of bonds or notes or of an issue of bonds or notes subject to any existing agreements with bondholders or noteholders
- (b) A pledge of a loan grant or contribution from the federal or state government
- (c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this part
- (d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional bonds or notes may be issued and secured
- (e) The procedure if any by which the terms of a contract with noteholders or bondholders may be amended or abrogated the number of noteholders or bondholders who are required to consent to the amendment or abrogation and the manner in which the consent may be given
- (f) A contract with the bondholders as to the custody collection securing investment and payment of any money of the authority Money of the authority and deposits of money may be secured in the manner determined by the authority Banks and trust companies may give security for such deposits
- (g) A provision to vest in a trustee or a secured party property income revenues receipts rights remedies powers and duties in trust or otherwise that the authority determines necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the authority to appoint a trustee under this part or to limit the rights powers and duties of the trustee
- (h) A provision to provide to a trustee or the noteholders or bondholders remedies that may be exercised if the authority fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of bonds or notes which may include any of the following
 - (i) By mandamus or other suit action or proceeding to enforce the rights of the bondholders or noteholders and require the authority to implement any other agreements with the holders of those bonds or notes and to perform the authority's duties under this part
 - (ii) Bring suit upon the bonds or notes
 - (iii) By action or suit require the authority to account as if it were the trustee of an express trust for the holders of the bonds or notes

(v) By action suit or proceeding enjoin any act or thing that may be unlawful or in violation of the rights of the holders of the bonds or notes

(v) Declare the bonds or notes due and payable and if all defaults are made good then as permitted by the resolution to annul that declaration and its consequences

(i) Any other matters of like or different character that in any way affect the security of protection of the bonds or notes

Sec 21533 A pledge made by the authority is valid and binding from the time the pledge is made The money or property pledged by the authority is immediately subject to the lien of the pledge without a physical delivery or further act The lien of a pledge is valid and binding against parties having claims of any kind in tort contract or otherwise against the authority and is valid and binding as against the transfers of the money or property pledged irrespective of whether parties have notice Neither the resolution the trust agreement nor any other instrument by which a pledge is created is required to be recorded to establish and perfect a lien or security interest in the pledged property

Sec 21534 The proceeds of bonds or notes issued pursuant to this part shall be deposited into the fund or bond proceeds account as authorized or designated by resolution indenture or other agreement of the authority

Sec 21535 A member of the authority any person executing bonds or notes issued under this part or any person executing any agreement on behalf of the authority is not liable personally on the bonds or notes by reason of their issuance

Sec 21536 The state pledges to and agrees with the holders of bonds or notes issued under this part that the state shall not limit or restrict the rights vested in the authority by this part to fulfill the terms of an agreement made with the holders of authority bonds or notes or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds and notes together with interest on the bonds or notes and interest on any unpaid installments of interest and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met paid and discharged

Sec 21537 Notwithstanding any restriction contained in any other law the state and a public officer local unit of government or agency of the state or a local unit of government a bank trust company savings bank and institution savings and loan association investment company or other person carrying on a banking business an insurance company insurance association or other person carrying on an insurance business or an executor administrator guardian trustee or other fiduciary may legally invest funds belonging to them or within their control in bonds or notes issued under this part and authority bonds or notes shall be authorized security for public deposits

Sec 21538 (1) Property of the authority is public property devoted to an essential public and governmental function and purpose Income of the authority is for a public purpose

(2) The property of the authority and its income and operation are exempt from all taxes and special assessments of the state or a political subdivision of the state

(3) Bonds or notes issued by the authority and the interest on and income from those bonds and notes are exempt from all taxation of the state or a political subdivision of the state

Sec 21539 This part shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this part and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers

Sec 21540 The authority may promulgate rules as necessary to implement sections 21523 to 21539

Sec 21541 (1) The Michigan underground storage tank financial assurance policy board is created in the department of natural resources

(2) The board shall consist of the following

(a) The director of the department of management and budget or his or her designee

(b) The director of the department of natural resources or his or her designee

(c) The director of the department of state police or his or her designee

(d) The state treasurer or his or her designee

(e) Eight individuals appointed by the governor with the advice and consent of the senate as follows

(i) One individual representing an independent petroleum wholesale distributor marketer trade association

(ii) One individual representing a petroleum refiner supplier trade association

- (iii) One individual representing a service station dealers trade association
- (iv) One individual representing a truck stop operators trade association
- (v) One individual representing an environmental public interest organization who is not associated with any of the organizations listed in subparagraphs (i) to (iv)
- (vi) Two individuals representing the general public who are not associated with any of the organizations listed in subparagraphs (i) to (v)
- (vii) One individual representing local government
- (3) An individual appointed to the board shall serve for a term of 2 years
- (4) A vacancy on the board shall be filled in the same manner as the original appointment
- (5) The first meeting of the board shall be called by the department. At its first meeting the board shall elect from among its members a chairperson and other officers as it considers necessary. After the first meeting a meeting of the board shall be called by the chairperson on his or her own initiative or by the chairperson on petition of 3 or more members. Upon receipt of a petition of 3 or more members a meeting shall be called for a date no later than 14 days after the date of receipt of the petition.
- (6) The business that the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.
- (7) A majority of the members of the board constitutes a quorum for the transaction of business at a meeting of the board. Action by the board shall be by a majority of the votes cast.
- (8) The board shall advise the department and the administrator on all matters related to the implementation of this part.
- (9) The administrator or the department may submit to the board for its review and evaluation the competitive bidding process employed by a consultant pursuant to section 21517. In conducting this review and evaluation the board may convene a peer review panel. Following completion of its review and evaluation the board shall forward a copy of its findings to the department, the administrator, and the consultant. If the board finds the practices employed by a consultant to be inappropriate the board may recommend that the department remove the consultant from the list of qualified consultants.
- (10) Upon request of the administrator or the department the board shall make a recommendation to the department on whether a consultant should be removed from the list of qualified consultants. Prior to making this recommendation the board may convene a peer review panel to evaluate the conduct of the consultant with regard to compliance with this part.
- (11) A member of the board shall abstain from voting on any matter in which that member has a conflict of interest.

Sec. 21542 (1) The department, after consultation with the board, shall prepare and annually update a list of qualified underground storage tank consultants who, based on department guidelines, are qualified to carry out the responsibilities of consultants as provided in part 213 and to oversee corrective actions. However, in preparing this list of consultants the department is not responsible or liable for the performance of the consultants. The department shall make this list of consultants available to a person upon request.

(2) The department shall include a person on the list of qualified consultants upon application if the person meets all of the following requirements:

(a) The person demonstrates experience in all phases of underground storage tank work, including tank removal, oversight, site assessment, soil removal, feasibility design, remedial system installation, remediation management activities, and site closure.

(b) The person has 1 or more individuals actively on staff who are certified underground storage tank professionals. Each certified underground storage tank professional shall provide a letter declaring that he or she is employed by the applicant and that the individual has an active operational role in the daily activities of the applicant.

(c) The person demonstrates that the person has or will be able to obtain, if approved, all of the following:

(i) Workers' compensation insurance.

(ii) Professional liability errors and omissions insurance. This policy may not exclude bodily injury, property damage, or claims arising out of pollution for environmental work and shall be issued with a limit of not less than \$1,000,000.00 per occurrence.

(iii) Contractor pollution liability insurance with limits of not less than \$1,000,000.00 per occurrence, if not included under the professional liability errors and omissions insurance required under subparagraph (ii). The insurance requirement under this subparagraph is not required for consultants who do not perform contracting functions.

(v) Commercial general liability insurance with limits of not less than \$1 000 000 00 per occurrence and \$2 000 000 00 aggregate

(v) Automobile liability insurance with limits of not less than \$1 000 000 00 per occurrence

Deductibles in excess of 10% of the insurance limits provided in this subdivision or the use of self insurance must be approved by the department Insurance policies must be written by carriers authorized to write such business or approved as an eligible surplus lines insurer by the state The insurance utilized must be placed with an insurer listed in A M Best's with a rating of no less than B+ VII

(d) The person demonstrates compliance with the occupational safety and health act of 1970 Public Law 91 596 84 Stat 1590 and the regulations promulgated under that act and the Michigan occupational safety and health act Act No 154 of the Public Acts of 1974 being sections 408 1001 to 408 1094 of the Michigan Compiled Laws and the rules promulgated under that act and demonstrates that all such rules and regulations have been complied with during the person's previous corrective action activity

(3) A person applying to be placed on the list of qualified consultants under this section shall submit an application to the department along with documentation that the person meets the requirements of subsection (2) If the person is a corporation the person shall include a copy of its most recent annual report

(4) After submitting an application under this section or any time after a consultant is included on the list of qualified consultants the person shall notify the department within 10 days of a change in any of the requirements of subsection (2) or any material change in the person's operations or organizational status that might affect the person's ability to operate as a consultant

(5) A consultant shall be suspended or removed from the list of qualified consultants for fraud or other cause as determined by the department including but not limited to failing to select and employ the most cost effective corrective action measures As used in this subsection cost effective includes a consideration of timeliness of implementation of the corrective action measures

Sec 21543 (1) Upon request the department shall certify an individual as an underground storage tank professional if the individual meets 1 or more of the following requirements

(a) The individual is a licensed professional engineer and has 3 or more years of relevant soil corrective action experience in the state preferably involving petroleum underground storage tanks

(b) The individual is a certified professional geologist (CPG) or holds a similar approved designation such as a professional hydrologist or a certified groundwater professional and has 3 or more years of relevant soil corrective action experience in the state preferably involving petroleum underground storage tanks

(c) The individual is able to demonstrate that he or she has 3 or more years of relevant environmental assessment and corrective action experience in the state and 10 or more years of specific experience in relevant environmental work with increasing responsibilities This demonstrated experience shall be documented with professional and personal references past employment references and histories and documentation that all requirements of the occupational safety and health act of 1970 Public Law 91 596 84 Stat 1590 and regulations promulgated under that act and the Michigan occupational safety and health act Act No 154 of the Public Acts of 1974 being sections 408 1001 to 408 1094 of the Michigan Compiled Laws and rules promulgated under that act have been met

(2) An individual requesting to be granted certification under this section shall submit a copy of all of his or her credentials to the department along with a letter requesting consideration The letter shall also include a statement that attests that the information being submitted is a true and accurate reflection of the individual's capabilities and qualifications False or erroneous information contained in the documents submitted or representations made constitutes fraud on the part of the individual involved and may involve enactment of legal proceedings revocation of certification and permanent suspension from all activities funded by the fund

Sec 21544 The department and the department of treasury may promulgate rules necessary to implement this part

Sec 21545 By February 9 1994 the department shall promulgate rules to implement this part The rules shall address at a minimum a procedure for the fund administrator to make the determinations required under section 21515(2) and the procedures to be followed under section 21521(1) and (3)

Sec 21546 (1) This part does not create any liability on behalf of the state This part shall not be construed as making the state the guarantor of the fund

(2) This part does not relieve any person who may be eligible to receive money from the fund or the emergency response fund from any liability that he or she may incur as the owner or operator of an underground storage tank system The state is not assuming the liability of an owner or operator eligible for funding under this part it is only providing assistance to such owners or operators in meeting the financial responsibility requirements

(3) All bonds or notes of the authority payable from the fund have been fully paid or provided for and if any provision of this part is found to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal this whole part shall be considered unconstitutional and invalid

Sec 21547 Not later than June 22 1994 the department shall conduct a study to determine the availability and cost of environmental impairment insurance for owners and operators of petroleum underground storage tank systems and shall report to the legislature and the insurance commissioner on the results of this study

Sec 21548 (1) Beginning August 8 1993 a person who makes or submits or causes to be made or submitted either directly or indirectly any statement report application claim bid work invoice or other request for payment or indemnification under this part knowing that the statement report application claim bid work invoice or other request for payment or indemnification is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50 000 00 or both In addition to any penalty imposed under this subsection a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement report application claim bid work invoice or other request for payment or indemnification under this part knowing that the statement report application claim bid work invoice or other request for payment or indemnification is false misleading or fraudulent or who commits a fraudulent practice is subject to a civil fine of not more than \$50 000 00 or twice the amount submitted whichever is greater In addition to any civil fine imposed under this subsection a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection The legislature intends that this subsection be given retroactive application

(3) As used in subsection (2) fraudulent or fraudulent practice includes but is not limited to the following

(a) Submitting a work invoice for the excavation hauling disposal or provision of soil sand or backfill for an amount greater than the legal capacity of the carrying vehicle or greater than was actually carried excavated disposed or provided

(b) Submitting paperwork for services done or work provided that was not in fact provided or that was not directly provided by the individual indicated on the paperwork

(c) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site

(d) Returning any load of contaminated soil to its original site for reasons other than remediation of the soil

(e) Causing damage intentionally or as the result of gross negligence to an underground storage tank system which damage results in a release at a site

(f) Placing an underground storage tank system at a contaminated site where no underground storage tank system previously existed for purposes of disguising the source of contamination or to obtain funding under this part

(g) Submitting a work invoice for the excavation of soil from a site that was removed for reasons other than removal of the underground storage tank system or remediation

(h) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site

(i) Registration of a nonexistent underground storage tank system with the department

(j) Loaning to an owner or operator the co pay amount required under section 21514 and then submitting or causing to be submitted inflated claims or invoices designed to recoup the co pay amount

(k) Confirming a release without simultaneously providing notice to the owner or operator

(l) Inflating bills or work invoices or both by adding charges for work that was not performed

(m) Submitting a false or misleading laboratory report

(n) Submitting bills or work invoices or both for sampling testing monitoring or excavation that are not justified by the site condition

(o) Falsely characterizing the contents of an underground storage tank system for purposes of obtaining funding under this part

(p) Submitting or causing to be submitted bills or work invoices by or from a person who did not directly provide the service

(q) Characterizing legal services as consulting services for purposes of obtaining funding under this part

(r) Misrepresenting or concealing the identity credentials affiliation or qualifications of principals or persons seeking either directly or indirectly funding or approval for participation under this part

(s) Falsifying a signature on a claim application or a work invoice

(t) Failing to accurately disclose the actual amount and carrier of unencumbered insurance coverage available for new environmental impairment or professional liability claims

(u) Any other act or omission of a false fraudulent or misleading nature undertaken in order to obtain funding under this part

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession custody or control of any document or records however stored or embodied or tangible object which is relevant to an investigation of a violation or attempted violation of this part or a crime or attempted crime against the fund the attorney general or county prosecutor may before bringing any action make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the document records or object for inspection and copying or both Service may be accomplished by any means described in the Michigan court rules Requests made by the attorney general may be brought in Ingham county

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5) an action may be brought in district court to enforce the demand Actions filed by the attorney general may be brought in Ingham county

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information documents records or objects sought pursuant to this section If the judge is satisfied that it is in the interest of justice that immunity be granted he or she shall enter an order granting immunity to the person and requiring them to appear and be examined under oath or to produce the document records or object for inspection and copying or both

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than \$25 000 00 for each day of continued noncompliance

(9) In addition to any civil fines or criminal penalties imposed under this part or the criminal laws of this state the person found responsible shall repay any money obtained directly or indirectly under this part Money owed pursuant to this section constitutes a claim and lien by the fund upon any real or personal property owned either directly or indirectly by the person This lien shall attach regardless of whether the person is insolvent and may not be extinguished or avoided by bankruptcy The lien imposed by this section has the force and effect of a first in time and right judgment lien

(10) Subsection (1) does not preclude prosecutions under other laws of the state including but not limited to section 157a 218 248 249 280 or 422 of the Michigan penal code Act No 328 of the Public Acts of 1931 being sections 750 157a 750 218 750 248 750 249 750 280 and 750 422 of the Michigan Compiled Laws

(11) All civil fines collected pursuant to this section shall be apportioned in the following manner

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part

(b) Twenty five percent shall be paid to the office of the county prosecutor or attorney general whichever office brought the action

(c) Twenty five percent shall be paid to a local police department or sheriff's office or a city or county health department if investigation by that office or department led to the bringing of the action If more than 1 office or department is eligible for payment under this subsection division of payment shall be on an equal basis If there is not a local office or department that is entitled to payment under this subdivision the money shall be forwarded to the state treasurer for deposit into the emergency response fund created in section 21507

Sec 21549 (1) A person who provides information that materially contributes to the imposition of a civil fine against or the criminal conviction of any person under section 21548 shall be paid a reward pursuant to rules adopted by the department under subsection (6) The reward shall be the greater of 10% of the amount of the civil fine collected or \$1 000 00

(2) A person is not eligible for a reward under this section for a violation previously known to the investigating agency unless the information materially contributes to the civil judgment or criminal conviction

(3) If there is more than 1 person who provides information pursuant to subsection (1) for a single violation the first person to notify the investigating agency is eligible for the reward If more than 1 notification is received on the same day the reward shall be divided equally among those persons providing the information

(4) Public officers and employees of the United States the state of Michigan the states of Wisconsin Illinois Indiana and Ohio or counties and cities in Michigan Wisconsin Illinois Indiana and Ohio are not eligible for the reward under this section unless reporting those violations does not relate in any manner to their responsibilities as public officers or employees

(5) An employee of a business who provides information that the business violated this part is not eligible for a reward if the employee intentionally caused the violation

(6) The department shall promulgate rules that establish procedures for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for an award and the materiality of the provided information shall be made pursuant to these rules. In each case brought under section 21548, whichever office prosecuted the action shall determine whether the information materially contributed to the imposition of a civil fine or a criminal conviction.

(7) The department shall periodically publicize the availability of the rewards provided for in this section to the public.

(8) A claim for a reward under this section may be submitted only for information provided on or after July 23, 1993.

Sec. 21550 (1) Section 21507 is repealed effective December 22, 1998.

(2) Upon the repeal of section 21507, any unexpended money in the emergency response fund reverts to the fund.

(3) This part is repealed effective January 1, 2005.

(4) Upon repeal of this part, any money in the fund or in the possession of the authority reverts to the environmental response fund created in part 201.

(5) The authority's obligation to pay off any bonds or notes issued pursuant to this part shall survive the repeal of this part.

Sec. 21551 Notwithstanding any provision of this part prior to December 22, 1998, the state treasurer shall reserve enough money in the fund to pay interest subsidies pursuant to section 21522, and for work invoices and requests for indemnification that were denied by the administrator, if subsequent to the denial the owner or operator requested review by the board, requested a contested case hearing, or filed a lawsuit related to the denial, and the case is still pending. This money shall be used to pay interest subsidies, and for work invoices and requests for indemnification in cases in which an owner or operator is successful in persuading the board, the department, or a court that the administrator's denial was in error.

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THE GREAT LAKES

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ARTICLE VII

PART 901

Sec 90101 (1) The following acts and parts of acts that are codified in article I general provisions and article II pollution control are repealed

<u>PUBLIC ACT NUMBER</u>	<u>YEAR OF ACT</u>	<u>MICHIGAN COMPILED LAWS SECTIONS</u>
17	1921	299 1 to 299 10
199	1991	123 1031 to 123 1037
127	1970	691 1201 to 691 1207
245	1929	323 1 to 323 13a
350	1865	307 22 to 307 32
226	1971	323 231 to 323 236
98	1913	325 201 to 325 214
320	1927	123 241 to 123 253
211	1956	323 151 to 323 162
159	1969	323 401 to 323 412
271	1974	323 291 to 323 293
317	1988	323 451 to 323 470
348	1965	336 11 to 336 36
12	1993	336 121 to 336 129
171	1976	286 551 to 286 581
247	1993	286 851 to 286 868
106	1963	752 901 to 752 906
167	1970	323 331 to 323 342
64	1979	299 501 to 299 551
171	1986	299 621 to 299 625
641	1978	299 401 to 299 437
181	1986	325 311 to 325 332
136	1969	323 271 to 323 280
147	1993	299 891 to 299 898
148	1993	299 871 to 299 882
60	1976	299 351 to 299 360
414	1988	299 481 to 299 484
145	1988	445 581 to 445 584
411	1988	299 461 to 299 464
411	1980	319 311 to 319 316
133	1990	299 561 to 299 572
20	1990	299 861 to 299 869
249	1986	299 371 to 299 393
307	1982	299 601 to 299 618
91	1990	30 431 to 30 432
423	1984	299 701 to 299 712
478	1988	299 831 to 299 850
518	1988	299 801 to 299 828

(2) The following acts and parts of acts are not codified in this act but are repealed

(a) Act No 366 of the Public Acts of 1974 being sections 299 301 to 299 321 of the Michigan Compiled Laws

(b) Act No 329 of the Public Acts of 1966 being sections 323 111 to 323 128 of the Michigan Compiled Laws

(c) Act No 13 of the Public Acts of the Extra Session of 1956 being sections 323 201 to 323 203 of the Michigan Compiled Laws

(d) Act No 280 of the Public Acts of 1909 being sections 322 202 to 322 214 of the Michigan Compiled Laws

(e) Act No 155 of the Public Acts of 1937 being sections 211 355a to 211 364 of the Michigan Compiled Laws

Acting Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor