



SENATE BILL No. 257

January 26, 1993, Introduced by Senator EHLERS and referred to the Committee on Natural Resources and Environmental Affairs.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

ARTICLE I

2

PART 1

3

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

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

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

8

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

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

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

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

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

15

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

19

Sec. 103. This act shall be construed for all purposes as
20 incorporating by reference executive order 1991-31 issued pursu-
21 ant to the authority of section 2 of article V of the state con-
22 stitution of 1963 as this executive order may be judicially
23 construed.

24

PART 3 DEPARTMENT OF NATURAL RESOURCES

25

GENERAL POWERS AND DUTIES

26

Sec. 301. (1) A department of natural resources for this
27 state is created which possesses the powers and performs the

1 duties granted and imposed by this act and as otherwise provided
2 by law.

3 (2) The general administration of the powers and duties of
4 the department is vested in a commission of natural resources
5 which shall be composed of 7 members, not more than 4 of whom
6 shall be members of the same political party, appointed by the
7 governor by and with the advice and consent of the senate. A
8 member of the commission shall be selected with special reference
9 to that person's training and experience related to at least 1 of
10 the principal lines of activities vested in the department and
11 the ability and fitness of that person to deal with those
12 activities. The term of office of each member of the commission
13 shall be 4 years. The governor shall fill a vacancy occurring in
14 the membership of the commission and may remove a member of the
15 commission for cause after a hearing. Each member of the commis-
16 sion shall hold office until the appointment and qualification of
17 that member's successor.

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

1 place of the meeting shall be given in the manner required by Act
2 No. 267 of the Public Acts of 1976. A meeting may be called by
3 the chairperson and shall be called on request of a majority of
4 the members of the commission. A meeting may be held as often as
5 necessary and at other places than the commissioners' offices at
6 Lansing. The commission shall meet at least once each month.

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

22 (5) The compensation of the deputy director, the assistants,
23 and the employees, and the number of assistants and employees
24 shall be subject to the approval of the state administrative
25 board. The members of the commission shall not receive compensa-
26 tion under this part, but each member and the other officers and
27 employees of the department shall be entitled to reasonable

1 expenses while traveling in the performance of their duties
2 prescribed by this part. The salaries and expenses authorized
3 under this part shall be paid out of the state treasury in the
4 same manner as the salaries of other state officers and employees
5 are paid. The department of management and budget shall furnish
6 suitable offices and office equipment, at Lansing, for the use of
7 the department. Each member of the commission and the director
8 shall qualify by taking and subscribing to the constitutional
9 oath of office, and by filing it in the office of the secretary
10 of state.

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

20 (2) The commission may promulgate rules, not inconsistent
21 with law, governing its organization and procedure, and the
22 administration of this part, as considered expedient. The com-
23 mission may promulgate and enforce reasonable rules concerning
24 the use and occupancy of lands and property under its control in
25 accordance with section 304; may provide and develop facilities
26 for outdoor recreation; may conduct investigations it considers
27 necessary for the proper administration of this part; may remove

1 and dispose of forest products as required for the protection,
2 reforestation, and proper development and conservation of the
3 lands and property under control of the department; and may
4 require the payment of a fee as provided by law for a daily
5 permit or other authorization that allows the person to hunt and
6 take waterfowl on a public hunting area managed and developed for
7 waterfowl. The commission may require the wearing of a special
8 tag or license as a condition of issuing a permit under this
9 section.

10 (3) Except as provided in subsection (4), the commission may
11 enter into contracts for the taking of coal, oil, gas, and other
12 mineral products from state owned lands, upon a royalty basis or
13 upon another basis, and upon the terms the commission considers
14 just and equitable. This contract power includes authorization
15 to enter into contracts for the storage of gas or other mineral
16 products in or upon state owned lands, if the consent of the
17 state agency having jurisdiction and control of the state owned
18 land is first obtained. A contract permitted under this section
19 for the taking of coal, oil, gas, or metallic mineral products,
20 or for the storage of gas or other mineral products, is not valid
21 unless the contract is approved by the state administrative
22 board. Money received from a contract permitted under this sub-
23 section, except money received from lands acquired with money
24 from the game and fish protection fund, shall be transmitted to
25 the state treasurer for deposit in the Michigan natural resources
26 trust fund created in section 35 of article IX of the state
27 constitution of 1963. However, the money received from the

1 payment of service charges by a person using areas managed for
2 waterfowl shall be credited to the game and fish protection fund
3 created in section 601 of the hunting and fishing license act,
4 Act No. 86 of the Public Acts of 1980, being section 316.601 of
5 the Michigan Compiled Laws, and used only for the purposes pro-
6 vided by law. Money received from bonuses, rentals, delayed
7 rentals, royalties, and the direct sale of resources, including
8 forest resources, from lands acquired with money from the game
9 and fish protection fund shall be credited to the game and fish
10 protection trust fund, except as otherwise provided by law.

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

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

25 Sec. 303. (1) The department shall protect and conserve the
26 natural resources of the state; provide and develop facilities
27 for outdoor recreation; prevent the destruction of timber and

1 other forest growth by fire or otherwise; promote the reforesting
2 of forest lands belonging to the state; prevent and guard against
3 the pollution of lakes and streams within the state, and enforce
4 all laws provided for that purpose with all authority granted by
5 law, and foster and encourage the protecting and propagation of
6 game and fish. On behalf of the people of the state, the commis-
7 sion may accept gifts and grants of land and other property and
8 may buy, sell, exchange, or condemn land and other property, for
9 any of the purposes contemplated by this part. The department
10 may accept funds, money, or grants for development of salmon and
11 steelhead trout fishing in this state from the government of the
12 United States, or any of its departments or agencies, pursuant to
13 the anadromous fish conservation act, Public Law 89-304, 16
14 U.S.C. 757a to 757g, and may use this money in accordance with
15 the terms and provisions of that act. However, the acceptance
16 and use of federal funds does not commit state funds and does not
17 place an obligation upon the legislature to continue the purposes
18 for which the funds are made available.

19 (2) The department may lease lands owned or controlled by it
20 that have been designated for use for recreational purposes, but
21 only to responsible legal units, within this state, of national
22 or state recognized groups devoted principally to development of
23 character and citizenship training and physical fitness of youth,
24 the financial support of which is by voluntary public subscrip-
25 tions or contributions, and the property of which is exempt from
26 taxation under the laws of this state. The department may lease
27 land in the Porcupine mountain state park to third parties for

1 purposes as it considers desirable. Any lease entered into under
2 this subsection shall limit the purposes for which the leased
3 land is to be used and shall authorize the department to termi-
4 nate the lease upon a finding that the land is being used for
5 purposes other than those permitted in the lease.

6 Sec. 304. (1) The commission shall promulgate rules for
7 the protection of the lands and property under its control
8 against wrongful use or occupancy as will insure the carrying out
9 of the intent of this part to protect the lands and property from
10 depredations and to preserve the lands and property from molesta-
11 tion, spoilation, destruction or any other improper use or
12 occupancy. This section does not allow the commission to promul-
13 gate a rule that applies to commercial fishing except as other-
14 wise provided by law. The director shall issue orders necessary
15 to implement rules promulgated under this section. These orders
16 shall be effective upon posting.

17 (2) A person who violates a rule promulgated under this sec-
18 tion or an order issued under this section is guilty of a misde-
19 meanor, punishable by imprisonment for not more than 90 days or
20 community service of not more than 30 days, or by a fine of not
21 more than \$500.00, or both.

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

1 Sec. 305. The commission or the department, in pursuing the
2 state's policy of propagating fish for the purpose of stocking
3 the streams and lakes of the state, shall accept federal fish
4 stock for such programs, and shall apply for all federal fish
5 stock programs that do not commit the state to future
6 expenditures. The department shall provide a listing to the leg-
7 islature of all federal fish stock programs by April 15 of each
8 year.

9 Sec. 306. (1) A writing prepared, owned, used, in the pos-
10 session of, or retained by the department or the commission in
11 the performance of an official function shall be made available
12 to the public in compliance with the freedom of information act,
13 Act No. 442 of the Public Acts of 1976, being sections 15.231 to
14 15.246 of the Michigan Compiled Laws.

15 (2) Before January 16 of each year in which a regular ses-
16 sion of the legislature is held, the director shall make a report
17 covering the operation of the department for the preceding bien-
18 nial period to the governor and the legislature. The report, if
19 ordered by the department of management and budget, shall be
20 printed and be distributed in the manner and to the persons,
21 organizations, institutions, and officials as the board directs.
22 The report shall be made available to the public as prescribed in
23 subsection (1).

24 Sec. 307. This part is declared to be immediately necessary
25 for the preservation of the public health, safety, welfare, and
26 the environment.

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

20 Sec. 309. (1) The commission may require that a person
21 obtain a permit for the use of a state park or a state forest
22 campground. The commission may establish and collect fees for
23 permits to use state parks, state forest campgrounds, and spe-
24 cific state forest areas. The revenue realized by the commission
25 from permit fees and concessions at state parks shall be credited
26 to a separate fund of the state treasury and shall be available
27 for appropriation to the department for improvement and

1 maintenance of state parks. The permit fees for state forest
2 campgrounds shall be used for the operation, maintenance, and
3 development of state forest campgrounds. Any unexpended permit
4 fees for state forest campgrounds, along with any excess collec-
5 tions from prior fiscal years, shall be carried over into subse-
6 quent fiscal years and shall be available for appropriation for
7 the operation, maintenance, and development of state forest
8 campgrounds.

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

13 Sec. 310. (1) Money received by the department for reim-
14 bursement of damages to department property, reimbursement of
15 land recording fees, sale of farm animals from Maybury state
16 park, reimbursement for utilities for the Michigan state exposi-
17 tion and fairgrounds, reproduction of the agenda of the commis-
18 sions of the department, reimbursement for forest fire protection
19 services provided to the federal government or other states, and
20 money received from forfeited cash bonds, security bonds, and
21 court ordered reimbursements may be credited to the accounts from
22 which these disbursements were or are to be made.

23 (2) The department may establish and collect fees for use of
24 aircraft and pilots of the department. The aircraft fees col-
25 lected shall be credited to a separate fund of the state treasury
26 and shall be available for appropriation to the department and
27 used to pay all operating and maintenance costs of the aircraft,

1 including depreciation and aircraft replacement, but shall not
2 exceed the fee revenue collected for the fiscal year together
3 with any unexpended balances of prior years.

4 Sec. 311. The department may establish and collect fees for
5 the department magazine, publications, and related materials.
6 Fees collected shall be credited to a separate fund of the state
7 treasury and shall be available for appropriation to the depart-
8 ment and used to pay all direct and indirect operating costs of
9 the magazine and for the purchase of other related publications
10 and materials. The retained earnings balance of the magazine at
11 the end of the fiscal year shall not fall below the retained
12 earnings balance at the end of the prior fiscal year. Any unex-
13 pended fees collected pursuant to this section, along with any
14 excess collections from prior fiscal years, shall be carried over
15 into subsequent fiscal years and shall be available for appropri-
16 ation for the purposes described in this section. The magazine
17 account shall receive an annual allocation of interest earned by
18 the state treasurer's common cash fund on cash balances of the
19 magazine in accordance with procedures established by the state
20 treasurer. Accounting records of the magazine shall be main-
21 tained on an accrual basis in accordance with generally accepted
22 accounting principles, including the establishment of separate
23 asset, liability, and equity accounts for the magazine. On
24 March 1 of each year, the department shall report to the appro-
25 priations committees of the house of representatives and senate
26 and the house and senate fiscal agencies the status of the

1 natural resources magazine program as of the end of the prior
2 fiscal year.

3 ARTICLE II POLLUTION CONTROL

4 PART 11 WATER RESOURCES PROTECTION

5 Sec. 1101. As used in this part:

6 (a) "Municipality" means the state, a county, city, village
7 or township, or an agency or instrumentality of any of these
8 entities.

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

12 Sec. 1102. (1) For the purpose of carrying out this part a
13 water resources commission is created which shall consist of the
14 director, the director of the department of public health, the
15 director of the state transportation department, the director of
16 the department of agriculture, and 3 citizens of the state to be
17 appointed by the governor, by and with the advice and consent of
18 the senate, 1 from groups representative of industrial manage-
19 ment, 1 from groups representative of municipalities, and 1 from
20 groups representative of conservation associations or interests,
21 for terms of 3 years each. Vacancies shall be filled for the
22 unexpired term in the same manner as original appointments.
23 Members of the water resources commission shall be entitled to
24 actual and necessary expenses incurred in the performance of
25 official duties. The department of management and budget shall
26 provide suitable office facilities for the use of the water
27 resources commission.

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

5 Sec. 1103. (1) The water resources commission shall orga-
6 nize and make its own rules and procedure and shall meet not less
7 than once each month and shall keep a record of its proceedings.
8 The water resources commission shall protect and conserve the
9 water resources of the state and shall have control of the pollu-
10 tion of surface or underground waters of the state and the Great
11 Lakes, which are or may be affected by waste disposal of any
12 person. The water resources commission may make or cause to be
13 made surveys, studies, and investigations of the uses of waters
14 of the state, both surface and underground, and cooperate with
15 other governments, and governmental units and agencies in making
16 the surveys, studies, and investigations. The water resources
17 commission shall assist in an advisory capacity a flood control
18 district that may be authorized by the legislature. The water
19 resources commission, in the public interest, shall appear and
20 present evidence, reports, and other testimony during the hear-
21 ings involving the creation and organization of flood control
22 districts. The water resources commission shall advise and con-
23 sult with the legislature on the obligation of the state to par-
24 ticipate in the costs of construction and maintenance as provided
25 for in the official plans of a flood control district or inter-
26 county drainage district. The water resources commission shall

1 enforce this part and shall promulgate rules as it considered
2 necessary to carry out its duties under this part.

3 (2) The water resources commission may promulgate rules and
4 take other actions as may be necessary to comply with the federal
5 water pollution control act, chapter 758, 86 Stat. 816, 33
6 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1270,
7 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1330,
8 1341 to 1345, 1361 to 1377, and 1381 to 1387, and to expend funds
9 available under such law for extension or improvement of the
10 state or interstate program for prevention and control of water
11 pollution. This act shall not be construed as authorizing the
12 commission to expend nor to incur any obligation to expend any
13 state funds for such purpose in excess of any amount that is
14 appropriated by the legislature.

15 (3) The business which the water resources commission may
16 perform shall be conducted at a public meeting of the water
17 resources commission held in compliance with the open meetings
18 act, Act No. 267 of the Public Acts of 1976, being sections
19 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of
20 the time, date, and place of the meeting shall be given in the
21 manner required by Act No. 267 of the Public Acts of 1976.

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

1 Sec. 1104. (1) The department is designated as the state
2 agency to cooperate and negotiate with other governments, govern-
3 mental units and governmental agencies in matters concerning the
4 water resources of the state, including, but not limited to,
5 flood control, beach erosion control and water quality control
6 planning, development, and management. The department shall have
7 control over the alterations of natural or present watercourses
8 of all rivers and streams in the state to assure that the chan-
9 nels and the portions of the floodplains that are the floodways
10 are not inhabited and are kept free and clear of interference or
11 obstruction which will cause any undue restriction of the capac-
12 ity of the floodway. The department may take such steps as may
13 be necessary to take advantage of any act of congress that may be
14 of assistance in carrying out the purposes of this part including
15 the water resources planning act, Public Law 89-80,
16 42 U.S.C. 1962 to 1962-1 and 1962a to 1962d-3 and the federal
17 water pollution control act, chapter 758, 86 Stat. 816,
18 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263,
19 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313,
20 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1377, and 1381
21 to 1387.

22 (2) The department shall report to the governor and to the
23 legislature at least once in each year any plans or projects
24 being implemented or considered for implementation. The report
25 shall include requests for any legislation needed to implement a
26 proposed plan, project, or agreement made necessary as a result
27 of a plan or project, together with any requests for

1 appropriations. The department may make recommendations to the
2 governor on the designation of areawide water quality planning
3 regions and organizations relative to the governor's responsibil-
4 ities under the federal water pollution control act.

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

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

1 water resources commission may promulgate rules and issue orders
2 restricting the polluting content of any waste material or pol-
3 luting substance discharged or sought to be discharged into any
4 lake, river, stream, or other waters of the state. The water
5 resources commission shall take all appropriate steps to prevent
6 any pollution the water resources commission considers to be
7 unreasonable and against public interest in view of the existing
8 conditions in any lake, river, stream, or other waters of the
9 state.

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

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

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

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

5 (b) To domestic, commercial, industrial, agricultural, rec-
6 reational, or other uses that are being or may be made of such
7 waters.

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

9 (d) To livestock, wild animals, birds, fish, aquatic life,
10 or plants, or the growth, propagation, or value of any of these
11 life forms.

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

25 (3) Unless authorized by permit, order, or rule of the water
26 resources commission or the department, the discharge into the
27 waters of this state of any medical waste, as defined in part 138

1 of the public health code, Act No. 368 of the Public Acts of
2 1978, being sections 333.13801 to 333.13831 of the Michigan
3 Compiled Laws, is prima facie evidence of a violation of this
4 part and subjects the responsible person to the penalties pre-
5 scribed in section 1115.

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

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

21 (2) The department may conduct a program for training per-
22 sons seeking to be certified as operators or supervisors under
23 subsection (1) or seeking to be certified as operators or super-
24 visors of municipal wastewater treatment facilities. The depart-
25 ment, with the annual approval of the water resources commission,
26 may charge a fee based on the costs to the department of
27 operating the training program. The fees shall be deposited in

1 the state treasury and credited to a separate fund and used to
2 conduct the training program. Any unexpended fees collected pur-
3 suant to this subsection, along with any excess collections from
4 prior fiscal years, shall be carried over into subsequent fiscal
5 years and shall be available for appropriation for the purposes
6 of conducting the program described in this subsection.

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

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

21 Sec. 1111. A person doing business within this state who
22 discharges wastewater to the waters of the state or to any sewer
23 system, which contains wastes in addition to sanitary sewage,
24 shall file annually reports on forms provided by the department
25 setting forth the nature of the enterprise, indicating the quan-
26 tities of materials used in and incidental to its manufacturing
27 processes and including by-products and waste products that

1 appear on a register of critical materials as compiled by the
2 department with the advice of an advisory committee of environ-
3 mental specialists designated by the department, and the esti-
4 mated annual total number of gallons of wastewater, including,
5 but not limited to, process and cooling water to be discharged to
6 the waters of the state or to any sewer system. The information
7 shall be used by the department only for purposes of water pollu-
8 tion control. The department shall provide proper and adequate
9 facilities and procedures to safeguard the confidentiality of
10 manufacturing proprietary processes except that confidentiality
11 shall not extend to waste products discharged to the waters of
12 the state. Operations of a business or industry that violate
13 this section may be enjoined by an action commenced by the attor-
14 ney general, in a court of competent jurisdiction. The depart-
15 ment shall promulgate rules as it considers necessary to effectu-
16 ate the administration of this section, including where necessary
17 to meet special circumstances, reporting more frequently than
18 annually.

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

1 of a permit upon the permittee's meeting the effluent
2 requirements that the water resources commission considers neces-
3 sary to prevent unlawful pollution by such dates that the water
4 resources commission considers to be reasonable and necessary and
5 to assure compliance with applicable federal law and
6 regulations. If the water resources commission finds that the
7 terms of a permit have been, are being, or may be violated, it
8 may modify, suspend, or revoke the permit or grant the permittee
9 a reasonable period of time in which to comply with the permit.
10 The water resources commission may reissue a revoked permit upon
11 a showing satisfactory to the water resources commission that the
12 permittee has corrected the violation. A person who has had a
13 permit revoked may apply for a new permit.

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

20 (3) A person who is aggrieved by an order of abatement of
21 the department or by the reissuance, modification, suspension, or
22 revocation of an existing permit of the water resources commis-
23 sion executed pursuant to section 1112 may file a sworn petition
24 with the department or the water resources commission, as appro-
25 priate, setting forth the grounds and reasons for the complaint
26 and asking for a contested case hearing on the matter pursuant to
27 the administrative procedures act of 1969, Act No. 306 of the

1 Public Acts of 1969, being sections 24.201 to 24.328 of the
2 Michigan Compiled Laws. A petition filed more than 60 days after
3 action on the order or permit may be rejected by the department
4 or the water resources commission as being untimely.

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

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

24 (3) If the permit or denial of a new or increased use is not
25 acceptable to the permittee, the applicant or any other person,
26 the permittee, the applicant, or other person may file a sworn
27 petition with the water resources commission setting forth the

1 grounds and reasons for the complaint and asking for a contested
2 case hearing on the matter pursuant to the administrative proce-
3 dures act of 1969, Act No. 306 of the Public Acts of 1969, being
4 sections 24.201 to 24.328 of the Michigan Compiled Laws. A peti-
5 tion filed more than 60 days after action on the permit applica-
6 tion may be rejected by the water resources commission as being
7 untimely.

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

12 Sec. 1115. (1) The department or the water resources com-
13 mission may request the attorney general to commence a civil
14 action for appropriate relief, including a permanent or temporary
15 injunction, for a violation of this part or a provision of a
16 permit, order, rule, or stipulation of the department or the
17 water resources commission. An action under this subsection may
18 be brought in the circuit court for the county of Ingham or for
19 the county in which the defendant is located, resides, or is
20 doing business. The court has jurisdiction to restrain the vio-
21 lation and to require compliance. In addition to any other
22 relief granted under this subsection, the court shall impose a
23 civil fine of not less than \$2,500.00 and may award reasonable
24 attorney fees and costs to the prevailing party. However, the
25 maximum fine imposed by the court shall be not more than
26 \$25,000.00 per day of violation.

1 (2) A person who at the time of the violation, knew or
2 should have known that he or she discharged a substance contrary
3 to this part, or contrary to a permit, order, rule, or stipula-
4 tion of the department or the water resources commission, or who
5 intentionally makes a false statement, representation, or certi-
6 fication in an application for, or form pertaining to a permit,
7 or in a notice or report required by the terms and conditions of
8 an issued permit, or who intentionally renders inaccurate a moni-
9 toring device or record required to be maintained by the water
10 resources commission, is guilty of a felony, and shall be fined
11 not less than \$2,500.00 or more than \$25,000.00 for each
12 violation. The court may impose an additional fine of not more
13 than \$25,000.00 for each day during which the unlawful discharge
14 occurred. If the conviction is for a violation committed after a
15 first conviction of the person under this subsection, the court
16 shall impose a fine of not less than \$25,000.00 per day and not
17 more than \$50,000.00 per day of violation. Upon conviction, in
18 addition to a fine, the court in its discretion may sentence the
19 defendant to imprisonment for not more than 2 years or impose
20 probation upon a person for a violation of this part. With the
21 exception of the issuance of criminal complaints, issuance of
22 warrants, and the holding of an arraignment, the circuit court
23 for the county in which the violation occurred has exclusive
24 jurisdiction. However, the person shall not be subject to the
25 penalties of this subsection if the discharge of the effluent is
26 in conformance with and obedient to a rule, order, or permit of
27 the water resources commission. In addition to a fine, the

1 attorney general may file a civil suit in a court of competent
2 jurisdiction to recover the full value of the injuries done to
3 the natural resources of the state and the costs of surveillance
4 and enforcement by the state resulting from the violation.

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

10 (4) Upon a finding by the court that the action of a crimi-
11 nal defendant pose or posed a substantial endangerment to public
12 health, safety, or welfare, the court shall impose, in addition
13 to the penalties set forth in subsection (2), a fine of not less
14 than \$1,000,000.00 and, in addition to a fine, a sentence of
15 5 years' imprisonment.

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

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

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

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

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

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

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

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

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

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

24 Sec. 1116. This part does not repeal any law governing the
25 pollution of lakes and streams, but shall be held and construed
26 as ancillary to and supplementing the other laws and in addition
27 to the laws now in force, except as a law may be in direct

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

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

20 PART 13 DRINKING WATER

21 Sec. 1301. As used in this part:

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

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

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

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

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

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

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

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

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

1 distributed meets the state drinking water standards. Sections
2 1304 and 1310 do not apply to waterworks systems serving 2 to 14
3 living units.

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

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

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

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

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

1 the purpose of inspecting the system and carrying out this part
2 and rules promulgated under this part.

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

7 (2) As used in this section:

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

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

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

1 be provided to the department by a supplier of water and shall be
2 updated as determined necessary by the department.

3 (2) Upon receipt of the plans and specifications for a pro-
4 posed waterworks system, the department shall evaluate the ade-
5 quacy of the proposed system to protect the public health by sup-
6 plying water meeting the state drinking water standards. If upon
7 evaluation the department determines the plans and specifications
8 to be inadequate, the department may return the plans and speci-
9 fications to the applicant and require additions or modifications
10 as may be appropriate. The department may reject plans and spec-
11 ifications for a waterworks system that it determines will not
12 satisfactorily provide for the protection of the public health.

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

1 or in any other way expend money or provide consideration for
2 construction of a waterworks system unless a valid permit issued
3 by the department is in effect.

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

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

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

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

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

1 Compiled Laws, and may be amended or rescinded by the director
2 under this part.

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

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

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

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

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

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

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

24 (3) The membership of the advisory board shall consist of 2
25 certified water treatment operators, 2 certified water distribu-
26 tion operators, 1 superintendent or manager of a supplier of
27 water, 1 representative of the administrative branch of a local

1 governmental agency, 2 members of the public at large, and 1
2 professor of sanitary or environmental engineering at a univer-
3 sity in the state. A representative of the department shall be
4 the nonvoting secretary for the board.

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

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

13 (6) Those individuals now certified to operate water treat-
14 ment systems under the existing mandatory certification rule 1,
15 being R 325.11901 of the Michigan administrative code, and those
16 meeting the requirements of the voluntary distribution system
17 operator certification program administered by the department,
18 shall be considered to meet the requirements of this section and
19 shall be issued a certificate in an appropriate class in accord-
20 ance with the certifications system established under this act.

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

1 Sec. 1310. (1) Beginning January 4, 1978, approval of the
2 department shall not be granted to a privately owned public water
3 supply which serves a group of living units, unless by resolution
4 of its governing body the municipality in which the water supply
5 is to be located refuses to accept ownership and operational
6 responsibility of the public water supply.

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

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

25 Sec. 1312. The department shall maintain a laboratory capa-
26 bility to test for those contaminants in water that are included

1 in the state drinking water standards and any other contaminant
2 that may be of concern to the director.

3 Sec. 1313. (1) All chemicals and materials that may come in
4 contact with the water or be used in treatment processes shall be
5 approved by the department before being utilized in a public
6 water supply. A list of approved chemicals and materials shall
7 be published by the department.

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

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

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

21 (2) The department shall inspect a waterworks system or a
22 part of a waterworks system, and the manner of operation of the
23 system or part. If upon inspection the department determines the
24 waterworks system to be inadequate or operated in a manner that
25 does not adequately protect the public health, the department may
26 order the supplier of water to make alterations in the waterworks
27 system or its method of operation as may be required or

1 considered advisable by the department to assure the public water
2 supply shall be adequate, healthful, and in conformance with
3 state drinking water standards. If the supplier does not request
4 a public hearing within 30 days after receipt of the order, the
5 order shall be final and binding on the supplier of water. If
6 the department receives a request for a public hearing within the
7 specified 30 days, the public hearing shall be immediately
8 arranged. A supplier of water shall comply with a final order of
9 the department.

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

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

1 Sec. 1316. The department may enter into agreements,
2 contracts, or cooperative arrangements under terms and conditions
3 appropriate with other state agencies, federal agencies, inter-
4 state agencies, political subdivisions, educational institutions,
5 local health departments, or other organizations or individuals
6 for the purpose of administering this part. The department may
7 solicit and receive grants of money or other aid from federal and
8 other public or private agencies or individuals for the adminis-
9 tration of this part or a portion of this part, to conduct
10 research and training activities or cause them to be conducted,
11 to cause waterworks systems or portions of waterworks systems to
12 be constructed, or for other program purposes.

13 Sec. 1317. (1) Suppliers of water providing bottled drink-
14 ing water shall utilize a water source meeting the requirements
15 of this part. Bottling or packaging facilities and their opera-
16 tion shall remain under the supervision of the department of
17 agriculture as provided for in the Michigan food law of 1968, Act
18 No. 39 of the Public Acts of 1968, being sections 289.701 to
19 289.727 of the Michigan Compiled Laws, and regulation no. 549,
20 being sections R 285.549.1 through R 285.549.29 of the Michigan
21 administrative code, and other pertinent rules and laws.

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

1 Sec. 1318. Water haulers shall obtain an annual license
2 from the department for their containers, equipment, and
3 operation. The source of water shall be acceptable to the
4 department and the water quality shall meet the state drinking
5 water standards.

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

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

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

19 Sec. 1321. A person who violates this part or a rule
20 promulgated under this part or an order issued pursuant to this
21 part is guilty of a misdemeanor, and shall be punished by impris-
22 onment for not more than 1 year or a fine of not more than
23 \$5,000.00 for each day of violation, or both.

24 Sec. 1322. At the request of the department, the attorney
25 general may bring an injunctive action or other appropriate
26 action in the name of the people of the state to enforce this
27 part, rules promulgated under this part, or an order issued

1 pursuant to this part or the rules promulgated under this part.
2 In addition to other relief granted under this section, the court
3 may impose a civil fine of not more than \$5,000.00 for each day
4 of violation.

5 PART 15 STATE CLEAN WATER ASSISTANCE

6 Sec. 1501. As used in this part:

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

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

12 (ii) Project refinancing assistance.

13 (iii) The guarantee or purchase of insurance for local obli-
14 gations, if the guarantee or purchase action would improve credit
15 market access or reduce interest rates.

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

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

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

24 (vii) Provision for reasonable costs of administering and
25 conducting activities under title VI of the federal water pollu-
26 tion control act, chapter 758, 101 Stat. 21, 33 U.S.C. 1381 to
27 1387.

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

5 (c) "Capitalization grant" means the federal grant made to
6 this state by the United States environmental protection agency
7 for the purpose of establishing a state water pollution control
8 revolving fund, as provided in title VI of the federal water pol-
9 lution control act.

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

14 (i) Engineering services.

15 (ii) Legal services.

16 (iii) Financial services.

17 (iv) Design of plans and specifications.

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

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

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

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

1 (e) "Director" means the director of the department or his
2 or her designated representative.

3 (f) "Federal water pollution control act" means chapter 758,
4 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257,
5 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299,
6 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to
7 1377, and 1381 to 1387.

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

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

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

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

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

3 (l) "Project refinancing assistance" means buying or refi-
4 nancing the debt obligations of municipalities within the state
5 if construction activities commenced after March 7, 1985 and the
6 debt obligation was incurred after March 7, 1985.

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

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

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

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

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

26 (2) Except as may be authorized by the federal water
27 pollution control act, the fund shall not provide grant

1 assistance to a municipality or provide loans for the local share
2 of projects constructed with grants provided under title II of
3 the federal water pollution control act, chapter 758, 86
4 Stat. 833, 33 U.S.C. 1281, 1282 to 1293, and 1294 to 1299.

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

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

11 Sec. 1503. (1) Municipalities shall consider and utilize,
12 where possible, cooperative regional or intermunicipal projects
13 in satisfying sewerage needs in the development of project
14 plans.

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

17 (3) The project plan for a tier I project shall include doc-
18 umentation that demonstrates that the project is needed to assure
19 maintenance of, or to progress toward, compliance with the fed-
20 eral water pollution control act or part 11, and to meet the min-
21 imum requirements of the national environmental policy act of
22 1969, Public Law 91-190, 42 U.S.C. 4321, 4331 to 4335, and 4341
23 to 4347. The documentation shall demonstrate all of the
24 following:

25 (a) The need for the project.

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

4 (c) That the project is cost effective and implementable
5 from a legal, institutional, financial, and management
6 standpoint.

7 (d) Other information as required by the director.

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

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

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

19 (5) After notice and an opportunity for public comment, the
20 director shall annually develop a priority list for sewage treat-
21 ment works projects and a separate priority list for nonpoint
22 source projects. Projects not funded during the time that a pri-
23 ority list developed under this section is in effect shall be
24 automatically prioritized on the next annual list using the same
25 criteria, unless the municipality submits an amendment to its
26 plan that introduces new information to be used as the basis for

1 prioritization. These priority lists shall be based upon project
2 plans submitted by municipalities and the following criteria:

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

5 (b) An application for a segment of a project that received
6 funds under the title II construction grant program or title VI
7 state revolving loan funds of the federal water pollution control
8 act shall be first priority for funding for a period of not more
9 than 3 years after funds were first committed under those
10 programs.

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

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

16 (ii) A determination of whether a project is or was neces-
17 sary to comply with an order, permit, or other document issued by
18 the director or the department or entered as part of an action
19 brought by the state against the municipality or a component of
20 the municipality.

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

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

24 (d) Rankings for nonpoint source projects shall be consis-
25 tent with the state nonpoint source management plan developed
26 pursuant to section 319 of title III of the federal water

1 pollution control act, chapter 758, 101 Stat. 52, 33
2 U.S.C. 1329.

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

4 (6) The priority list shall be submitted annually to the
5 chair of the senate and house of representatives standing commit-
6 tees that primarily consider issues pertaining to the protection
7 of natural resources and the environment.

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

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

13 Sec. 1504. Subject to sections 1509 and 1510, assistance
14 provided to municipalities to construct sewage treatment works
15 projects and nonpoint source projects shall be in accordance with
16 all of the following:

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

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

24 Sec. 1505. The director shall provide written descriptions
25 and timetables for actions required under this part, including
26 the intended use plan developed under section 1506, and may

1 provide to municipalities that request assistance in writing
2 other information that the director considers appropriate.

3 Sec. 1506. (1) The director shall prepare and submit an
4 intended use plan annually to identify proposed annual intended
5 uses of the fund, and to facilitate the negotiation process that
6 the director may conduct with the United States environmental
7 protection agency for the capitalization grant agreement and
8 schedule of payments to be made to this state under the federal
9 water pollution control act.

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

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

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

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

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

24 (d) A description of the projects that are on the priority
25 lists, including project categories and types, applicable dis-
26 charge or enforceable requirements, proposed terms of the
27 assistance, including a schedule of estimated disbursements of

1 funds, and the names of the municipalities proposed to receive
2 assistance.

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

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

7 (g) A description of the public participation process fol-
8 lowed in the development of the intended use plan and the results
9 of that process.

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

12 (i) Any other information considered appropriate by the
13 director.

14 (4) Upon notice from the United States environemntal protec-
15 tion agency that the intended use plan is approved, the director
16 shall notify each municipality of its inclusion on the intended
17 use plan and shall further provide copies of the sewage treatment
18 works projects priority list, the nonpoint source project prior-
19 ity list, and the intended use plan to all persons requesting
20 such information. Following notification, the director shall
21 establish, with the concurrence of the municipality, a schedule
22 for project plan approval, submittal of a complete application
23 for assistance, and approval of plans and specifications.

24 Sec. 1507. (1) The director shall review, generally in pri-
25 ority order, the project plans for projects in the fundable range
26 and either approve or disapprove the plans within 120 days of
27 notifying the municipalities of their inclusion in the intended

1 use plan. Upon determination by the director that a project is
2 complex and warrants additional review, the director shall notify
3 the municipality and may extend the review period for not more
4 than 60 days.

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

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

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

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

16 (a) If assistance is in the form of a loan, financial docu-
17 mentation that a dedicated source of revenue is established, con-
18 sistent with municipal bond obligations existing at the time
19 assistance is requested, and pledged to both of the following
20 purposes:

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

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

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

26 (c) A certification by an authorized representative of a
27 municipality affirming that the municipality has the legal,

1 managerial, institutional, and financial capability to build,
2 operate, and maintain the project.

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

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

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

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

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

18 (i) If applicable, all executed intermunicipal service
19 agreements.

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

22 (k) An agreement that the municipality will not sell, lease,
23 abandon, or otherwise dispose of the project without an effective
24 assignment of obligations and the prior written approval of the
25 director and the authority.

26 (l) An agreement that all municipal project accounts will be
27 maintained in accordance with generally accepted government

1 accounting standards as defined and required under the federal
2 water pollution control act.

3 (m) An agreement that the municipality will provide written
4 authorizations to the director for the purpose of examining the
5 physical plant and for examining, reviewing, or auditing the
6 operational or financial records of the project, and that the
7 municipality will require similar authorizations from all con-
8 tractors, consultants, or agents with which it negotiates an
9 agreement.

10 (n) An agreement that all municipal contracts with contrac-
11 tors will provide that the contractor and any subcontractor may
12 be subject to a financial audit and that contractors and subcon-
13 tractors shall comply with generally accepted governmental
14 accounting standards.

15 (o) An agreement that all pertinent records shall be
16 retained and available to the director for a minimum of 3 years
17 after initiation of the operation and that if litigation, a
18 claim, an appeal, or an audit is begun before the end of the
19 3-year period, records shall be retained and available until the
20 3 years have passed or until the action is completed and
21 resolved, whichever is longer. As used in this subdivision,
22 "initiation of the operation" means the date certain set by the
23 municipality and accepted by the director, on which use of the
24 project begins for the purposes for which it was constructed.

25 (p) If the project is segmented as provided in section 1509,
26 a schedule for completion of the project and adequate assurance
27 that the project shall be completed with or without assistance

1 from the fund or that the segmented project shall be operational
2 without completion of the entire project.

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

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

6 (2) The requirement of subsection (1)(a) for a dedicated
7 source of revenue may include a revenue source pledged to repay
8 the debt to the fund from sources including, but not limited to,
9 1 or more of the following:

10 (a) Ad valorem taxes.

11 (b) Special assessments.

12 (c) User-based revenue collections.

13 (d) General funds of the municipality.

14 (e) Benefit charges.

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

16 (3) The department shall accept applications for assistance
17 from municipalities in the fundable range of the priority list
18 that have approved project plans and shall determine whether an
19 application for assistance is administratively complete and
20 notify the applicant within 30 calendar days of receipt of the
21 application specifying any additional information necessary to
22 complete the application.

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

26 Sec. 1509. To ensure that a disproportionate share of
27 available funds for a given fiscal year is not committed to a

1 single sewage treatment work project, the director may segment a
2 sewage treatment work project if either of the following criteria
3 is present:

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

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

8 Sec. 1510. A project in the fundable range of a priority
9 list that fails to meet the schedule established by the depart-
10 ment under section 1506, or does not have approved plans and
11 specifications and an approvable application 90 days prior to the
12 last day of the fiscal year, whichever comes first, is subject to
13 bypass. A municipality may request an extension of the schedule
14 for cause. A project bypassed pursuant to this section shall not
15 be considered for an order of approval until all other projects
16 in the fundable range have either been funded or rejected. This
17 section does not prohibit the inclusion of the project in the
18 priority list of the next annual funding cycle or the resubmis-
19 sion of an application for assistance in the next annual funding
20 cycle. After a project within the fundable range has been
21 bypassed, the director may award assistance to projects outside
22 the fundable range. Assistance shall be made available to
23 projects outside the fundable range in priority order contingent
24 upon the municipality's satisfaction of all applicable require-
25 ments for assistance pursuant to section 1508 within the time
26 period established by the director, but not to exceed 60 days
27 from the date of notification of bypass.

1 Sec. 1511. (1) The director shall review a complete
2 application for assistance for a project in the fundable range.
3 If the director approves the application for assistance, the
4 director shall issue, subject to section 1510, an order of
5 approval to establish the specific terms of the assistance. The
6 order of approval shall include, but not be limited to, all of
7 the following:

8 (a) The term of the assistance.

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

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

12 (2) The order of approval shall incorporate all require-
13 ments, provisions, or information included in the application and
14 other documents submitted to the director during the application
15 process.

16 (3) After issuance of the order, the director shall certify
17 to the authority that the municipality is eligible to receive
18 assistance.

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

24 (5) The method of establishing interest rates may provide
25 for a different level of subsidy for tier I projects than for
26 tier II projects.

1 Sec. 1512. (1) The director may make a determination that
2 assistance should be terminated and may issue an order
3 recommending that the authority take appropriate action to termi-
4 nate assistance.

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

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

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

11 (c) Practices in the administration of the project that are
12 illegal or that may impair the successful completion or organi-
13 zation of the project.

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

16 (3) The director shall give written notice to the municipal-
17 ity by certified letter of the intent to issue an order recom-
18 mending that assistance be terminated. This notification must be
19 issued not less than 30 days before the director forwards the
20 order recommending that the authority take appropriate action to
21 terminate assistance.

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

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

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

4 (2) The director may issue an order to terminate the project
5 for cause that is effective on the date the project ceases
6 activities.

7 (3) Subject to the termination of assistance by the author-
8 ity and payment of any appropriate termination settlement costs,
9 the director shall issue an order to the authority recommending
10 appropriate action.

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

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

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

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

24 (b) Loan fees, not to exceed the ratio that the annual
25 appropriation for administration of this part bears to the total
26 value of loans awarded for the fiscal year in which the
27 appropriation was made, as estimated in the intended use plan.

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

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

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

7 Sec. 1515. The priority list developed under Act No. 329 of
8 the Public Acts of 1966, being sections 323.111 to 323.128 of the
9 Michigan Compiled Laws, and rules promulgated under that act,
10 shall remain in effect until a priority list is developed by the
11 director pursuant to this part.

12 Sec. 1516. The director has the powers necessary or conven-
13 ient to carry out and effectuate the purpose, objectives, and
14 provisions of this part, and the powers delegated by other laws
15 or executive orders, including, but not limited to, the power
16 to:

17 (a) Make, execute, and deliver contracts, conveyances, and
18 other instruments necessary or convenient to the exercise of his
19 or her powers.

20 (b) Solicit and accept gifts, grants, loans, allocations,
21 appropriations, and other aid, including capitalization grant
22 awards, from any person, or the federal or state, or a local gov-
23 ernment or any agency of the federal, state, or local government,
24 to enter into agreements with any person or the federal, state,
25 or a local government, or to participate in any other way in any
26 federal, state, or local government program consistent with this
27 part and the purposes of this part.

1 (c) Negotiate and enter into agreements and amendments to
2 agreements with the federal government to implement establishment
3 and operation of the fund, including capitalization grant agree-
4 ments and schedules of payments.

5 (d) Engage personnel as is necessary and engage the services
6 of private consultants, managers, counsel, auditors, engineers,
7 and scientists for rendering professional management and techni-
8 cal assistance and advice.

9 (e) Charge, impose, and collect fees and charges in connec-
10 tion with any transaction authorized under this part and provide
11 for reasonable penalties for delinquent payment of fees or
12 charges.

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

16 (g) Promulgate rules necessary to carry out the purposes of
17 this part and to exercise the powers expressly granted in this
18 part pursuant to the administrative procedures act of 1969, Act
19 No. 306 of the Public Acts of 1969, being sections 24.201 to
20 24.328 of the Michigan Compiled Laws.

21 (h) Administer, manage, and do all other things necessary or
22 convenient to achieve the objectives and purposes of the fund,
23 the authority, this part, or other state and federal laws that
24 relate to the purposes and responsibilities of the fund.

25 (i) Make application requesting a capitalization grant and
26 prepare, submit, and certify any required or appropriate
27 information with that application.

1 (j) Establish priority lists and fundable ranges for
2 projects and the criteria and methods used to determine the dis-
3 tribution of the funds available to the fund among the various
4 types of assistance to be offered and to select projects to be
5 funded.

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

8 PART 17 SEWAGE DISPOSAL AND WATER SUPPLY DISTRICTS

9 Sec. 1701. As used in this part:

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

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

1 (c) "Sewage disposal systems" includes all interceptor
2 sewers, storm sewers, sanitary sewers, combined sanitary and
3 storm sewers, sewage treatment plants, and all other plants,
4 works, instrumentalities, and properties used or useful in con-
5 nection with the collection, treatment, and disposal of sewage
6 and industrial wastes.

7 (d) "Water supply system" includes all plants, work, instru-
8 mentalities and properties used or useful in connection with
9 obtaining a water supply, the treatment of water and the distri-
10 bution of water.

11 (e) "United States or agencies of the United States"
12 includes the United States of America or any bureau, department,
13 agency, or instrumentality of the United States or otherwise cre-
14 ated by the congress of the United States.

15 (f) "Water supply and sewage disposal district" means a gov-
16 ernmental subdivision of this state and a public body corporate
17 and politic organized in accordance with this part for the pur-
18 pose, with the powers, and subject to the restrictions in this
19 part.

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

22 (a) To foster and encourage the organization of sewage dis-
23 posal and water supply districts, to act as the administrative
24 agency in the proceedings incident to the formation of districts,
25 to offer and lend appropriate assistance to the directors of dis-
26 tricts organized as provided in this part in the carrying out of
27 any of their powers, functions, and programs.

1 (b) To cooperate, negotiate, and enter into contracts with
2 the other governments, governmental units and agencies in matters
3 concerning water supply systems and sewage disposal systems; to
4 take steps and perform acts and execute documents as may be nec-
5 essary to take advantage of any act enacted by the congress of
6 the United States that may make available funds for any of the
7 purposes enumerated in this part or be otherwise of assistance in
8 carrying out the purposes of this part; to disburse money that
9 may be appropriated by the legislature for the use and benefit of
10 the districts created under this part or municipalities or local
11 units of government of this state in accordance with the formula
12 prescribed in this part or in the acts of appropriation, and to
13 disburse money that may be received by this state from the United
14 States government for the purposes provided for in this part in
15 accordance with the formula set forth by applicable acts of
16 congress.

17 (c) To act as the fiscal agent for this state, for the pur-
18 pose of making available to local units of government and the
19 districts as may be organized under this part, money or instru-
20 ments of indebtedness that may be approved by the legislature or
21 the people of this state for the construction and operation of
22 sewage disposal systems by local units of government or
23 districts.

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

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

7 (a) The proposed name of the district.

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

11 (c) A description of the area proposed to be organized as a
12 district. The description is not required to be given by metes
13 and bounds or by legal subdivision, but is sufficient if the
14 description is generally accurate and designates the local units
15 of governments comprised within the proposed district. The ter-
16 ritory shall include only area within the boundaries of the peti-
17 tioning municipality.

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

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

24 Sec. 1704. Within 30 days after a petition is filed with
25 the water resources commission, or later if authorized by the
26 water resources commission, but not to exceed 90 days, the water
27 resources commission shall cause due notice to be given of a

1 hearing upon the question of the desirability and necessity in
2 the interests of public health and welfare of the creation of the
3 district, upon the question of appropriate boundaries to be
4 assigned to the district, upon the propriety of the petition and
5 of the proceedings taken under this part, and upon all other
6 questions relative to this matter. All interested parties have
7 the right to attend the hearings and be heard. Due notice of the
8 time and place of holding the hearing shall be given to all of
9 the executive officials of the municipalities included within the
10 involved territory. If it appears upon the hearing that it is
11 desirable to include within the proposed district territory out-
12 side of the area within which due notice has been given, or if it
13 is made to appear that more data or information is needed, the
14 hearing shall be publicly adjourned and due notice of further
15 hearing shall be given throughout the entire area considered for
16 inclusion in the district and a further hearing held. The water
17 resources commission shall cooperate to the fullest extent possi-
18 ble with the local units of government included within the terri-
19 torial limits of the proposed district in the making of the nec-
20 essary investigations and engineering and financial studies that
21 may be required for the proper decisions to be made by the water
22 resources commission upon the conclusion of the hearing. After
23 the hearing, if the water resources commission determines upon
24 the facts presented and upon other relevant facts and information
25 as may be available to it, that there is need in the interests of
26 public health and welfare for a sewage disposal or water supply
27 district, or both, to be created and function in the territory

1 considered at the hearing, it shall make and record this
2 determination and shall define the boundaries of the districts by
3 the territorial limits of municipalities included within the dis-
4 trict or by metes and bounds. In making the determination and in
5 defining the boundaries, the water resources commission may give
6 due weight and consideration to the physical and topographical
7 conditions of the area considered, availability or nonavailabil-
8 ity of water resources, the engineering and economic feasibility
9 of the construction and management of the works required and all
10 other relevant and pertinent facts that may be brought to its
11 attention or of which it may have knowledge. Such additional
12 territory shall not be included without the approval by resolu-
13 tion of the legislative body of any municipality affected,
14 including the original petitioners.

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

23 (2) If the water resources commission has made and recorded
24 a determination that in the interests of public health and wel-
25 fare there is a need for the formation, organization, and func-
26 tioning of a district in a particular territory and has defined
27 the boundaries thereof, it shall consider the question of whether

1 the operation of that district within the boundaries with the
2 powers conferred upon districts in this part is desired by a
3 majority of the electors within the boundaries of the district.
4 To assist the water resources commission in the determination of
5 this question, it is the duty of the water resources commission,
6 within a reasonable time of entry of the finding that there is
7 need for the organization of the proposed district and the deter-
8 mination of the boundaries of the district, to order a referendum
9 within the proposed district upon the proposition of the creation
10 of the district and to order the municipalities affected to cause
11 due notice of the referendum to be given. The water resources
12 commission shall direct the officials in charge of the holding of
13 elections in the local units of government included within the
14 district to call a special election or to place the referendum on
15 the ballot at the next general election to be held in all of the
16 territory comprising the district. The question shall be submit-
17 ted by ballots prepared by the water resources commission that
18 shall succinctly describe the district proposed to be formed, the
19 area in which it shall function, and in appropriate language
20 require those voting on the proposition to vote for or against
21 the creation of the district, in accordance with the requirements
22 of law for the holding of referendums on state questions.
23 Municipalities affected are responsible for the costs of the
24 preparation of the ballots. Only electors who have property
25 assessed for taxes within the boundaries of the district are eli-
26 gible to vote in the referendum. Upon the completion of the

1 referendum, the water resources commission shall publish the
2 result thereof.

3 (3) The water resources commission shall pay all expenses
4 for the issuance of the notice and the conduct of the hearings
5 described in this section and shall supervise the conduct of the
6 hearings. The referendum shall be held by the regular estab-
7 lished election officials and any costs shall be borne by the
8 affected municipalities. The water resources commission shall
9 promulgate rules governing the conduct of the hearings.

10 (4) If the results of the referendum described in
11 subsection (3) call for the formation of the proposed district
12 the water resources commission shall call a conference of all the
13 officials of all of the municipalities within the boundaries of
14 the proposed district and the commission shall make every effort
15 to encourage the municipalities to incorporate an authority for
16 the purpose of constructing and operating a sewage disposal
17 system or water supply system under the terms and authority
18 vested in the municipalities pursuant to law. If after the expi-
19 ration of 180 days from the holding of the conference, or within
20 an additional period as the water resources commission may con-
21 sider necessary, the municipalities have not created an authority
22 as provided in this part, the water resources commission shall
23 make, file, and publish as provided in this part a determination
24 creating the district as contained in the application and as
25 approved by the referendum.

26 (5) Upon the making and filing of the determination as
27 described in subsection (4), due notice shall be served and

1 published and the water resources commission shall appoint 5
2 directors who are electors for the purpose of this act within the
3 territory comprising the district and who shall comprise a tempo-
4 rary governing body of the district. The members of the tempo-
5 rary governing body shall hold office until the officers of the
6 first permanent governing body have been elected and qualified.

7 (6) The district shall be a governmental subdivision of this
8 state and a public body corporate upon the taking of the follow-
9 ing proceedings:

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

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

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

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

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

25 (7) The application shall be subscribed and sworn to by at
26 least a majority of the directors before an officer authorized by
27 the laws of the state to administer oaths. The officer shall

1 certify upon the application that he or she personally knows the
2 directors and that each has subscribed thereto in the officer's
3 presence. The application shall be accompanied by a certified
4 statement made by the water resources commission that a petition
5 was filed, notice issued, and hearing held as required in this
6 part; that the water resources commission determined that there
7 is need in the interests of the public health and welfare for a
8 district to function in the proposed territory; that the bounda-
9 ries are defined; that notice was given and referendum held in
10 the question of creation of the district; that the result of the
11 referendum showed a majority of the votes cast in the referendum
12 to be in favor of the creation of such a district; and that the
13 water resources commission did determine that the operation of
14 the proposed district is administratively practicable and
15 feasible. In addition, the statement shall set forth the bounda-
16 ries of the district.

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

1 under the seal of the state of the due organization of the
2 district and shall record such certificate with the application
3 and statement.

4 (9) Petitions for including additional territory within a
5 district may be filed with the water resources commission and the
6 proceedings provided for in this part or petitions to organize a
7 district shall be observed in the case of petitions for
8 inclusion. The water resources commission shall prescribe the
9 form for the petitions, which shall be as nearly as possible to
10 the form prescribed in this part for petitions to organize a
11 district. The petition shall be filed with the water resources
12 commission and upon its receipt it shall be referred to the gov-
13 erning body of the district to be affected by the petition and
14 if, after due consideration, the governing body determines
15 against the inclusion of the additional territory, the petition
16 shall be denied.

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

26 Sec. 1706. (1) The first permanent governing body of the
27 district after the district has been organized and has received

1 the secretary of state certificate described in section 5 shall
2 consist of 5 directors. The directors shall be nominated and
3 elected at the next general state election in the same manner and
4 pursuant to the election laws applicable to members of the house
5 of representatives.

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

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

1 Sec. 1707. (1) The directors may employ an executive
2 secretary, technical experts, and other officers, agents, and
3 employees, permanent or temporary, as required, and shall deter-
4 mine their qualifications, duties, and compensation. The direc-
5 tors may delegate to the chairperson, to 1 or more directors, or
6 to 1 or more agents or employees, powers and duties as they con-
7 sider proper.

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

19 (3) The directors shall provide for the execution of surety
20 bonds for employees and officers entrusted with funds or proper-
21 ty; shall provide for the keeping of a full and accurate record
22 of their proceedings and of rules and orders promulgated or
23 adopted; and shall provide for an annual audit of the accounts of
24 receipts and disbursements. The directors shall request that the
25 legislative body and executive officers of a municipality located
26 within the territory comprised within the district designate a
27 representative to advise and consult with the directors of the

1 district on questions of program and policy that may affect the
2 property, water supply, or sewage disposal problems, or other
3 interests of the municipality.

4 Sec. 1708. A district organized under this part constitutes
5 a governmental subdivision of this state and a body corporate,
6 exercising public powers, with power to sue and to be sued in any
7 court of this state. A district shall possess all the powers
8 necessary to organize itself and also possesses powers incident
9 to the powers enumerated in this part. The district is autho-
10 rized and empowered to do all of the following:

11 (a) Pursuant to the terms of any contract entered into under
12 section 1709 of this part to construct and operate sewage dis-
13 posal systems and water supply systems within the area comprising
14 its territorial limits and to acquire, extend, and improve the
15 systems.

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

25 (c) To make and cause to be made surveys, studies, and
26 investigations for the purpose of ascertaining the requirements
27 of municipalities, industrial and commercial establishments,

1 individual and collective groups, or occupants of lands for
2 sewage disposal systems so that sewers and sewage disposal facil-
3 ities are available to the entities described in this subdivision
4 that are situated within the territorial limits of the district
5 and that may need or require the facilities for the protection of
6 public health and the promotion of the general welfare.

7 (d) To cooperate with and enter into agreements with any
8 person as may be necessary for the full performance of its func-
9 tions and duties and to acquire by purchase, exchange, lease,
10 gift, grant, bequest, devise or otherwise any property, real or
11 personal, or rights or interests in property, either within or
12 outside of its territorial limits; to maintain, administer and
13 improve any acquired properties; to receive income from same and
14 to expend the income in implementing this part and its purposes;
15 and to sell, lease, or otherwise dispose of any of its property
16 or interests in property to implement this part and its
17 purposes. The district is invested with the power of eminent
18 domain in acquiring private property for public use. For the
19 purposes of exercising the power, the district may proceed under
20 Act No. 149 of the Public Acts of 1911, being sections 213.21 to
21 213.25 of the Michigan Compiled Laws, or any other statute that
22 grants to any municipality or public body the authority to
23 acquire private property for public use.

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

26 (f) To accept and receive any funds or money which may be
27 appropriated by any act of congress either directly from any

1 federal governmental agency responsible for the disbursement and
2 allocation of the funds or through the water resources commission
3 and for that purpose the districts are authorized to execute con-
4 tracts, documents, or agreements as may be required by the con-
5 gressional act as a prerequisite to the securing of the funds.

6 Sec. 1709. (1) The district may enter into contracts with
7 any municipality located within its territorial limits providing
8 for the acquisition, construction, improvement, enlargement,
9 extension, operation, and financing of a sewage disposal system
10 or water supply system. A contract shall provide for the alloca-
11 tion and payment of the share of the total cost to be borne by
12 the municipality in annual installments for a period not exceed-
13 ing 40 years. Each contracting municipality may pledge its full
14 faith and credit for the payment of the obligation in the manner
15 and times specified in the contract. If a contracting municipal-
16 ity pledges its full faith and credit, the municipality shall
17 include in its annual tax levy a sufficient amount so that the
18 estimated collections will be sufficient to promptly pay when due
19 the portion of the obligation falling due before the time of the
20 following year's tax collection. The district shall make a rea-
21 sonable charge for its services which it renders to the users in
22 order to cover the retirement of outstanding indebtedness, costs
23 of operation, maintenance, and replacement of its plants and
24 reserves for capital improvements. If there is excess money in
25 the treasury of the district after all of the contingencies have
26 been met, the excess shall be rebated to the contracting
27 municipalities in proportion to the total amount that the

1 municipality pay for services it has received from the district.
2 No limitation in any statute or charter shall prevent the levy
3 and collection by each of the contracting municipalities of the
4 full amount of taxes necessary for the payment of the contractual
5 obligation. If at the time of making the annual tax levy, there
6 are other funds on hand earmarked for the payment of the contrac-
7 tual obligation, then credit therefor may be taken upon the
8 annual levy for the payment of the obligation. These funds may
9 be raised by each contracting municipality by the use of 1 or
10 more of the following methods:

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

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

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

22 (d) From any other fund or funds that may be validly used
23 for the purpose. The contract may provide for any and all mat-
24 ters relating to the acquisition, construction, operation, and
25 financing of the sewage disposal system or water supply system as
26 are considered necessary, including authorization to the district
27 to issue bonds secured by the full faith and credit pledges of

1 the contracting municipalities, as authorized in this part. The
2 contract may provide for appropriate remedies in case of default,
3 including, but not limited to, the right of the municipalities to
4 authorize the county treasurer or other official charged with the
5 disbursement of funds derived from the state sales tax levy under
6 the general sales tax act, Act No. 167 of the Public Acts of
7 1933, being sections 205.51 to 205.78 of the Michigan Compiled
8 Laws, to withhold sufficient funds to make up any default or
9 deficiency in funds.

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

1 shall be verified by some person under oath, as the actual
2 signatures of the persons whose names are signed on the petition,
3 and the clerk of the municipality has the same power to reject
4 signatures as city clerks under section 25 of Act No. 279 of the
5 Public Acts of 1909, being section 117.25 of the Michigan
6 Compiled Laws. The number of registered electors in a municipal-
7 ity is determined by the registration books as of the date of the
8 filing of the petition.

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

1 the issuance of the bonds shall include the terms of the
2 contracts.

3 Sec. 1710. The district may enter into a contract for the
4 furnishing of sewage treatment services by any sewage treatment
5 plant owned or operated by the district as a part of its sewage
6 disposal system or the furnishing of water service from any water
7 facilities owned or operated by the district. This contract
8 shall provide for reasonable charges or rates for the service
9 furnished. Any income derived from a contract described in this
10 section shall be applied by the district to the costs of opera-
11 tion and maintenance of its sewage disposal system or its water
12 supply system, and any balances remaining after payment of its
13 cost in reduction of its outstanding bonded indebtedness incurred
14 for the acquisition or improvement of its sewage disposal system
15 or water supply system. A contract shall not exceed a period of
16 40 years.

17 Sec. 1711. If territory that is part of a district created
18 under this act is detached from a municipality and transferred to
19 a municipality that is not part of the district, the territory
20 shall remain a part of the municipality from which detached only
21 for the purpose of carrying out any contractual obligations or
22 for the purpose of levying a tax to retire any bonded indebted-
23 ness incurred by such district for which the territory is liable
24 until the contractual obligations are fulfilled or the bonds are
25 redeemed, or sufficient funds are available in the district's
26 debt retirement fund for this purpose. A territory described in
27 this section is a part of the municipality to which transferred

1 for all other purposes and subsequent to the redemption of the
2 bonds or the time when sufficient funds are available to redeem
3 the bonds, the territory is no longer a part of the district.

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

PART 19 SEWERAGE SYSTEMS

Sec. 1901. 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. 1902. The director 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. 1903. The director and his or her agents and representatives may enter at reasonable times the sewerage systems, and other property of a person for the purpose of inspecting a

1 sewerage system and carrying out the authority vested in him or
2 her by this part.

3 Sec. 1904. The director may promulgate and enforce rules as
4 he or she considers necessary governing and providing a method of
5 conducting and operating all or a part of sewerage systems
6 including sewage treatment works. The director shall classify
7 sewage treatment works with regard to size, type, location, and
8 other physical conditions affecting those works and according to
9 the skill, knowledge, experience, and character that the person
10 who is in charge of the active operation of the sewage treatment
11 works has to possess in order to successfully operate the works,
12 to prevent the discharge of deleterious matter capable of being
13 injurious to the health of the people, or to other public
14 interests. The director shall examine or provide for the exami-
15 nation of persons as to their qualifications to operate sewage
16 treatment works. He or she shall promulgate rules regarding the
17 classification of sewage treatment works, the examinations for
18 certification of operators for those works, and the issuance and
19 revocation of certificates, and shall issue and revoke certifi-
20 cates in accordance with those rules. Every sewage treatment
21 works subject to this part shall be under the supervision of a
22 properly certified operator, except that this section does not
23 require the employment of a certified operator in a waste treat-
24 ment works that receives only wastes that are not potentially
25 prejudicial to the public health.

26 Sec. 1905. (1) The mayor of each city, the president of
27 each village, the township supervisor, the responsible executive

1 officer of a governmental agency, and all other persons operating
2 sewerage systems in this state, shall file with the director a
3 true copy of the plans and specifications of the entire sewerage
4 system owned or operated by that person, including filtration or
5 other purification plant or treatment works as may be operated in
6 connection with the sewerage system, and also plans and specifi-
7 cations of all alterations, additions, or improvements to the
8 systems that may be made. The plans and specifications shall, in
9 addition to all other things, show all the sources through or
10 from which water is or may be at any time pumped or otherwise
11 permitted to enter into the sewerage system, and the drain,
12 watercourse, river, or lake into which sewage is to be
13 discharged. The plans and specifications shall be certified by
14 the mayor and city engineer of a city, by the president and engi-
15 neer if employed for a village, and by the proper officer and the
16 engineer employed by any other governmental agency, association,
17 or private corporation for the governmental agency, association,
18 or private corporation, and by an individual member of a partner-
19 ship, or by the individual owner of a sewerage system owned and
20 operated by a partnership or 1 or more individuals, including the
21 engineer employed, if any. Before constructing a sewerage
22 system, filtration, or other purification plant or treatment
23 works or any alteration, addition, or improvement to the system
24 or plant, the mayor of each city, the president of each village
25 and the responsible official of all other governmental agencies,
26 associations, private corporations, and partnerships or
27 individuals shall submit the plans and specifications to the

1 director and secure from the director a permit for construction.
2 The director may promulgate and enforce rules regarding the prep-
3 aration and submission of plans and specifications and for the
4 issuance and period of validity of construction permits for the
5 work. A contractor, builder, governmental agency, corporation,
6 association, partnership, or individual shall not engage in or
7 commence the construction of a sewerage system, filtration, or
8 other purification plant or treatment works or an alteration,
9 addition, or improvement until a valid permit for the construc-
10 tion is secured from the director. An official of the governmen-
11 tal agency, corporation, association, partnership, or individual
12 shall not issue a voucher, check, or in any other way expend the
13 money of the governmental agency, corporation, association, part-
14 nership, or individual for the construction unless a valid permit
15 issued by the director is in effect.

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

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

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

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

19 (2) The recommendations or orders of the director shall be
20 served in writing upon the owner or operator of the sewerage
21 system and the owner and operator shall comply with the recommen-
22 dations or orders.

23 Sec. 1908. The director shall exercise due care to see that
24 sewerage systems are properly planned, constructed, and operated
25 to prevent unlawful pollution of the streams, lakes, and other
26 water resources of the state. He or she shall counsel owners and
27 operators of sewerage systems or any parts of sewerage systems

1 when disputes between public agencies over sewerage service or
2 sewage treatment rates occur and may act as arbitrator in these
3 cases when called upon so to do by a majority of the parties to
4 the controversy. The director shall cooperate with appropriate
5 federal or state agencies in the determination of grants of
6 assistance for the preparation of plans for the construction of
7 waterworks systems, sewerage systems, or waste treatment
8 projects.

9 Sec. 1909. The director may employ engineers, and other
10 assistants as may be necessary, to administer this part.

11 Sec. 1910. (1) A person who violates this part or a written
12 order of the director is guilty of a misdemeanor and upon convic-
13 tion shall be punished by imprisonment for not more than 90 days,
14 or a fine of not less than \$25.00 or more than \$100.00, or both,
15 and payment of the costs of prosecution.

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

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

20 Sec. 1911. The director may bring an appropriate action in
21 the name of the people of this state as may be necessary to carry
22 out this part and to enforce any and all laws, rules, and regula-
23 tions relating to this part.

24 PART 20 CONSTRUCTION OF COLLECTING SEWERS

25 Sec. 2001. As used in this part:

26 (a) "Collecting sewers" means lateral, branch, submain, and
27 trunk sewers consisting of pipes or conduits including pumps,

1 lift stations, force mains, and other appurtenances necessary for
2 a system to prevent or eliminate discharges of raw or inade-
3 quately treated sewage of human origin into any waters of the
4 state. Collecting sewers do not include pipes or conduits that
5 carry storm water, surface water, and street wash, or that convey
6 sewage from a building to a common public sewer except that part
7 lying within a public right-of-way; and sewers eligible for
8 grants under Act No. 329 of the Public Acts of 1966, being
9 sections 323.111 to 323.128 of the Michigan Compiled Laws.

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

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

21 Sec. 2002. Grants to local agencies shall be funded from
22 the state sewer construction fund for collecting sewer projects
23 in the descending order of their priority as established by the
24 water resources commission under sections 2009 to 2012.

25 Sec. 2003. A fund to be known as the state sewer construc-
26 tion fund is established to be used for state grants to local
27 agencies for their construction of collecting sewers. Grants

1 shall be made only for collecting sewers on which contracts for
2 construction were awarded prior to the exhaustion of the fund.

3 Sec. 2004. The proceeds of the sale of \$50,000,000.00 of
4 the bonds authorized by Act No. 76 of the Public Acts of 1968,
5 being sections 323.371 to 323.382 of the Michigan Compiled Laws,
6 or any series thereof, and any premiums and accrued interest
7 received on the delivery thereof, shall be deposited with the
8 state treasurer in the state sewer construction fund.

9 Disbursements from the fund shall be made only for specific eli-
10 gible collecting sewer projects approved, as provided in
11 section 2012, by the appropriations committees and by the legis-
12 lature by concurrent resolution adopted by a roll call vote of a
13 majority of the members elected to and serving in each house. A
14 concurrent resolution shall include all or part of the projects
15 on the priority list of eligible projects reported to the legis-
16 lature by the water resources commission as provided in
17 section 2012, but in case of a part only it shall be the entire
18 part containing all projects on the list having priorities higher
19 than those of projects not included in the resolution and shall
20 not include projects lower in the order of priority. The income
21 from temporary investments of the proceeds shall be deposited in
22 the general fund.

23 Sec. 2005. (1) A local agency may apply to the water
24 resources commission for a grant under this part.

25 (2) A grant shall be made in an amount equal to 1/2 that
26 portion of the cost of construction of collecting sewers,
27 computed upon the cost of the current year's project only, in

1 excess of 10% of the state equalized value of all taxable
2 property within the political boundaries of the unit of govern-
3 ment served by the collecting sewers certified under subsection
4 (2) of section 2006 or \$1,000,000.00, whichever is less.

5 (3) Grants are subject to the following limitations:

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

10 (b) A grant shall not be made for collecting sewers for
11 which a federal grant has been made if the amount of the federal
12 grant equals or exceeds the amount of the state grant that the
13 collecting sewers would have received if there had been no fed-
14 eral grant. If the amount of the federal grant made for the col-
15 lecting sewers is less than the amount of the state grant that
16 the collecting sewers would have received if there had not been a
17 federal grant, the amount of the state grant made for the col-
18 lecting sewers shall not exceed the difference between the state
19 grant that the collecting sewers would have received if there had
20 not been a federal grant, and the federal grant.

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

24 (d) A grant shall not be made unless the local agency has
25 received approval by the water resources commission of an offi-
26 cial pollution control plan as required by sections 7 and 8 of
27 Act No. 329 of the Public Acts of 1966, being sections 323.117

1 and 323.118 of the Michigan Compiled Laws, and the collecting
2 sewers are in conformity with the official plan.

3 (e) A grant shall not be made for collecting sewers which
4 the water resources commission determines would not meet an
5 existing or imminent need or would constitute a noneconomic or
6 speculative project.

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

9 Sec. 2006. (1) Disbursements from the state sewer construc-
10 tion fund shall be made by the director of the department of man-
11 agement and budget and the state treasurer in accordance with the
12 accounting laws of the state only for the following purposes for
13 which the bonds have been authorized:

14 (a) Expense of issuing the bonds.

15 (b) Grants to local agencies as provided in section 2005(2)
16 and (3).

17 (2) Before any disbursement from the fund, as provided in
18 subsection (3), is made to a local agency for a grant for the
19 construction of collecting sewers, the water resources commission
20 shall certify to the director of the department of management and
21 budget and the state treasurer the amount of the grant which the
22 agency is eligible to receive under this part. The certificate
23 shall include or have attached thereto a certificate by the water
24 resources commission, or by the state department of public health
25 when so requested by the water resources commission, of the
26 necessity and sufficiency of the collecting sewers.

1 (3) A disbursement from the fund to a local agency shall be
2 made for projects on the priority list established under sections
3 2004 and 2012 upon certification to the director of the depart-
4 ment of management and budget and the state treasurer by the
5 water resources commission that the disbursement is due. A local
6 agency may request and receive disbursement of the state grant in
7 not more than 5 installments:

8 (a) An installment of 50% of the reasonable cost for prepar-
9 ing completed final construction plans and specifications, but
10 not to exceed the amount of the grant, for the collecting sewers
11 which have been certified as eligible for a state grant, on issu-
12 ance of a construction permit by the state department of public
13 health for the collecting sewers for which the construction plans
14 and specifications have been prepared and on receipt of evidence
15 satisfactory to the water resources commission of the local
16 agency's ability and intent to finance the local share of the
17 project cost. A disbursement shall not be made under this sub-
18 section to a local agency which has received federal or other
19 state grants for the preparation of final plans and
20 specifications.

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

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

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

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

4 Sec. 2007. The water resources commission may promulgate
5 rules to implement this part.

6 Sec. 2008. (1) The water resources commission, with consent
7 of the head of any other agency of this state, shall use the
8 officers and employees of such agency as may be found necessary
9 to assist in carrying out the purposes of this part.

10 (2) A recipient of a grant under this part shall keep
11 records as the water resources commission prescribes, including
12 records that fully disclose the amount and disposition by the
13 recipient of the proceeds of the grant, the total cost of con-
14 struction of the collecting sewers in connection with the grant
15 given or used, and the amount of that portion of the cost of con-
16 struction of the collecting sewers supplied by other sources, and
17 other records as will facilitate an effective audit. The water
18 resources commission, the auditor general, and the state trea-
19 surer or any of their duly authorized representatives shall have
20 access, for the purpose of audit and examination, to any books,
21 documents, papers, and records of the recipient that are perti-
22 nent to grants received under this part.

23 Sec. 2009. Notwithstanding any other provision of this part
24 or of any rule of the water resources commission, compliance with
25 sections 2009 to 2012 is a prerequisite to the making of a grant
26 under this part. Sections 2009 to 2012 provide procedures for

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

3 Sec. 2010. (1) Points assigned to a collecting sewer
4 project as a complete measure of pollution control needs shall
5 not exceed 15.

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

10 (a) Public health, safety or welfare but not including
11 bathing.

12 (b) Public water supply for domestic use.

13 (c) Water supply for commercial or industrial use.

14 (d) Irrigation or livestock water supply for agricultural
15 use.

16 (e) Organized public recreational use including bathing.

17 (f) Aesthetic value or utility of riparian lands.

18 (g) Water supply for wild animals, birds, and fish and
19 adverse effects on aquatic life or plants.

20 (h) Usefulness of fish or game for human consumption.

21 (3) Collecting sewers required to be constructed in compli-
22 ance with a judgment rendered by a court of competent jurisdic-
23 tion, or with a stipulation or an order of the water resources
24 commission, or an agreement with the department of public health,
25 shall be assigned from 1 to 4 points in accordance with the fol-
26 lowing schedule, if the stipulation, order, or agreement
27 specifically recites the existence of unlawful pollution and was

1 in effect not less than 30 days before the deadline for filing
2 applications and if the pollution abatement date is such that
3 compliance would make it necessary to start construction during
4 the year ending:

5 (a) June 30 of the fiscal year for which the application is
6 filed, 4 points.

7 (b) June 30 of the first succeeding fiscal year, 3 points.

8 (c) June 30 of the second succeeding fiscal year, 2 points.

9 (d) June 30 of the third succeeding fiscal year, 1 point.

10 (4) An applicant in default of a performance date specified
11 by an order, stipulation, or agreement may be assigned points
12 under the preceding schedule only at the discretion of the water
13 resources commission.

14 (5) A collecting sewer project for which construction con-
15 tracts were awarded before the deadline date for filing applica-
16 tions shall be assigned 4 points. The combined total points
17 assigned pursuant to subsections (3) to (5) shall not exceed 4
18 points.

19 Sec. 2011. (1) Total priority points for a collecting sewer
20 project shall be the sum of the points assigned for water pollu-
21 tion control needs.

22 (2) If 2 or more projects receive the same priority point
23 totals, the water resources commission shall assign priorities to
24 the tied projects after considering factors such as waters
25 affected, extent of public interests involved, relative magnitude
26 of pollution injury, and other factors as the water resources
27 commission considers appropriate.

1 Sec. 2012. (1) For the purposes of sections 2009 to 2012,
2 the fiscal year is July 1 to June 30.

3 (2) Applications for collecting sewer construction grants
4 and official pollution control plans required by sections 7 and 8
5 of Act No. 329 of the Public Acts of 1966, being sections 323.117
6 and 323.118 of the Michigan Compiled Laws, shall be filed with
7 the water resources commission not later than September 15 pre-
8 ceding the period or fiscal year for which the application is
9 filed. Applications postmarked not later than midnight of
10 September 15 meet this requirement.

11 (3) A point total shall be assigned by the water resources
12 commission to each application that has been timely filed and
13 conforms to the requirements of this part no later than the fol-
14 lowing January 1.

15 (4) Projects entitled to construction grants shall be certi-
16 fied to the director of the department of management and budget
17 and the state treasurer from the eligibility list established by
18 the water resources commission and as approved by the
19 legislature. Certification shall be made following approval by
20 the legislature.

21 (5) Certification of a project for a grant is subject to the
22 condition that construction contracts for the project be awarded
23 not later than March 1 of the fiscal year for which application
24 for a state grant has been filed. Failure to comply with this
25 condition of certification is cause for the water resources com-
26 mission to take any action necessary to withdraw any grant offer
27 that may have been obligated to such project. However, on a

1 showing satisfactory to the water resources commission that the
2 project will proceed within an extended period, the water
3 resources commission may allow 30-day extensions totaling not
4 more than 90 days.

5 (6) Except as otherwise provided in this part, an applica-
6 tion for a collecting sewer construction grant filed with the
7 water resources commission is valid only for the fiscal year for
8 which the application is filed.

9 (7) The water resources commission shall report to the leg-
10 islature by January 15 of each year a list of collecting sewer
11 projects eligible for grants, the points and priorities assigned
12 to them pursuant to this part, a list of projects that are recom-
13 mended to be funded, and a list of projects which failed to
14 comply with the conditions of certifications set forth in
15 subsection (5) and on which the water resources commission has
16 taken action to withdraw offers of state grants. If legislative
17 approval or rejection of eligible projects is not given each year
18 within 45 days after receipt of the water resources commission's
19 list of eligible projects, the water resources commission list
20 shall be considered approved.

21 PART 21 WATERWORKS SYSTEMS, SEWERS, AND DISPOSAL PLANTS

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

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

26 Sec. 2102. The waterworks system, intercepting sewers,
27 pumping stations, sewage disposal plant and system, transfer

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

1 valuation of the real and personal property of the local unit of
2 government as shown by the last preceding tax roll. Bonds shall
3 not be issued as faith and credit bonds or mortgage bonds of the
4 utility except upon a 3/5 affirmative vote of the legislative
5 body of the local unit of government.

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

25 Sec. 2104. Bonds that are issued and secured by a mortgage
26 on the utility as provided in this part shall not be a general
27 obligation of the local unit of government, but shall be paid

1 only out of revenues received from the service charges as
2 provided in section 1203, or from a sale of the property and
3 franchises under a foreclosure of the mortgage. If a service
4 rate is charged, a sufficient portion shall be set aside as a
5 sinking fund for the payment of the interest on the bonds, and
6 the principal of the bonds at maturity.

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

1 plant and under reasonable rules, regulations, and supervision as
2 are established by the local unit or units of government. The
3 franchise is void unless approved by 3/5 of the electors of the
4 local unit or units of government voting at a general or special
5 election. This franchise shall not duplicate existing private
6 solid waste management services or facilities that have been
7 developed under part 63.

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

20 Sec. 2107. (1) In accordance with and to the extent autho-
21 rized by law, when the water resources commission, the department
22 or the department of public health has ordered, or when the water
23 resources commission has issued a permit for, or when a court of
24 competent jurisdiction in the state has ordered the installation,
25 construction, alteration, improvement, or operation of a sewage
26 system, solid waste facility, or waterworks system, in a local
27 unit of government, and the plans for the facility or system have

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

1 The annual amount may be in excess of the authorized annual tax
2 rate fixed by the statutes or charters.

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

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

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

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

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

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

25 PART 23 WASTEWATER DISPOSAL

26 Sec. 2301. As used in this part, "land disposal wastewater
27 management program" means the program developed in the United

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

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

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

23 PART 25 SEPTAGE WASTE SERVICERS

24 Sec. 2501. As used in this part:

25 (a) "Certified health department" means a city, county, or
26 district department of health to which the director has delegated
27 the authority to perform activities as prescribed by this part.

1 (b) "Cesspool" means a cavity in the ground that receives
2 waste to be partially absorbed directly or indirectly by the sur-
3 rounding soil.

4 (c) "Director" means the director of the department or his
5 or her authorized representative.

6 (d) "Governmental unit" means a county, township, municipal-
7 ity, or other regional authority.

8 (e) "Injection" means the pressurized placement of septage
9 waste below the surface of soil.

10 (f) "Motor vehicle" means a vehicle that is self-propelled
11 and used to transport septage waste.

12 (g) "Peace officer" means every sheriff or sheriff's deputy,
13 village or township marshal, officer of the police department of
14 any city, village, or township, any officer of the Michigan state
15 police, any peace officer who is trained and certified pursuant
16 to the Michigan law enforcement officers training council act of
17 1965, Act No. 203 of the Public Acts of 1965, being sections
18 28.601 to 28.616 of the Michigan Compiled Laws, or any conserva-
19 tion officer appointed by the director pursuant to section 6 of
20 Act No. 192 of the Public Acts of 1929, being section 300.16 of
21 the Michigan Compiled Laws.

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

24 (i) "Public septage waste treatment facility" means a
25 septage waste or other wastewater treatment facility owned and
26 operated by a governmental unit and approved by the director for
27 treating septage waste.

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

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

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

13 (m) "Service" or "servicing" means cleaning, removing,
14 transporting, or disposing of septage waste from a portable
15 toilet, septic tank, seepage pit, cesspool, sewage lift station,
16 or other enclosure as determined by the director under section
17 2518.

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

20 (o) "Site" means a location that has been approved by the
21 director as a suitable location for the disposal of septage
22 waste.

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

25 Sec. 2502. (1) Except as otherwise provided in this sec-
26 tion, a person shall not engage in the business of servicing, or
27 contract with a person to service, a portable toilet, septic

1 tank, seepage pit, cesspool, or other enclosure as determined by
2 the director under section 2518, unless the person who will per-
3 form the servicing is licensed as provided in sections 2503 and
4 2504.

5 (2) Licensure, as provided in this part, is not required for
6 a real property owner who services his or her own portable
7 toilet, septic tank, seepage pit, cesspool, sewage lift station,
8 or other enclosure as determined by the director under section
9 2518 located on that person's property. Septage waste removed by
10 a real property owner pursuant to this subsection may be disposed
11 of on the real property from which it originates, if the real
12 property is at least 20 acres in size, and if the disposal is in
13 compliance with sections 2510, 2511, and 2514, and any rules
14 promulgated under this part pertaining to the disposal of septage
15 waste.

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

18 Sec. 2503. (1) A person engaged in the business of servic-
19 ing shall apply for a septage waste servicing license on an
20 application form provided by the department. The department
21 shall provide an application form that includes all of the
22 following:

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

24 (b) The location or locations where the business is
25 operated.

26 (c) Additional information pertinent to this part as
27 required by the director.

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

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

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

10 (c) Written approval from all public septage waste treatment
11 facilities where the applicant plans to dispose of septage waste
12 and the locations where the applicant plans to dispose of septage
13 waste upon receiving the department's approval, and either proof
14 of ownership of the proposed disposal location or written
15 approval from the site owner.

16 (3) A person who holds a septage waste servicing license
17 shall maintain at all times at his or her place of business a
18 complete record of the amount of septage waste that the person
19 has transported and disposed of and the location at which the
20 disposal of septage waste has occurred. The person shall display
21 these records upon the request of the director, a peace officer,
22 or an official of a certified health department.

23 Sec. 2504. (1) A person who is required to be licensed pur-
24 suant to section 2503 is required to have a septage waste motor
25 vehicle license issued by the department for each vehicle that is
26 used to transport septage waste. A septage waste motor vehicle
27 license application form shall be provided by the department and

1 shall be submitted to the department with a license fee of \$75.00
2 for each vehicle required to be licensed under this part. A
3 motor vehicle license application is to include all of the fol-
4 lowing information:

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

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

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

9 (d) Additional information pertinent to this part as
10 required by the director.

11 (2) A person who is issued a septage waste motor vehicle
12 license issued pursuant to this section shall carry that license
13 at all times in the motor vehicle that is described in that
14 license and display the license upon the request of the director,
15 a peace officer, or an official of a certified health
16 department.

17 (3) Without the express permission of the director, a person
18 shall not use a vehicle used to transport septage waste to trans-
19 port hazardous waste regulated under part 61, or liquid indus-
20 trial waste regulated under part 71.

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

26 Sec. 2506. (1) Upon receipt of application forms complying
27 with sections 2503 and 2504, the department shall review each

1 application to insure that it is complete. If the department
2 determines that the application forms are complete, the depart-
3 ment shall promptly provide the applicable certified health
4 department with copies of all application materials. Upon
5 receipt of the application materials, a certified health depart-
6 ment shall conduct all necessary investigations to verify that
7 the locations to be used for disposal, the servicing methods, and
8 the motor vehicles and tanks are in compliance with this part and
9 the rules promulgated under this part. Upon approving of the
10 applicant, the director shall issue a license as provided in sec-
11 tions 2503 and 2504. If a certified health department does not
12 exist, the department may perform the functions of a certified
13 health department as necessary.

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

17 Sec. 2507. Each motor vehicle licensed pursuant to section
18 2504 shall display on both sides of the motor vehicle in letters
19 not less than 2 inches high the words "licensed septage hauler",
20 the motor vehicle license number issued by the department, and a
21 seal furnished by the department that designates the year the
22 license was issued.

23 Sec. 2508. A person licensed under this part shall deposit
24 all septage waste in a public septage waste treatment facility if
25 a facility is available to receive that septage waste and is
26 located within 15 road miles of the location where the septage
27 waste is received. This section does not restrict a licensed

1 person from taking septage waste to any public septage waste
2 treatment facility, regardless of where that facility is
3 located. The public septage waste treatment facility may charge
4 a disposal fee that does not exceed the actual costs related to
5 the treatment and storage of the waste.

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

16 (2) An applicant for a permit under subsection (1) shall
17 send a notice to each land owner who owns property located within
18 800 feet of the proposed disposal location on a form approved by
19 the department. Service of the notice shall be made by first
20 class mail. The notification shall include the nature of the
21 proposed land use, the location of the proposed disposal area,
22 and whom to contact if there is an objection to the proposed land
23 use. A copy of the notice that is mailed to each property owner
24 shall be sent to the certified health department having
25 jurisdiction. If no substantiated objections as determined by
26 the director are received within 10 business days following the
27 mailing of the notification, the director may issue a permit as

1 provided in this section. If the director finds that the
2 applicant is unable to provide notice as required in this subsec-
3 tion, the department may waive the notice requirement or allow
4 the applicant to use a substitute means of providing notice.

5 (3) A permit issued under this section shall expire at the
6 same time as a septage waste servicing license issued pursuant to
7 section 2503, but is subject to renewal at that time. A permit
8 issued under this section may be revoked by the director if
9 septage waste disposal or site management is in violation of this
10 part or the rules promulgated pursuant to this part.

11 Sec. 2510. Except as provided in section 2511, a permit
12 issued pursuant to section 2509 is subject to the following
13 requirements:

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

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

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

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

TYPE OF APPLICATIONSurface Injection

3	(i) Homes or commercial buildings	800 feet	150 feet
4	(ii) Private drinking water wells	800 feet	150 feet
5	(iii) Surface water	500 feet	150 feet
6	(iv) Roads or property lines	200 feet	150 feet

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

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

13 (g) Septage waste shall be treated to reduce pathogens prior
14 to land disposal by aerobic or anaerobic digestion, lime stabili-
15 zation, composting, air drying, or other process or method
16 approved by the director, unless public access to the site is
17 restricted for 12 months and no animals whose products are con-
18 sumed by humans are allowed to graze on the site for at least 1
19 month following disposal.

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

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

1 Sec. 2511. (1) The director may approve of surface
2 application of septage waste when the soil is frozen and the fol-
3 lowing requirements are met:

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

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

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

9 (d) The United States department of agriculture defines the
10 soil as well-drained, moderately well-drained, somewhat
11 poorly-drained, or poorly-drained if the director finds that the
12 poorly-drained soil is systematically tiled or specifies other
13 reasons for approving surface application.

14 (2) The director may grant a variance from the requirements
15 of section 2510(d), (e), or (f) or subsection (1) if the director
16 finds that the conditions of the variance provide the same or a
17 higher degree of protection to the environment and the public
18 health as provided in section 2510(d), (e), or (f) or subsection
19 (1).

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

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

1 (a) Septage waste is applied at a rate no greater than
2 10,000 gallons per acre per month and not greater than 60,000
3 gallons per acre per year.

4 (b) The site of the septage waste disposal has a permanent
5 vegetative cover and the disposal does not have a detrimental
6 impact on products grown on the land or on animals being fed
7 these products.

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

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

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

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

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

21 Sec. 2512. The standards provided for in sections 2510 and
22 2511 may be modified by rules promulgated by the department, pro-
23 vided that if the rules provide the same or a higher degree of
24 protection to the environment and the public health as provided
25 in sections 2510 and 2511.

26 Sec. 2513. The department shall inspect a septage waste
27 disposal site at least once each year.

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

3 Sec. 2515. (1) If a governmental unit requires that all
4 septage waste collected in that governmental unit be disposed of
5 in a septage waste treatment facility or prohibits, or effec-
6 tively prohibits, the application of septage waste to land within
7 that governmental unit, the governmental unit shall make avail-
8 able a public septage waste treatment facility that can lawfully
9 accept all septage waste generated within that governmental unit
10 that is not lawfully applied to land.

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

15 Sec. 2516. (1) The director shall certify city, county, and
16 district departments of health to carry out certain responsibili-
17 ties under this part. Except as provided in section 2517 and
18 subsection (2), the department shall provide for the payment of
19 all fees collected under this part to certified health depart-
20 ments that carry out responsibilities under this part.

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

25 (3) If a certified health department does not exist in a
26 city, county, or district or does not fulfill its
27 responsibilities pursuant to this part, the department may carry

1 out those responsibilities it considers necessary. The
2 department shall retain the fees collected under this part that
3 would have been paid to the certified health department had it
4 existed or fulfilled its responsibilities pursuant to this part.

5 Sec. 2517. There is created in the state treasury a septage
6 waste site contingency fund. The contingency fund shall be
7 financed by a \$100.00 fee collected from each person who holds a
8 septage waste servicing license under this part. The fee shall
9 be collected from a person holding a license under section 2503
10 with the first application and shall not be collected with subse-
11 quent renewal licenses. The fees shall be deposited in the state
12 treasury to the credit of the septage waste site contingency
13 fund. The director shall administer the fund and authorize
14 expenditures to remove or treat septage waste which has been dis-
15 posed of in violation of this part. Following an expenditure
16 from the fund, the director immediately shall request that the
17 attorney general begin proceedings to recover the expenditure
18 from the fund from the person responsible for the damage.
19 Interest earned by the fund shall remain in the fund unless
20 expended as provided in this section.

21 Sec. 2518. The director may promulgate rules to implement
22 this part. The rules may include rules establishing other mate-
23 rials and substances that are included in the definition of
24 septage waste and other enclosures for septage waste that require
25 licenses to service under this part.

26 Sec. 2519. (1) A person who violates this part, a condition
27 of a license or permit issued under this part, or who makes false

1 statements to obtain a license under this part is guilty of a
2 misdemeanor, punishable by imprisonment for not more than 10
3 days, or a fine of not more than \$500.00, or both. If the viola-
4 tion is of a continuing nature, each day the violation occurs is
5 a separate offense.

6 (2) If the director finds that a person is in violation of a
7 license, permit, or a requirement of this part, pursuant to the
8 administrative procedures act of 1969, Act No. 306 of the Public
9 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
10 Compiled Laws, the director may revoke, suspend, or modify the
11 license or permit.

12 (3) Upon receipt of information that the servicing of
13 septage waste regulated by this part presents an imminent or sub-
14 stantial threat to the public health, safety, welfare, or the
15 environment, after consultation with the director or a designated
16 representative of the department of public health, the director,
17 or a peace officer if authorized by law, shall do 1 or more of
18 the following:

19 (a) Summarily suspend a license pursuant to the administra-
20 tive procedures act of 1969, Act No. 306 of the Public Acts of
21 1969, and afford the holder of the license an opportunity for a
22 hearing within 7 days.

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

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

8 (4) If the director determines that hazardous or nuisance
9 conditions or unlawful pollution of the waters of the state has
10 resulted or may result from the activities of a person who holds
11 a license, the director shall notify the holder of that license
12 and afford the license holder the opportunity to take corrective
13 action to abate or prevent the pollution.

14 PART 27 CONTAMINATION OF WATERS

15 Sec. 2701. All fish, offal, or filth of any description
16 accruing from the catching and curing of fish, shall be burned or
17 buried at least 10 rods from the beach or shore of any stream,
18 pond, or lake.

19 Sec. 2702. Upon receipt of an application by a person who
20 is not a resident of this state for a license to use a pound or
21 trap net and payment of a \$50.00 fee for each trap net, the
22 county board of commissioners of each county, or a majority of
23 the county board of commissioners, shall grant written permission
24 to the nonresident applicant for 1 year, to use 1 or more pound
25 or trap nets within the water of this state. A person who vio-
26 lates this section is responsible for a civil fine of \$100.00 and
27 the costs of suit. The county board of commissioners, or a

1 majority of them, shall enforce this part. Money accruing from
2 fees and civil fines under this part shall be paid to the county
3 treasurer.

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

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

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

15 Sec. 2705. A person shall not willfully cut, tear, untie,
16 remove, or in any manner injure, damage, molest, or destroy a
17 net, rope, line, stake, anchor, or other property belonging to,
18 in use, or to be used in any pound net or trap net or other net
19 or fixture that is lawfully set and used to take fish from any of
20 the waters of the state. A person who violates this section is
21 guilty of a misdemeanor punishable by imprisonment for not more
22 than 6 months or a fine of not more than \$500.00, or both. In
23 addition, the person is liable civilly for all damages done will-
24 fully to the property to the legal owners or occupants of the
25 property. An action filed under this section may be filed in a
26 court of proper jurisdiction in the county where the property is
27 located.

PART 29 WATERCRAFT POLLUTION CONTROL

Sec. 2901. 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.

1 (j) "Watercraft" means a contrivance used or capable of
2 being used for navigation upon water, whether or not capable of
3 self-propulsion, including foreign and domestic vessels engaged
4 in commerce upon the waters of this state, passenger or other
5 cargo-carrying vessels and privately owned recreational
6 watercraft.

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

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

16 (2) A person shall not discharge, dump, throw, or deposit
17 garbage, litter, sewage, or oil from a recreational, domestic, or
18 foreign watercraft used for pleasure or for the purpose of carry-
19 ing passengers, cargo, or otherwise engaged in commerce on the
20 waters of this state.

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

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

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

7 (2) Except as otherwise provided in this section, a person
8 shall not moor or operate a watercraft on the waters of this
9 state if the watercraft has a marine sanitation device that is
10 equipped with any type of bypass connection, pump, or other means
11 of directly or indirectly discharging sewage into the waters of
12 this state, unless the bypass connection, pump, or other device
13 has been rendered incapable of directly or indirectly discharging
14 sewage into the waters of this state. This subsection does not
15 prohibit a properly installed discharge line used to empty a
16 holding tank or retention device at an onshore sewage pump-out
17 station, or prohibit the use of a portable marine sanitation
18 device. A bypass connection, pump, or other device shall be
19 rendered incapable of directly or indirectly discharging sewage
20 into the waters of this state by 1 of the following methods:

21 (a) Removing a section of the pipe or tubing that allows
22 discharge of sewage into the waters of this state, placing a cap
23 over the pipe or tubing that remains attached to the marine sani-
24 tation device, and placing a seal approved by the department over
25 the cap in a manner that precludes reattaching the pipe or tubing
26 without breaking the seal. To comply with the requirements of

1 this subsection, the seal must be unbroken at the time an
2 inspection occurs.

3 (b) Closing a valve that will prevent all discharge of
4 sewage into the waters of the state, and placing a seal approved
5 by the department over the valve handle in a manner that pre-
6 cludes reopening the valve without breaking the seal. To comply
7 with the requirements of this subsection, the seal must be unbroke-
8 ken at the time an inspection occurs.

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

11 (4) If the department or its designee conducts an inspection
12 to determine whether a watercraft is in compliance with this sec-
13 tion and finds that the watercraft is in compliance, the depart-
14 ment or its designee shall place a sticker on the watercraft that
15 lists the date that the watercraft was inspected. The department
16 or its designee shall not inspect a watercraft for compliance
17 with this section more than once per year except upon probable
18 cause.

19 Sec. 2904. (1) Except as otherwise provided in this sec-
20 tion, all docking facilities shall provide pump-out facilities
21 approved by the department of public health for marine sanitation
22 device holding tanks on the watercraft. All pump-out facility
23 plans and installations shall be approved by the department of
24 public health or its authorized representative.

25 (2) An existing docking facility that would otherwise be
26 required by this section to have pump-out facilities is not
27 required to have those facilities if it has a contract to use,

1 and does use, the pump-out facilities of a docking facility in
2 the vicinity. A contract between docking facilities under this
3 subsection shall be approved by the department. This subsection
4 does not apply to any docking facility that is constructed after
5 May 1, 1990, or whose capacity is expanded by a cumulative amount
6 exceeding 25%, or more than 15 slips, whichever is less, of the
7 capacity existing on May 1, 1990.

8 (3) A docking facility that is constructed after May 1, 1990
9 or whose capacity is expanded by a cumulative amount exceeding
10 25%, or more than 15 slips, whichever is less, of the capacity
11 existing on May 1, 1990 shall provide pump-out facilities as
12 required by this part.

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

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

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

21 (2) The owner or operator of a watercraft who, whether
22 directly or through any person concerned in the operation, navi-
23 gation, or management of the watercraft, discharges, permits, or
24 causes or contributes to the discharge of oil into or onto the
25 waters of this state or adjoining shorelines or beaches shall
26 immediately remove the oil from the waters, shorelines, or
27 beaches. If the state removes the oil that was discharged from

1 the watercraft, the owner or operator, or both, are liable to the
2 state for the full amount of the costs reasonably incurred for
3 its removal. The state may bring action against the owner or
4 operator, or both, to recover such costs in any court of compe-
5 tent jurisdiction.

6 Sec. 2906. All watercraft moored, operated, or located upon
7 the waters of this state are subject to inspection by the water
8 resources commission, any lawfully designated agent or inspector
9 of the water resources commission, or any peace, conservation, or
10 police officer for the purpose of determining if the watercraft
11 is equipped in compliance with the requirements of this part.
12 The water resources commission may inspect marinas and other
13 waterside facilities used by watercraft for launching, docking,
14 or mooring purposes to determine if they are equipped with trash
15 receptacles, sewage disposal equipment or both. Commercial docks
16 and wharfs designed for receiving and loading cargo or freight,
17 or both, from commercial watercraft shall furnish facilities, if
18 determined necessary, as prescribed by the water resources com-
19 mission, to accommodate discharge of sewage from heads and gal-
20 leys, and for deposit of litter, garbage, trash, or bilge waters
21 from the watercraft that utilize the docks or wharfs.

22 Sec. 2907. The state fully reserves to itself the exclusive
23 right to establish requirements with reference to the disposal or
24 discharge of sewage, litter, and oil from all watercraft. In
25 order to assure statewide uniformity, the regulation by any
26 political subdivision of the state of waste disposal from
27 watercraft is prohibited.

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

3 (2) The department of public health may promulgate rules
4 necessary for the regulation of docking facility water supplies
5 and sewage systems, pump-out facilities, and dockside sanitary
6 facilities.

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

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

15 PART 31 CLEANING AGENTS

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

17 (a) "Cleaning agent" means a laundry detergent, dishwashing
18 compound, household cleaner, metal cleaner, degreasing compound,
19 commercial cleaner, industrial cleaner, phosphate compound, or
20 other substance intended to be used for cleaning purposes.

21 Cleaning agent does not include any of the following:

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

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

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

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

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

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

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

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

26 (c) A person shall not sell or distribute for use in this
27 state a metal cleaner, metal brightener, metal treatment

1 compound, conversion coating agent, corrosion remover, paint
2 remover, rust inhibitor, etchant, phosphatizer, degreasing com-
3 pound, industrial cleaner, or commercial cleaner intended primar-
4 ily for use in industrial and manufacturing processes that con-
5 tains phosphorus in excess of 28% by weight expressed as elemen-
6 tal phosphorus.

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

10 Sec. 3103. The water resources commission shall promulgate
11 rules to implement this part. The rules may further restrict the
12 nutrient content and other contents of cleaning agents and water
13 conditioners, to prevent unlawful pollution and control nuisance
14 growths of algae, weeds, and slimes that are or may become inju-
15 rious to other lawful water uses, to prevent cleaning agents and
16 water conditioners, separately or in combination with other sub-
17 stances, from rendering or tending to render any waters of this
18 state harmful or inimical to public health, or to animal or
19 aquatic life, or to beneficial water uses, and to minimize any
20 hazard to the health or safety of users of the cleaning agents or
21 water conditioners. The burden of proof is on a manufacturer of
22 a cleaning agent or water conditioner, before distribution for
23 sale or use in this state, to establish that its contents comply
24 with this part and rules promulgated under this part, and will
25 not or is not likely to adversely affect human health or the
26 environment. A person shall not sell or distribute for use in

1 this state a cleaning agent or water conditioner in violation of
2 a rule promulgated under this part.

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

17 Sec. 3105. A local unit of government shall not enact or
18 enforce an existing or future ordinance or rule with respect to
19 the sale of cleaning agents containing phosphorus or any other
20 substance that is or may be regulated under this part.

21 Sec. 3106. The water resources commission shall enforce
22 this part and seek court enforcement of its orders pursuant to
23 part 11.

24 PART 33 LITTERING

25 Sec. 3301. As used in this part:

1 (a) "Litter" means all rubbish, refuse, waste material,
2 garbage, offal, paper, glass, cans, bottles, trash, debris, or
3 other foreign substances.

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

6 (i) The right-of-way of a road or highway, a body of water
7 or watercourse, or the shore or beach of the body of water or
8 watercourse, including the ice above the water.

9 (ii) A park, playground, building, refuge, or conservation
10 or recreation area.

11 (iii) Residential or farm properties or timberlands.

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

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

18 Sec. 3302. (1) A person shall not knowingly, without the
19 consent of the public authority having supervision of public
20 property or the owner of private property, dump, deposit, place,
21 throw, or leave, or cause or permit the dumping, depositing,
22 placing, throwing, or leaving of, litter on public or private
23 property or water other than property designated and set aside
24 for such purposes.

25 (2) A person who removes a vehicle that is wrecked or dam-
26 aged in an accident on a highway, road, or street shall remove

1 all glass and other injurious substances dropped on the highway,
2 road, or street as a result of the accident.

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

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

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

16 (2) Except as provided in subsection (4) involving litter
17 from a leased vehicle or leased vessel, in a proceeding for a
18 violation of this part involving litter from a motor vehicle or
19 vessel, proof that the particular vehicle or vessel described in
20 the citation, complaint, or warrant was used in the violation,
21 together with proof that the defendant named in the citation,
22 complaint, or warrant was the registered owner of the vehicle or
23 vessel at the time of the violation, constitutes an evidentiary
24 presumption that the registered owner of the vehicle or vessel
25 was the driver of the vehicle or vessel at the time of the
26 violation.

1 (3) The driver of a vehicle or vessel is presumed to be
2 responsible for litter that is thrown, dropped, dumped,
3 deposited, placed, or left from the vehicle or vessel on public
4 or private property or waters.

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

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

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

1 (3) For a second or subsequent violation under subsection
2 (2), the person shall be punished by imprisonment for not less
3 than 1 year or more than 5 years and a fine of not more than
4 \$10,000.00.

5 (4) As used in this section:

6 (a) "Infectious waste" means waste that contains varying
7 amounts of microorganisms that have a potential for causing seri-
8 ous illness.

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

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

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

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

24 PART 35 PESTICIDE CONTROL

25 Sec. 3501. For the purposes of this part the words and
26 phrases defined in sections 3502 to 3506 have the meanings
27 ascribed to them in those sections.

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

5 (2) "Adulterated" applies to a pesticide if its strength or
6 purity is less than, or significantly greater than, the professed
7 standard or quality as expressed on its labeling or under which
8 it is sold; if a substance was substituted wholly or in part for
9 a pesticide; or if a valuable constituent of the pesticide was
10 wholly or in part abstracted.

11 (3) "Agricultural commodity" means a plant or part of a
12 plant, or an animal or animal product produced primarily for
13 sale, consumption, propagation, or other use by human beings or
14 animals.

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

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

20 (6) "Certified applicator" means a person authorized under
21 this part to use and supervise the use of a restricted use
22 pesticide.

23 (7) "Commercial applicator" means a person who is not a pri-
24 vate agricultural applicator, whether that person is a private
25 agricultural applicator with respect to some uses or not, and who
26 uses or supervises the use of a restricted use pesticide or who

1 holds himself or herself out to the public as being in the
2 business of applying pesticides.

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

6 (2) "Desiccant" means a substance or mixture of substances
7 intended for artificially accelerating the drying of plant
8 tissue.

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

13 (4) "Direct supervision" means that a certified applicator
14 is supervising the application of a pesticide and is physically
15 present at the time and place the pesticide is being applied.
16 However, direct supervision by a private agricultural applicator
17 who is supervising the application of a restricted use pesticide
18 for an agricultural purpose means that a certified applicator is
19 either in the same field or at the same location with that appli-
20 cator as he or she applies the restricted use pesticide or that
21 the private agricultural applicator supervises at all times the
22 applicator and directly supervises representative aspects of each
23 initial application process on an agricultural commodity or agri-
24 cultural structure, including the calibration, mixing, applica-
25 tion, operator safety, and disposal aspects of the process.

1 (5) "Director of the department of agriculture" means the
2 director of the department of agriculture or his or her
3 authorized representative.

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

8 (7) "Environment" includes water, air, land, plants, and
9 human beings and other animals, and the interrelationships which
10 exist among them.

11 (8) "FIFRA" means the federal insecticide, fungicide, and
12 rodenticide act, chapter 125, 61 Stat. 163, 7 U.S.C. 136 to
13 136a-1, 136c to 136i, and 136j to 136y.

14 (9) "Fungi" means all nonchlorophyll bearing thallophytes,
15 that is, all nonchlorophyll bearing plants of a lower order than
16 mosses and liverworts, as for example, rusts, smuts, mildews,
17 molds, yeasts, and bacteria, except those in or on other animals,
18 and except those in or on processed foods, beverages, or
19 pharmaceuticals.

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

22 (2) "Ingredient statement" means:

23 (a) A statement of the name and percentage of each active
24 ingredient together with the total percentage of the inert ingre-
25 dients in the pesticide.

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

4 (3) "Insect" means any of the numerous small invertebrate
5 animals generally having the body more or less obviously segment-
6 ed, for the most part belonging to the class insecta, comprising
7 6-legged, usually winged forms, as for example, beetles, bugs,
8 bees, flies, and to other allied classes or arthropods whose mem-
9 bers are wingless and usually have more than 6 legs, as for exam-
10 ple, spiders, mites, ticks, centipedes, and wood lice.

11 (4) "Insecticide" means a substance or mixture of substances
12 intended for preventing, destroying, repelling, or mitigating an
13 insect.

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

17 (6) "Labeling" means the label and all other written,
18 printed, or graphic matter accompanying the pesticide or device,
19 or to which reference is made on the label or in literature
20 accompanying the pesticide or device, and all applicable modifi-
21 cations or supplements to official publications of the United
22 States environmental protection agency, the United States depart-
23 ments of agriculture and interior, the United States department
24 of health and human services, state experiment stations, state
25 agricultural colleges, and other similar federal or state insti-
26 tutions or agencies authorized by law to conduct research in the
27 field of pesticides.

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

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

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

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

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

22 (4) "Pesticide" means a substance or mixture of substances
23 intended for preventing, destroying, repelling, or mitigating
24 pests, or intended for use as a plant regulator, defoliant, or
25 desiccant.

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

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

11 (7) "Private agricultural applicator" means a certified
12 applicator who uses or supervises the use of a restricted use
13 pesticide for a private agricultural purpose.

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

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

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

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

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

4 (c) He or she applies pesticides for a private agricultural
5 purpose.

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

8 (3) "Restricted use pesticide" means a pesticide formulation
9 classified for restricted use by the United States environmental
10 protection agency or the director of the department of
11 agriculture.

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

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

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

24 (7) "Unreasonable adverse effect on the environment" means
25 any unreasonable risk to human beings or the environment, taking
26 into account the economic, social, and environmental costs and
27 benefits of the use of a pesticide.

1 (8) "Vendor" means a person that sells or distributes
2 pesticides.

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

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

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

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

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

23 (c) A full description of tests made and the results of
24 tests made upon which claims are based for the pesticide if not
25 registered by the United States environmental protection agency.

26 (d) Other necessary information required for completion of
27 the registration form.

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

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

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

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

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

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

19 (4) The director of the department of agriculture shall
20 require the applicant to submit a complete formula of the pesti-
21 cide proposed for registration, including the active and inert
22 ingredients, if necessary to execute the director's duties under
23 this part. The director may not use for his or her own advantage
24 or reveal, other than to his or her authorized representative,
25 the United States environmental protection agency, the department
26 of natural resources, the department of public health, a court of
27 the state in response to a subpoena, a licensed physician, or in

1 an emergency to a pharmacist or other persons qualified to
2 administer antidotes, any information relative to formulas of
3 products, trade secrets, or other information obtained under
4 authority of this part.

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

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

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

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

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

25 (c) Revoke an experimental permit when its terms or condi-
26 tions are violated, or its terms and conditions are inadequate to
27 avoid unreasonable, adverse effects on the environment.

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

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

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

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

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

26 Sec. 3510. (1) A person who is a restricted use pesticide
27 dealer shall obtain an annual license for each business

1 location. The license shall expire on December 31. The annual
2 license fee of \$50.00 shall accompany the application for license
3 together with other pertinent information the director of the
4 department of agriculture may require. The license fee shall be
5 credited to the general fund of the state.

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

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

1 manufacturer. The summary shall include the name and address of
2 the restricted use pesticide dealer, the name and address of the
3 purchaser, the name of the pesticide sold and, in an emergency,
4 the quantity sold.

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

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

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

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

21 (a) Self-study and examination.

22 (b) Classroom training and examination.

23 (c) An oral fact-finding interview administered by an autho-
24 rized representative of the director of the department of agri-
25 culture when a person is unable to demonstrate competence by
26 examination or classroom training.

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

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

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

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

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

26 Sec. 3512. (1) Satisfactory completion of certification
27 requirements prescribed by the director of the department of

1 agriculture and categorized according to the various types of
2 pesticide applications prescribed by rule and consistent with the
3 regulations of the United States environmental protection agency
4 are a prerequisite for certification.

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

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

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

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

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

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

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

11 (8) The director of the department of agriculture may at any
12 time deny, revoke, or suspend a private agricultural applicator
13 certificate or a commercial applicator certificate for a viola-
14 tion of this part, or a violation of an order issued under this
15 part, or upon conviction under section 14 of FIFRA, 7
16 U.S.C. 1361, or upon conviction under a state pesticide law of a
17 reciprocating state in accordance with section 3519.

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

24 (2) A commercial applicator required to be licensed by sub-
25 section (1) shall be certified under section 3512 and shall have
26 at least 1 of the following in order to qualify for a license
27 under this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (c) Determine pesticides, and quantities of substances con-
18 tained in pesticides, that are injurious to the environment. The
19 director of the department of agriculture shall use the United
20 States environmental protection agency regulations as a guide in
21 this determination.

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

26 (e) Enter upon any public or private premises or other
27 place, including vehicles of transport, where pesticides or

1 devices are being used or held for distribution or sale, for the
2 purposes of inspecting and obtaining samples of pesticides or
3 devices or to inspect equipment or methods of application.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 pesticides; and the requirements of applicable laws, rules, and
2 labeling.

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

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

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

13 (a) The establishment of field reentry periods after the
14 application of agricultural pesticides.

15 (b) The posting and notification of areas where pesticides
16 have been applied.

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

19 (d) Notification of agricultural workers of poison treatment
20 facilities.

21 (4) If the United States environmental protection agency at
22 any time adopts and publishes agricultural worker protection
23 standards, the federal standards shall supersede rules promul-
24 gated under subsection (3).

25 (5) The director of the department of agriculture shall
26 submit rules to the joint committee on administrative rules.
27 These rules shall include all of the following:

1 (a) Minimum standards of competency and experience or
2 expertise for trainers of certified and registered applicators.

3 (b) The development of a training program for applicators on
4 the use of appropriate procedures for the application of pesti-
5 cides; safety procedures for pesticide application; clothing and
6 protective equipment for pesticide application; the detection of
7 common symptoms of pesticide poisoning; the means of obtaining
8 emergency medical treatment; hazards posed by pesticides to work-
9 ers, the public health, and the environment; specific categories
10 of pesticides; and the requirements of applicable laws, rules,
11 and labeling.

12 (c) The number of directly supervised application hours
13 required before a registered applicator may apply each category
14 of restricted use pesticide without direct supervision.

15 Sec. 3523. (1) A pesticide advisory committee is created
16 within the department of agriculture. The committee shall be
17 composed of the following members:

18 (a) The director of the department of agriculture.

19 (b) The director of the department of natural resources.

20 (c) A representative of the department of natural resources
21 selected by the director of the department of natural resources
22 who has expertise regarding water quality programs.

23 (d) The director of public health.

24 (e) The director of the Michigan cooperative extension
25 service.

1 (2) The director of the department of agriculture shall
2 appoint 8 additional members to the committee, 1 each
3 representing the following:

4 (a) Licensed indoor commercial applicators.

5 (b) Licensed outdoor commercial applicators.

6 (c) Producers of agricultural commodities.

7 (d) Licensed aerial applicators.

8 (e) Nongovernmental organizations for environmental
9 preservation.

10 (f) Farm employees.

11 (g) Those in the medical or health science profession
12 experienced in the toxicology of pesticides.

13 (h) Agricultural chemical industry.

14 (4) The members of the committee may designate an authorized
15 representative to represent them on the committee. Of the mem-
16 bers first appointed by the director of the department of agri-
17 culture, 3 shall serve for 1 year, 3 for 2 years, and 2 for 3
18 years. Thereafter, an appointment shall be for 3 years.

19 Vacancies shall be filled for the balance of an unexpired term.

20 The committee shall meet on the call of the director of the
21 department of agriculture, who shall serve as chairperson. The
22 director of the department of agriculture shall call a meeting of
23 the committee upon request of 2 or more members. A majority of
24 the members of the committee constitute a quorum.

25 (5) The pesticide advisory committee shall consult with and
26 advise the director of the department of agriculture in the

1 administration of this part and have the following
2 responsibilities:

3 (a) To analyze and summarize information pertaining to pes-
4 ticide use, including, but not limited to, the number and types
5 of pesticide use violations, underlying causes and circumstances
6 involving pesticide misuse, and to develop a profile of violators
7 of this part.

8 (b) To evaluate potential contamination related to the size
9 and disposal of pesticide containers for home, agricultural,
10 industrial, and commercial use and make recommendations to the
11 legislature.

12 (c) To utilize available information pertaining to the
13 misuse of pesticides to determine whether the training programs
14 offered by the director of the department of agriculture are
15 effective in curtailing misuses.

16 (d) To review all training requirements for applicators and
17 persons licensed under this part, including the specific review
18 of the components of each area tested under this part, and to
19 make recommendations to the director of the department of agri-
20 culture regarding training and testing. Notwithstanding the
21 responsibilities of the committee under this subdivision, the
22 specific test questions prepared to implement requirements of
23 this part are confidential.

24 (e) To annually publish a report to be submitted to the gov-
25 ernor, the legislature, and the director of the department of
26 agriculture. The report shall include all of the following:

1 (i) A review of the recommendations of the committee.

2 (ii) Recommendations regarding amendatory language for this
3 part.

4 (iii) Recommendations regarding resources necessary to ade-
5 quately implement this part.

6 (iv) A summary of the annual enforcement actions taken under
7 this part.

8 (6) All meetings of the committee shall be conducted pursu-
9 ant to the open meetings act, Act No. 267 of the Public Acts of
10 1976, being sections 15.261 to 15.275 of the Michigan Compiled
11 Laws.

12 Sec. 3524. (1) When the director of the department of agri-
13 culture believes that an applicator is using or intending to use
14 a pesticide in an unsafe or inadequate manner, or in a manner
15 inconsistent with its labeling, the director of the department of
16 agriculture shall order the applicator to cease the use of or
17 refrain from the intended use of the pesticide. The order may be
18 either oral or written, and shall inform the applicator of the
19 reason for the order.

20 (2) Upon receipt of the order, the applicator shall immedi-
21 ately comply with the order. Failure to comply constitutes cause
22 for revocation of the license or certification and subjects the
23 applicator to the penalty imposed under section 3529.

24 (3) The director of the department of agriculture shall
25 rescind the order immediately upon being satisfied after inspec-
26 tion that the order has been complied with. The inspection shall
27 be conducted as soon as possible at the oral or written request

1 of the applicator. The rescinding order of the director of the
2 department of agriculture may be oral and the applicator may rely
3 on that oral rescinding order. However, an oral order shall be
4 followed by a written rescinding order.

5 (4) If sampling or examination of a pesticide or device dis-
6 closes that it fails to comply with this part or the rules
7 promulgated under this part, then the pesticide or device is in
8 violation of this part.

9 Sec. 3525. (1) When the director of the department of agri-
10 culture has reasonable cause to believe that a pesticide or
11 device is being distributed, stored, transported, offered for
12 sale, or used in violation of this part or the rules promulgated
13 under this part, the director of the department of agriculture
14 may issue a written order to the owner or custodian of the pesti-
15 cide or device to stop the prohibited conduct. After receipt of
16 such an order, a person shall not sell, use, or remove the pesti-
17 cide or device described in the order except in accordance with
18 the order.

19 (2) A pesticide or device that is being transported, a pes-
20 ticide or device that was transported and remains unsold or is in
21 original unbroken packages, a pesticide or device that is sold or
22 offered for sale in this state, or a pesticide or device that is
23 imported from a foreign country, in violation of this part or the
24 rules promulgated under this part is subject to the procedures
25 described in this subsection. The proceeding may be brought in
26 any district court in the district where the pesticide or device
27 is found. A pesticide or device described in this subsection may

1 be seized for confiscation by a process in rem for condemnation
2 if:

3 (a) In the case of a pesticide any of the following circum-
4 stances exist:

5 (i) It is adulterated or misbranded.

6 (ii) It is not registered pursuant to this part.

7 (iii) Its labeling fails to bear the information required by
8 FIFRA or the regulations promulgated under FIFRA.

9 (iv) It is not colored or discolored and coloring or discol-
10 oring is required under FIFRA.

11 (v) Any of the claims made for it or any of the directions
12 for its use differ in substance from the representations made in
13 connection with its registration.

14 (b) In the case of a device, it is misbranded.

15 (c) In the case of a pesticide or device, when used in
16 accordance with the requirements imposed under this part and as
17 directed by the labeling, it nevertheless causes unreasonable
18 adverse effects on the environment. However, when a plant regu-
19 lator, defoliant, or desiccant is used in accordance with the
20 label claims and recommendations, physical or physiological
21 effects on plants or parts of plants are not considered to be
22 injurious, when those effects are the purpose for which the plant
23 regulator, defoliant, or desiccant was applied.

24 (3) If the pesticide or device is condemned it shall, after
25 entry of the decree, be disposed of by destruction or sale as the
26 court directs and, if sold, the proceeds less the court costs
27 shall be credited to the general fund, but the pesticide or

1 device shall not be sold contrary to this part or the laws of the
2 jurisdiction in which it is sold. However, upon payment of the
3 costs of the condemnation proceedings and the execution and
4 delivery of a good and sufficient bond conditioned that the pes-
5 ticide or device shall not be sold or otherwise disposed of con-
6 trary to this part or the laws of the jurisdiction in which sold,
7 the court may direct that the pesticide or device be delivered to
8 the owner. The proceedings of condemnation cases shall conform
9 as near as possible to proceedings in admiralty, except that
10 either party may demand trial by jury of an issue of fact joined
11 in a case, and the proceedings shall be brought by and in the
12 name of the people of the state.

13 (4) If a decree of condemnation is entered against a pesti-
14 cide or device, court costs and fees, storage, and other proper
15 expenses shall be awarded against the person, if any, intervening
16 as claimant of the pesticide or device.

17 Sec. 3526. (1) A pesticide that is transported, sold,
18 exposed, or offered for sale in this state shall be in the
19 registrant's or manufacturer's unbroken immediate container and
20 have attached to it a label conforming to the labeling require-
21 ments as prescribed under section 3507, or the rules promulgated
22 under this part. However, the unbroken container requirement of
23 this subsection does not apply to an applicator who is transport-
24 ing a pesticide between the place of storage and the area of
25 application.

26 (2) A pesticide container shall be free from damage that
27 might render the pesticide unsafe.

1 (3) A pesticide that is required by rule to be colored or
2 discolored shall not be distributed, sold, exposed, or offered
3 for sale unless the pesticide is colored or discolored as
4 prescribed.

5 (4) A pesticide shall be handled, stored, displayed, or
6 transported in such a manner that it will not endanger human
7 beings and their environment or endanger food, feed, or other
8 products that may be stored, displayed, or transported with the
9 pesticide.

10 (5) A person shall not detach, alter, deface, or destroy in
11 whole, or in part, any label or labeling provided for in this
12 part or rules promulgated under this part or add a substance to,
13 or take a substance from a pesticide in a manner that may defeat
14 the purpose of this part or FIFRA.

15 (6) A vendor of pesticides shall keep on file, subject to
16 inspection by an authorized agent of the director of the depart-
17 ment of agriculture for a period of 1 year, all invoices, freight
18 bills, truckers' receipts, waybills, and similar shipping data
19 pertaining to pesticides that would establish date and origin of
20 the shipments.

21 Sec. 3527. A person shall not give false information in a
22 matter pertaining to this part, or resist, impede, or hinder the
23 director of the department of agriculture or his or her autho-
24 rized representatives in the discharge of their duties.

25 Sec. 3528. A person aggrieved by an order issued in pursu-
26 ance of this part may request a hearing pursuant to the
27 administrative procedures act of 1969, Act No. 306 of the Public

1 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
2 Compiled Laws.

3 Sec. 3529. (1) The director of the department of agricul-
4 ture, upon finding after notice and an opportunity for a hearing
5 that a person has violated this part except sections 3511(2) and
6 3512, may impose an administrative fine of not more than
7 \$1,000.00 for each violation.

8 (2) If the director of the department of agriculture finds
9 that a violation occurred despite the exercise of due care or did
10 not result in significant harm to human health or the environ-
11 ment, the director of the department of agriculture may issue a
12 warning instead of imposing an administrative fine.

13 (3) The director of the department of agriculture shall
14 advise the attorney general of the failure of a person to pay an
15 administrative fine imposed under this section. The attorney
16 general shall bring an action in a court of competent jurisdic-
17 tion to recover the fine.

18 (4) A registrant, commercial applicator, registered applica-
19 tor, restricted use pesticide dealer, or a distributor who know-
20 ingly violates this part or a rule promulgated under this part is
21 guilty of a misdemeanor and shall be fined not more than
22 \$5,000.00 for each offense. A registrant, commercial applicator,
23 registered applicator, restricted use pesticide dealer, or a dis-
24 tributor who knowingly and with malicious intent violates this
25 part or a rule promulgated under this part is guilty of a misde-
26 meanor, and shall be fined not more than \$25,000.00 for each
27 offense. A private agricultural applicator or any other person

1 who knowingly violates this part or a rule promulgated under this
2 part is guilty of a misdemeanor, and shall be fined not more than
3 \$1,000.00 for each offense.

4 (5) The director of the department of agriculture may bring
5 an action to enjoin the violation or threatened violation of this
6 part or a rule promulgated under this part in a court of compe-
7 tent jurisdiction of the county in which the violation occurs or
8 is about to occur.

9 (6) The attorney general may file a civil action in which
10 the court may impose on any person who violates this part or a
11 rule promulgated under this part a civil fine of not more than
12 \$5,000.00 for each violation.

13 (7) In defense of an action filed under this section, in
14 addition to any other lawful defense, a person may present evi-
15 dence as an affirmative defense that, at the time of the alleged
16 violation, he or she was in compliance with label directions and
17 with this part and rules promulgated under this part.

18 (8) A civil cause of action does not arise for injuries to
19 any person or property if a private agricultural applicator, or a
20 registered applicator who stores, handles, or applies pesticides
21 only for a private agricultural purpose, was not grossly negli-
22 gent and stored, handled, or applied pesticides in compliance
23 with this part, rules promulgated under this part, and the pesti-
24 cide labeling.

25 (9) Applicable provisions of the revised judicature act of
26 1961, Act No. 236 of the Public Acts of 1961, being sections

1 600.101 to 600.9947 of the Michigan Compiled Laws, apply to civil
2 actions filed pursuant to this part.

3 Sec. 3530. The penalties provided for violations of this
4 part do not apply to any of the following:

5 (a) A carrier while lawfully engaged in transporting a pes-
6 ticide within this state, if the carrier, upon request, permits
7 the director of the department of agriculture to copy all records
8 showing the transactions in and movement of the pesticide or
9 devices.

10 (b) Public officials of this state and the federal govern-
11 ment while engaged in the performance of their official duties in
12 administering the state or federal pesticide laws or
13 regulations.

14 (c) A person who ships a substance or mixture of substances
15 being tested in which the only purpose is to determine its toxic-
16 ity or other properties and from which the user does not expect
17 to receive any pest control benefit from its use.

18 (d) The shipment or movement of an unregistered or canceled
19 pesticide for the specific purposes of disposal or storage.

20 Sec. 3531. A court shall not allow the recovery of damages
21 from an administrative action taken or an order stopping the sale
22 or use or requiring seizure if the court finds that there was
23 probable cause for the action or order.

24 Sec. 3532. (1) This part does not terminate or in any way
25 modify any liability, civil or criminal, that is in existence on
26 June 25, 1976.

1 (2) For the purposes of determining any penalty or liability
2 in respect to an act or omission occurring before June 25, 1976,
3 former Act No. 297 of the Public Acts of 1949, and former Act
4 No. 233 of the Public Acts of 1959, shall apply.

5 PART 37 PCB COMPOUNDS

6 Sec. 3701. As used in this part:

7 (a) "PCB" means the class of chlorinated biphenyl, ter-
8 phenyl, higher polyphenyl, or mixtures of these compounds
9 produced by replacing 2 or more hydrogen atoms on the biphenyl,
10 terphenyl, or higher polyphenyl molecule with chlorine atoms.
11 PCB does not include chlorinated biphenyls, terphenyls, higher
12 polyphenyls, or mixtures of these compounds that have functional
13 groups attached other than chlorine unless that functional group
14 on the chlorinated biphenyls, terphenyls, higher polyphenyls, or
15 mixtures thereof is determined to be dangerous to the public
16 health, safety, and welfare under section 3705.

17 (b) "Ppm" means parts per million.

18 Sec. 3702. The director is responsible for the administra-
19 tion and implementation of this part to protect the public
20 health, safety, and welfare from the toxic effects and environ-
21 mental dangers of PCB. The director shall promulgate rules to
22 implement and administer this part.

23 Sec. 3703. A person shall not sell, manufacture for sale,
24 or use an item, product, or material in his or her business in
25 this state if the item, product, or material contains a concen-
26 tration of PCB equal to or greater than 100 ppm, except that an
27 item, product, or material for which a lower maximum

1 concentration of PCB is prescribed by federal law, rule, or
2 regulation shall not contain a concentration of PCB higher than
3 that federal maximum.

4 Sec. 3705. After receiving a recommendation by affirmative
5 majority vote of a special committee consisting of the director,
6 the director of commerce, and the director of the department of
7 public health, the director shall by rule determine, within the
8 concentrations prescribed by this act, whether the chlorinated
9 biphenyls, terphenyls, higher polyphenyls, or mixtures thereof
10 named in the recommendation and having certain functional groups
11 in addition to chlorine attached to the molecule constitute a
12 sufficient danger to the public health, safety, and welfare as to
13 be regulated as a PCB by this part.

14 Sec. 3706. A person shall not dispose of solid or liquid
15 waste resulting from the use in his or her business of PCB or an
16 item, product, or material containing or which has contained a
17 concentration equal to or greater than 100 ppm of PCB except in
18 conformity with rules promulgated by the director.

19 Sec. 3707. (1) A person who violates this part or a rule
20 promulgated under this part is guilty of a misdemeanor, punish-
21 able by a fine of not less than \$2,500.00 or more than
22 \$25,000.00.

23 (2) Each day that a violation of this part or a rule promul-
24 gated under this part continues shall be considered a separate
25 violation.

PART 39 AIR POLLUTION CONTROL

Sec. 3901. 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 and 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 which interferes 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, this part or the rules promulgated under this part shall not 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 within a zoned agricultural area if the person engaged in the farm operation is following generally accepted agricultural and management practices.

(c) "Air cleaning device" means any method, process or equipment that removes, reduces or renders less noxious air contaminants discharged into the atmosphere.

(d) "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.

1 (e) "Generally accepted agricultural and management
2 practices" has the meaning ascribed to it in the Michigan right
3 to farm act, Act No. 93 of the Public Acts of 1981, being sec-
4 tions 286.471 to 286.474 of the Michigan Compiled Laws.

5 Sec. 3902. (1) To administer and implement certain provi-
6 sions of this part, an air pollution control commission is cre-
7 ated within the department. The air pollution control commission
8 shall consist of the director of the department of public health,
9 who shall act as chairperson of the air pollution control commis-
10 sion; the director; the director of the department of agricul-
11 ture; and 8 citizens of the state to be appointed by the governor
12 by and with the advice and consent of the senate. Each of the
13 state officers may designate a deputy of his or her department to
14 serve in his or her stead as a member of the air pollution con-
15 trol commission.

16 (2) Of the 8 citizens appointed by the governor, 2 shall be
17 representatives of industrial management, 1 of whom shall be a
18 licensed professional engineer trained and experienced in matters
19 of air pollution measurement and control; 2 shall be representa-
20 tives of local governing bodies, 1 of whom shall be a full-time
21 air pollution control officer; 1 shall be a licensed physician
22 who is experienced and competent in the toxicology of air contam-
23 inants; 1 shall be a member of organized labor and 2 shall be
24 representatives of the general public.

25 (3) Each appointed member shall serve for a term of 3
26 years. Vacancies shall be filled for the unexpired terms in the
27 same manner as original appointments. Members of the air

1 pollution control commission receive no compensation, but are
2 entitled to actual and necessary expenses incurred in the per-
3 formance of official duties under this part.

4 Sec. 3903. (1) The air pollution control commission shall
5 organize and promulgate rules governing the commission's formal
6 and informal procedures, and shall meet not less than twice each
7 year and shall keep a record of the proceedings and functions. A
8 special meeting of the air pollution control commission may be
9 called by the chairperson and shall be called upon receipt of a
10 written request signed by 2 or more members of the air pollution
11 control commission. Six members of the air pollution control
12 commission constitute a quorum to conduct business.

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

20 (3) A writing prepared, owned, used, in the possession of,
21 or retained by the air pollution control commission in the per-
22 formance of an official function shall be made available to the
23 public in compliance with the freedom of information act, Act
24 No. 442 of the Public Acts of 1976, being sections 15.231 to
25 15.246 of the Michigan Compiled Laws.

26 Sec. 3904. (1) The air pollution control commission may do
27 each of the following:

1 (a) Establish standards for ambient air quality and for
2 emissions.

3 (b) Issue permits for the construction and the operation of
4 air pollution control facilities and source emissions and to
5 require reports of the operation of the air pollution control
6 facilities.

7 (c) Compel the attendance of witnesses at proceedings of the
8 commission upon reasonable notice.

9 (d) Make findings of fact and determinations.

10 (e) Make, modify, or cancel orders that require, in accord-
11 ance with this part, the control of air pollution.

12 (f) Accept, or when considered necessary by the air pollu-
13 tion control commission require to be submitted to it, and con-
14 sider for approval plans for air cleaning devices or any part
15 thereof and inspect the installation for compliance with the
16 plans.

17 (2) The department may do all of the following:

18 (a) Institute in a court of competent jurisdiction proceed-
19 ings to compel compliance with any rule or any determination or
20 order promulgated under this part.

21 (b) Do such other things as it considers necessary, proper,
22 or desirable to enforce rules promulgated under this part.

23 (c) Enter and inspect any property at reasonable times and
24 places pursuant to reasonable notice for the purpose of investi-
25 gating either an actual or suspected source of air pollution or
26 ascertaining compliance or noncompliance with any rule that is
27 promulgated under this part. If in connection with an

1 investigation or inspection, samples of air contaminants are
2 taken for analysis, a duplicate of the analytical report shall be
3 furnished promptly to the person who is suspected of causing the
4 air pollution.

5 (d) Receive and initiate complaints of air pollution in
6 alleged violation of any rule promulgated under this part and
7 take action with respect to the complaint as provided in this
8 part.

9 (e) Prepare and develop a general comprehensive plan for the
10 control or abatement of existing air pollution and for the con-
11 trol or prevention of any new air pollution.

12 (f) Encourage voluntary cooperation by all persons in con-
13 trolling air pollution and air contamination.

14 (g) Encourage the formulation and execution of plans by
15 cooperative groups of persons who severally or jointly are or may
16 be the source of air pollution, for the control of pollution.

17 (h) Cooperate with the appropriate agencies of the United
18 States or other states or any interstate agencies or interna-
19 tional agencies with respect to the control of air pollution and
20 air contamination, or for the formulation for the submission to
21 the legislature of interstate air pollution control compacts or
22 agreements.

23 (i) Conduct or cause to be conducted studies and research
24 with respect to air pollution control, abatement or prevention.

25 (j) Conduct and supervise programs of air pollution control
26 education including the preparation and distribution of
27 information relating to air pollution control.

1 (k) Determine by means of field studies and sampling the
2 degree of air pollution in the state.

3 (l) Provide advisory technical consultation services to
4 local communities.

5 (m) Serve as the agency of the state for the receipt of
6 money from the federal government or other public or private
7 agencies and to expend that money after it is appropriated for
8 the purpose of air pollution control studies or research or the
9 enforcement of this part.

10 Sec. 3905. (1) Beginning June 6, 1991 or on the effective
11 date of the rules promulgated under subsection (5), whichever is
12 later, a facility that incinerates medical waste shall not be
13 operated unless the facility has an operating permit issued by
14 the air pollution control commission.

15 (2) An application for an operating permit under subsection
16 (1) shall be submitted in the form and contain the information
17 required by the air pollution control commission. The air pollu-
18 tion control commission shall issue an operating permit only if
19 the facility is in compliance with this part and the rules
20 promulgated under this part.

21 (3) A permit issued under this section is valid for
22 5 years. The air pollution control commission may renew a permit
23 upon the expiration of the permit.

24 (4) Within 2 years after the effective date of the rules
25 promulgated under subsection (5), the air pollution control com-
26 mission shall review all operating permits issued under this part
27 for facilities that incinerate medical waste that were issued

1 permits prior to the promulgation of the rules under
2 subsection (5). If, upon review, the air pollution control com-
3 mission determines that the facility does not meet the require-
4 ments of the rules promulgated under subsection (5) and cannot be
5 retrofitted to comply with these rules, the air pollution control
6 commission shall issue an interim operating permit that is valid
7 for 2 years only. If the facility only needs retrofitting in
8 order to comply with the rules, the facility shall be granted an
9 interim permit that is valid for 1 year only. However, in either
10 case the facility shall comply with this part and all other rules
11 promulgated under this part for the interim period. An interim
12 operating permit shall provide that if the facility is within
13 50 miles of another facility that is in compliance with the rules
14 promulgated under subsection (5), the facility operating under
15 the interim operating permit may receive only medical waste that
16 is generated on the site of that facility, at a facility owned
17 and operated by the person who owns and operates that facility,
18 or at the private practice office of a physician who has privi-
19 leges to practice at that facility, if the facility is a
20 hospital. The air pollution control commission shall renew an
21 operating permit for a facility only if the facility is in com-
22 pliance with this part and the rules promulgated under this
23 part.

24 (5) The air pollution control commission shall promulgate
25 rules to do both of the following:

26 (a) Regulate facilities that incinerate medical waste.

27 These rules shall address at least all of the following:

- 1 (i) Incinerator design and operation.
- 2 (ii) Ash handling and quality.
- 3 (iii) Stack design.
- 4 (iv) Requirements for receiving medical waste from genera-
- 5 tors outside the facility.
- 6 (v) Air pollution control requirements.
- 7 (vi) Performance monitoring and testing.
- 8 (vii) Record-keeping and reporting requirements.
- 9 (viii) Inspection and maintenance.
- 10 (b) Regulate the operation of facilities that incinerate
- 11 only pathological waste and limited other permitted solid waste.
- 12 (6) A permit issued under this section may allow a facility
- 13 to receive pathological or medical wastes that were generated off
- 14 the site of the facility. However, the owner or operator of the
- 15 facility shall keep monthly records of the source of the wastes
- 16 and the approximate volume of the wastes received by the
- 17 facility.
- 18 (7) As used in this section:
- 19 (a) "Medical waste" means that term as it is defined in
- 20 part 138 of the public health code, Act No. 368 of the Public
- 21 Acts of 1978, being sections 333.13801 to 333.13831 of the
- 22 Michigan Compiled Laws.
- 23 (b) "Pathological waste" means that term as it is defined in
- 24 part 138 of the public health code.
- 25 Sec. 3906. The director shall act as the authorized agent
- 26 for the air pollution control commission in assisting the air
- 27 pollution control commission in the performance of its duties

1 under this part. All investigative, technical, scientific, and
2 other services shall be performed by the director or his or her
3 authorized deputies.

4 Sec. 3907. (1) A rule or amendment or repeal of a rule or
5 amendment shall require a vote of approval in writing of not less
6 than 6 members of the air pollution control commission.

7 (2) The air pollution control commission shall promulgate
8 rules for all of the following purposes:

9 (a) Controlling or prohibiting air pollution.

10 (b) Complying with the federal clean air act, chapter 360,
11 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492,
12 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to
13 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612,
14 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to
15 7651o, 7661 to 7661f, and 7671 to 7671q.

16 (c) Controlling any mode of transportation that is capable
17 of causing or contributing to air pollution.

18 (d) Reviewing proposed locations of stationary emission
19 sources.

20 (e) Reviewing modifications of existing emission sources.

21 (f) Prohibiting locations or modifications of emission
22 sources which impair the state's ability to meet federal ambient
23 air standards.

24 (g) Establishing suitable emission standards consistent with
25 ambient air quality standards established by the federal govern-
26 ment and factors, including, but not limited to, conditions of
27 the terrain, wind velocities and directions, land usage of the

1 region, and the anticipated characteristics and quantities of
2 potential air pollution sources. This part does not prohibit the
3 air pollution control commission from denying or revoking a
4 permit to operate a control facility that would adversely affect
5 human health or other conditions important to the life of the
6 community.

7 Sec. 3908. Notwithstanding any other provision of this part
8 or the rules promulgated under this part, car ferries having the
9 capacity to carry more than 110 motor vehicles and coal-fueled
10 trains used in connection with tourism or an historical museum,
11 or carrying works of art or items of historical interest are not
12 subject to regulation under this part.

13 Sec. 3908a. A congressionally chartered patriotic organi-
14 zation that disposes of an unserviceable flag of the United
15 States by burning that flag is not subject to regulation or pen-
16 alty for violating a state law or local ordinance pertaining to
17 open burning of materials or substances.

18 Sec. 3909. (1) If a written complaint is filed with the
19 department and the department believes that any person is violat-
20 ing this part or any rule promulgated under this part by causing
21 or permitting air pollution, the department shall make a prompt
22 investigation. If after this investigation the department finds
23 that a violation of any rule promulgated under this part exists,
24 the department shall attempt to enter into a voluntary agreement
25 with the person as provided in subsection (2).

26 (2) In consideration of this section or other sections of
27 this part, the department, after due notice and opportunity for

1 public hearing, may enter into a voluntary agreement or a
2 performance contract with a person to abate pollution under con-
3 ditions agreed upon by the department and the person. This
4 agreement may provide for the enforcement of its terms by spe-
5 cific performance.

6 (3) If in the opinion of the department the person violates
7 the terms of the agreement or contract, the department can pro-
8 ceed to enforce the conditions of the agreement or contract by
9 order or by the institution in a court of competent jurisdiction
10 of an action for specific performance or such other legal or
11 equitable relief as the department considers appropriate.

12 (4) Whenever a person other than a party to the agreement
13 feels aggrieved by an agreement entered pursuant to subsection
14 (2), he or she may file a sworn petition with the department
15 within 30 days of the issuance of notice of the agreement setting
16 forth the grounds and reasons for his or her complaint and asking
17 for a hearing of the matter involved. The department shall set a
18 date for a hearing to be held not more than 60 days from the date
19 the petition is filed and shall notify the petitioner of the date
20 of the hearing. At the hearing the petitioner and any other
21 interested party may appear, present witnesses, and submit
22 evidence. A final order or determination of the department upon
23 the matter following the hearing is conclusive, unless reviewed
24 in accordance with the administrative procedures act of 1969, Act
25 No. 306 of the Public Acts of 1969, being sections 24.201 to
26 24.328 of the Michigan Compiled Laws, in the circuit court for

1 the county of Ingham or for the county in which the person
2 resides.

3 Sec. 3910. If a voluntary agreement under section 3909 is
4 not entered into within a reasonable time, set by the air pollu-
5 tion control commission, the air pollution control commission may
6 issue and serve upon the person complained against a written
7 notice, together with a copy of the complaint, which shall spec-
8 ify the facts which are the basis for the alleged violation and a
9 proposed order for corrective action that states the time sched-
10 ule and standards or rules that are to be met by the person com-
11 plained against. If a person who is served with a complaint and
12 proposed order agrees with the proposed restrictions of polluting
13 content, waste or pollution and period of time for abatement of
14 pollution that the air pollution control commission considers
15 necessary, and notifies the air pollution control commission
16 thereof before the date set for hearing, unless the person com-
17 plained against requests a hearing before the air pollution con-
18 trol commission within 30 days after he or she receives the
19 order, disposition of the case may be made with the approval of
20 the air pollution control commission by stipulation or consent
21 order without further hearing. An order adopted by the air pol-
22 lution control commission is final.

23 Sec. 3911. (1) The respondent to the complaint under
24 section 3910 may file a written answer to the complaint and may
25 appear at the hearing in person or by representative, with or
26 without counsel, and may submit testimony, or may do both.

1 (2) The air pollution control commission on behalf of a
2 party may subpoena and compel the attendance of witnesses, and
3 require the production for examination of any book or paper
4 relating to the matter under investigation at the hearing. The
5 subpoena shall only be issued after application to the circuit
6 court having jurisdiction and with the approval of the court.

7 (3) The testimony taken at the hearing before the air pollu-
8 tion control commission or its presiding officer shall be under
9 oath and recorded.

10 (4) A hearing on a contested matter held pursuant to this
11 act shall be held pursuant to the administrative procedures act
12 of 1969, Act No. 306 of the Public Acts of 1969, being sections
13 24.201 to 24.328 of the Michigan Compiled Laws.

14 Sec. 3912. (1) Public hearings with reference to pollution
15 control may be held before any member of the air pollution con-
16 trol commission or their designated delegates or
17 representatives. Persons designated to conduct the hearing as
18 presiding officers shall be disinterested and technically quali-
19 fied persons.

20 (2) If a record, permit application, or other information
21 that is furnished to or is obtained by the air pollution control
22 commission concerning 1 or more air contaminant sources is certi-
23 fied by the owner or operator, that the record, permit applica-
24 tion, or information that relates to production, sales figures,
25 or to processes are unique to the owner or operator or would tend
26 to affect adversely the competitive position of the owner or
27 operator, or if information relating to secret processes,

1 production or methods of manufacture is obtained in the course of
2 an in-plant inspection, then the record, permit application or
3 information shall be only for the confidential use of the air
4 pollution control commission and the department in the adminis-
5 tration of this part, unless the owner or operator expressly
6 agrees to its publication or availability to the general public.
7 This does not prevent the use of a record, permit application or
8 information by the air pollution control commission or department
9 in compiling or publishing analyses or summaries relating to the
10 general condition of the outdoor atmosphere if the analyses or
11 summaries do not identify an owner or operator or reveal informa-
12 tion that is otherwise confidential under this section. This
13 section does not render data on the quantity or quality of emis-
14 sions from any source confidential. The data on amount and
15 nature of emissions from each source is public information.

16 Sec. 3913. Application for relief from any rule or order
17 issued under this part shall be made by petition to the circuit
18 court for the county of Ingham, or to the county in which the
19 petitioner resides. The petition shall be verified as in a civil
20 action. Each petition shall contain a plain and concise state-
21 ment of the material facts on which the petitioner relies and
22 shall set forth the rule or order or part of the rule or order
23 that he or she claims to be unreasonable or prejudicial to him or
24 her and shall specify the grounds upon which the petitioner
25 relies. The petition may be accompanied by affidavits or other
26 written proof and shall demand the relief to which the petitioner
27 alleges he or she is entitled, in the alternative or otherwise.

1 The petition may be made by any 1 or more persons, jointly or
2 severally, who are aggrieved by any rule or order whether or not
3 the petitioner is or was a party to the proceeding in which the
4 rule was adopted under this part.

5 Sec. 3914. (1) When the director of public health finds
6 that a person is discharging or causing to be discharged into the
7 atmosphere directly or indirectly any air contaminant and the
8 discharge constitutes an immediate and serious danger to the
9 health, safety, and welfare of the people and that it appears to
10 be prejudicial to the interests of the people of the state to
11 delay action, the director of public health shall notify the
12 person by written notice that he or she must discontinue immedi-
13 ately the air pollution. Within not more than 15 days, the
14 department shall provide the person the opportunity to be heard
15 and to present any proof that the discharge does not constitute a
16 danger to the health, safety, and welfare of the people.

17 (2) The state or local agency may require an annual report
18 that states the nature of the enterprise, and a list of materials
19 including a by-product or waste product that appears on a
20 commission's register of materials. The air pollution control
21 commission shall promulgate rules necessary or required to imple-
22 ment this section and the applicable federal law or regulation.

23 Sec. 3915. (1) This section, including subsection (2),
24 shall apply to any fugitive dust source at all mining operations,
25 standard industrial classification major groups 10 through 14;
26 manufacturing operations, standard industrial classification
27 major groups 20 through 39; railroad transportation, standard

1 industrial classification major group 40; motor freight
2 transportation and warehousing, standard industrial classifica-
3 tion major group 42; electric services, standard industrial clas-
4 sification group 491; sanitary services, standard industrial
5 classification group 495; and steam supply, standard industrial
6 classification group 496, which are located in areas listed in
7 table 36 of R 336.1371 of the Michigan administrative code.

8 (2) Except as provided in subsection (8), a person responsi-
9 ble for any fugitive dust source regulated under this section
10 shall not cause or allow the emission of fugitive dust from any
11 road, lot, or storage pile, including any material handling
12 activity at a storage pile, that has an opacity greater than 5%
13 as determined by reference test method 9d. Except as otherwise
14 provided in subsection (8) or this section, a person shall not
15 cause or allow the emission of fugitive dust from any other fugi-
16 tive dust source that has an opacity greater than 20% as deter-
17 mined by test method 9d. The provisions of this subsection shall
18 not apply to storage pile material handling activities when wind
19 speeds are in excess of 25 miles per hour (40.2 kilometers per
20 hour).

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

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

1 (i) All storage piles of materials, where the total
2 uncontrolled emissions of fugitive dust from all such piles at a
3 facility is in excess of 50 tons per year and where such piles
4 are located within a facility with potential particulate emis-
5 sions from all sources including fugitive dust sources and all
6 other sources exceeding 100 tons per year, shall be protected by
7 a cover or enclosure or sprayed with water or a surfactant solu-
8 tion, or treated by an equivalent method, in accordance with the
9 operating program required by subsection (4).

10 (ii) All conveyor loading operations to storage piles speci-
11 fied in subparagraph (i) shall utilize spray systems, telescopic
12 chutes, stone ladders, or other equivalent methods in accordance
13 with the operating program required by subsection (4). Batch
14 loading operations to storage piles specified in subparagraph (i)
15 shall utilize spray systems, limited drop heights, enclosures, or
16 other equivalent methods in accordance with the operating program
17 required by subsection (4). Unloading operations from storage
18 piles specified in subparagraph (i) shall utilize rake reclaim-
19 ers, bucket wheel reclaimers, under-pile conveying, pneumatic
20 conveying with baghouse, water sprays, gravity-feed plow reclaim-
21 er, front-end loaders with limited drop heights, or other equiva-
22 lent methods in accordance with the operating program required by
23 subsection (4).

24 (iii) All traffic pattern access areas surrounding storage
25 piles specified in subparagraph (i) and all traffic pattern roads
26 and parking facilities shall be paved or treated with water,
27 oils, or chemical dust suppressants. All paved areas, including

1 traffic pattern access areas surrounding storage piles specified
2 in subparagraph (i), shall be cleaned in accordance with the
3 operating program required by subsection (4). All areas treated
4 with water, oils, or chemical dust suppressants shall have the
5 treatment applied in accordance with the operating program
6 required by subsection (4).

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

11 (v) Crushers, grinding mills, screening operations, bucket
12 elevators, conveyor transfer points, conveyor bagging operations,
13 storage bins, and fine product truck and railcar loading opera-
14 tions shall be sprayed with water or a surfactant solution, uti-
15 lize choke-feeding, or be treated by an equivalent method in
16 accordance with an operating program required under
17 subsection (4). This subparagraph shall not apply to high-lines
18 at steel mills.

19 (b) If particulate collection equipment is operated pursuant
20 to this section, emissions from such equipment shall not exceed
21 0.03 grains per dry standard cubic foot (0.07 grams per cubic
22 meter).

23 (c) A person shall not cause or allow the operation of a
24 vehicle for the transporting of bulk materials with a silt con-
25 tent of more than 1% without employing 1 or more of the following
26 control methods:

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

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

8 (iii) Loading trucks so that no part of the load making con-
9 tact with any sideboard, side panel, or rear part of the load
10 comes within 6 inches of the top part of the enclosure for bulk
11 materials with a silt content of more than 1% but not more than
12 5%.

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

19 (e) Subdivisions (c) and (d) do not apply to vehicles with
20 less than a 2-ton capacity that are used to transport sand,
21 gravel, stones, peat, or topsoil.

22 (f) Subdivision (c)(i) and (ii) do not apply to fly ash
23 which has been thoroughly wetted and has the property of forming
24 a stable crust upon drying.

25 (g) Subdivision (c) does not apply to the transportation of
26 iron or steel slag if the vehicles do not leave the facility and
27 the slag has a temperature of 200 degrees fahrenheit or greater.

1 (4) All fugitive dust sources subject to this section shall
2 be operated in compliance with both the provisions of an operat-
3 ing program that shall be prepared by the owner or operator of
4 the source and submitted to the commission and with applicable
5 provisions of this section. Such operating program shall be
6 designed to significantly reduce the fugitive dust emissions to
7 the lowest level that a particular source is capable of achieving
8 by the application of control technology that is reasonably
9 available, considering technological and economic feasibility.
10 The operating program shall be implemented upon the approval of
11 the air pollution control commission.

12 (5) The operating program required by subsection (4) is
13 subject to review and approval or disapproval by the air pollu-
14 tion control commission and shall be considered approved if not
15 acted on by the air pollution control commission within 90 days
16 of submittal. All programs approved by the air pollution control
17 commission shall become a part of a legally enforceable order or
18 as part of an approved permit to install or operate. At a mini-
19 mum, the operating program shall include all of the following:

20 (a) The name and address of the facility.

21 (b) The name and address of the owner or operator responsi-
22 ble for implementation of the operating program.

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

25 (i) Approximate locations of storage piles.

26 (ii) Conveyor loading operations.

1 (iii) All traffic patterns within the facility.

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

4 (e) A detailed description of the best management practices
5 utilized to achieve compliance with this section, including an
6 engineering specification of particulate collection equipment,
7 application systems for water, oil, chemicals, and dust suppres-
8 sants utilized, and equivalent methods utilized.

9 (f) A test procedure, including recordkeeping, for testing
10 all waste or recycled oils used for fugitive dust control for
11 toxic contaminants.

12 (g) The frequency of application, application rates, and
13 dilution rates if applicable, of dust suppressants by location of
14 materials.

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

17 (i) Other information as may be necessary to facilitate the
18 commission's review of the operating program.

19 (6) Except for fugitive dust sources operating programs
20 approved by the air pollution control commission pursuant to
21 R 336.1373 of the Michigan administrative code between April 23,
22 1985 and May 12, 1987, the owner or operator of a source shall
23 submit the operating program required by subsection (4) to the
24 air pollution control commission by August 12, 1987.

25 (7) The operating program required by subsection (4) shall
26 be amended by the owner or operator so that the operating program
27 is current and reflects any significant change in the fugitive

1 dust source or fugitive dust emissions. An amendment to an
2 operating program shall be consistent with the requirements of
3 this section and shall be submitted to the air pollution control
4 commission for its review and approval or disapproval.

5 (8) Upon request by the owner or operator of a fugitive dust
6 source, the air pollution control commission may establish alter-
7 nate provisions to those specified in this section, if all of the
8 following conditions are met:

9 (a) The fugitive dust emitting process, operation, or activ-
10 ity is subject to either of the following:

11 (i) The opacity limits of subsection (2).

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

13 (b) An alternate provision shall not be established by the
14 commission unless the air pollution control commission is reason-
15 ably convinced of all of the following:

16 (i) That a fugitive dust emitting process, operation, or
17 activity subject to the alternate provisions is in compliance or
18 on a legally enforceable schedule of compliance with the other
19 rules of the air pollution control commission.

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

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

26 (9) Any alternate provisions approved by the air pollution
27 control commission pursuant to subsection (8) shall be submitted

1 to the United States environmental protection agency as an
2 amendment to the state implementation plan.

3 Sec. 3916. As used in section 3915:

4 (a) "Control equipment or pollution control equipment" has
5 the meaning ascribed to control equipment in R 336.1103 of the
6 Michigan administrative code.

7 (b) "Fine product" means materials which will pass through a
8 20-mesh screen or those particles with aerodynamic diameters of
9 830 microns or less.

10 (c) "Fugitive dust" has the meaning ascribed to it in
11 R 336.1106 of the Michigan administrative code.

12 (d) "Fugitive dust source" means any fugitive dust emitting
13 process, operation, or activity regulated under section 3915.

14 (e) "Opacity" has the meaning ascribed to it in R 336.1115
15 of the Michigan administrative code.

16 (f) "Particulate" means any air contaminant existing as a
17 finely divided liquid or solid, other than uncombined water, as
18 measured by a reference test specified in subsection (5) of
19 R 336.2004 of the Michigan administrative code or by an equiva-
20 lent or alternative method.

21 (g) "Potential particulate emissions" means those emissions
22 of particulate matter expected to occur without control equip-
23 ment, unless such control equipment is, aside from air pollution
24 control requirements, vital to the production of the normal prod-
25 uct of the source or to its normal operation. Annual potential
26 particulate emissions shall be based on the maximum annual-rated
27 capacity of the source, unless the source is subject to

1 enforceable permit conditions or enforceable orders which limit
2 the operating rate or the hours of operation or both.
3 Enforceable agreements or permit conditions on the type or amount
4 of materials combusted or processed shall be used in determining
5 the potential particulate emission rate of a source.

6 (h) "Process" or "process equipment" has the meaning
7 ascribed to it in R 336.1116 of the Michigan administrative
8 code.

9 (i) "Silt content" means that portion, by weight, of a par-
10 ticulate material which will pass through a number 200 (75
11 micron) wire sieve as determined by the American society of test-
12 ing material, test C-136-76.

13 (j) "Test method 9D" means the method by which visible emis-
14 sions of fugitive dust shall be determined according to test
15 method 9, entitled visual determination of the opacity of emis-
16 sions from stationary sources, as set forth in appendix A-test
17 methods to 40 C.F.R. part 60, with the following modifications:

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

21 (ii) For roadways and parking lots, opacity observations
22 shall be made from a position such that the observer's line of
23 vision is approximately perpendicular to the plume direction and
24 approximately 4 feet directly above the surface of the road or
25 parking area from which the emissions are being generated. The
26 observer shall not look continuously at the plume, but instead
27 shall observe the plume momentarily at 15-second intervals at the

1 point of maximum plume density. Consecutive readings must be
2 suspended for any 15-second period if a vehicle is in the
3 observer's line of sight. If this occurs, a "V" shall be used in
4 lieu of a numerical value, and a footnote shall be made to indi-
5 cate that "V" signifies that the observer's view was obstructed
6 by a vehicle. Readings shall continue at the next 15-second
7 period, and they shall be considered consecutive to the reading
8 immediately preceding the 15-second period denoted by a "V".
9 Consecutive readings also shall be suspended for any 15-second
10 period if a vehicle passes through the area traveling in the
11 opposite direction and creates a plume that is intermixed with
12 the plume being read. If this occurs, an "I" shall be used in
13 lieu of a numerical value, and a footnote shall be made to indi-
14 cate that "I" signifies that the readings were terminated due to
15 interference from intermixed plumes. Readings shall continue
16 when, in the judgment of the observer, the plume created by the
17 vehicle traveling in the opposite direction no longer interferes
18 with the plume originally being read; and they shall be consid-
19 ered consecutive to the reading immediately preceding the
20 15-second period denoted by an "I". Intermixing of plumes from
21 vehicles traveling in the same direction represents the road con-
22 ditions, and reading shall continue in the prescribed manner. A
23 reading encompassing an unusual condition (such as a broken bag
24 of cement on the pavement) cannot be used to represent the entire
25 surface condition involved. In such cases, another set of read-
26 ings, encompassing the average surface condition, must be
27 conducted. For all other fugitive dust sources except roadways

1 and parking lots, opacity observations shall be made from a
2 position that provides the observer a clear view of the source
3 and the fugitive dust with the sun behind the observer. A posi-
4 tion at least 15 feet from the source is recommended. To the
5 extent possible, the line of sight should be approximately per-
6 pendicular to the flow of fugitive dust and to the longer axis of
7 the emissions. Opacity observations shall be made for the point
8 of highest opacity within the fugitive dust. Since the highest
9 opacity usually occurs immediately above or downwind of the
10 source, the observer should normally concentrate on the area or
11 areas of the plume close to the source.

12 Sec. 3917. A person who fails to obtain or comply with a
13 permit, or comply with a final order or order of determination of
14 the air pollution control commission under this part is guilty of
15 a misdemeanor, and shall be fined not more than \$10,000.00 and in
16 the discretion of the court an additional amount of not more than
17 \$2,000.00 per day a violation continues. The circuit court of
18 the county in which the violation occurred has exclusive
19 jurisdiction. However, the person is not subject to the penal-
20 ties of this section if the discharge of the emissions are in
21 conformance with and obedient to a rule, voluntary agreement, or
22 order of the air pollution control commission. Upon petition by
23 the department, the circuit court in the county where the viola-
24 tion exists may order a person to be restrained from continuing a
25 violation. In addition the attorney general may, at the request
26 of the department, file an action in a court of competent
27 jurisdiction to recover the full value of the injuries done to

1 the natural resources of the state and the costs of surveillance
2 and enforcement by the state resulting from the violation. In
3 addition to any fine, the court in its discretion may impose pro-
4 bation upon any person for a violation of this section.

5 Sec. 3918. The department may bring any appropriate action
6 in the name of the people of the state as may be necessary to
7 carry out this part and to enforce this part and the rules
8 promulgated under this part.

9 Sec. 3919. The penalties or fines that are imposed pursuant
10 to this part upon persons violating a rule promulgated under this
11 part do not include a violation that was caused by an act of God,
12 war, strike, riot, catastrophe, or other condition as to which
13 negligence or willful misconduct on the part of the person was
14 not the proximate cause.

15 Sec. 3920. Notwithstanding any other provision of this
16 part, the department may suspend the enforcement of the whole or
17 any part of any rule if a person shows that the enforcement of
18 the rule would be inequitable or unreasonable as to that person,
19 or the department may suspend the enforcement for any reason con-
20 sidered by the department to be sufficient to show that enforce-
21 ment would result in an unreasonable hardship upon the person;
22 and upon any suspension of the whole or any part of the rule, the
23 department shall grant to the person a variance from that rule.

24 Sec. 3921. In determining under what conditions and to what
25 extent a variance from a rule may be granted, the department
26 shall give due recognition to the progress that the person
27 requesting the variance has made in eliminating or preventing air

1 pollution. The department shall consider the reasonableness of
2 granting a variance conditioned upon the person effecting a par-
3 tial control of the particular air pollution or a progressive
4 control of the air pollution over a period of time that it con-
5 siderers reasonable under all the circumstances; or the department
6 may prescribe other and different reasonable requirements with
7 which the person receiving the variance shall comply.

8 Sec. 3922. The department shall grant a variance from any
9 rule to, and suspend the enforcement of that rule as to, any
10 person who shows in the case of the person and of the activity
11 which the person operates that a compliance with the rule, and
12 that the acquisition, installation, operation, and maintenance of
13 facilities and equipment required or necessary to accomplish the
14 compliance, would constitute an undue hardship on the person and
15 would be out of proportion to the benefits to be obtained by
16 compliance. A variance shall not be granted under this section
17 if the person applying for the variance is causing air pollution
18 that is injurious to the public health. A variance that is
19 granted shall not be construed to relieve the person who receive
20 it from any liability imposed by other law for the commission or
21 maintenance of a nuisance.

22 Sec. 3923. A variance granted pursuant to this part shall
23 be granted for a period of time, not to exceed 1 year, as speci-
24 fied by the department at the time of granting the variance.
25 However, a variance may be continued from year to year. A vari-
26 ance granted by the department may be granted on the condition
27 that the person receiving it reports to the department

1 periodically, as the department specifies, as to the progress
2 that the person has made toward reaching a compliance with the
3 rule of the air pollution control commission.

4 Sec. 3924. The department may revoke or modify by written
5 order, after a public hearing held upon not less than 10 days'
6 notice, any order permitting a variance.

7 Sec. 3925. It is the purpose of this part to provide addi-
8 tional and cumulative remedies to prevent and abate air
9 pollution. This part does not abridge or alter existing rights
10 of action or remedies. This part shall not be construed as
11 estopping individuals, counties, cities, townships, or villages
12 or other governmental units from the exercise of their respective
13 rights to suppress nuisances or to prevent or abate air
14 pollution.

15 Sec. 3926. This part is ancillary to and supplementing the
16 laws now in force, except laws that are in direct conflict with
17 this part. The final order or determination of the air pollution
18 control commission shall not be used in evidence of presumptive
19 air pollution in any suit filed by any person other than the air
20 pollution control commission.

21 Sec. 3927. (1) This part or any rule that is promulgated
22 under this part does not invalidate any existing ordinances or
23 regulations having requirements equal to or greater than the min-
24 imum applicable requirements of this part or prevent any politi-
25 cal subdivision from adopting similar provisions if their
26 requirements are equal to or greater than the minimum applicable
27 requirements of this part.

1 (2) When a political subdivision or enforcing official of a
2 political subdivision fails to enforce properly the political
3 subdivision's ordinances, laws, or regulations that do afford
4 equal protection to the public as that provided in this part, the
5 department, after consultation with the local official or govern-
6 ing body of the political subdivision may take appropriate action
7 as may be necessary for enforcement of the applicable provisions
8 of this part.

9 (3) The department shall counsel and advise local units of
10 government on the administration of this part. The department
11 shall cooperate in the enforcement of this part with local offi-
12 cials upon request.

13 PART 43 MICHIGAN ENVIRONMENTAL PROTECTION ACT

14 Sec. 4301. (1) The attorney general or any person may main-
15 tain an action in the circuit court having jurisdiction where the
16 alleged violation occurred or is likely to occur for declaratory
17 and equitable relief against any person for the protection of the
18 air, water, and other natural resources and the public trust in
19 these resources from pollution, impairment, or destruction.

20 (2) In granting relief provided by subsection (1), if there
21 is a standard for pollution or for an anti-pollution device or
22 procedure, fixed by rule or otherwise, by the state or an instru-
23 mentality, agency, or political subdivision of the state, the
24 court may:

25 (a) Determine the validity, applicability, and reasonable-
26 ness of the standard.

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

3 Sec. 4302. If the court has reasonable ground to doubt the
4 solvency of the plaintiff or the plaintiff's ability to pay any
5 cost or judgment that might be rendered against him or her in an
6 action brought under this part, the court may order the plaintiff
7 to post a surety bond or cash of not more than \$500.00.

8 Sec. 4303. (1) When the plaintiff in the action has made a
9 prima facie showing that the conduct of the defendant has, or is
10 likely to pollute, impair, or destroy the air, water, or other
11 natural resources, or the public trust in these resources, the
12 defendant may rebut the prima facie showing by the submission of
13 evidence to the contrary. The defendant may also show, by way of
14 an affirmative defense, that there is no feasible and prudent
15 alternative to defendant's conduct and that his or her conduct is
16 consistent with the promotion of the public health, safety, and
17 welfare in light of the state's paramount concern for the protec-
18 tion of its natural resources from pollution, impairment, or
19 destruction. Except as to the affirmative defense, the princi-
20 ples of burden of proof and weight of the evidence generally
21 applicable in civil actions in the circuit courts apply to
22 actions brought under this part.

23 (2) The court may appoint a master or referee, who is a dis-
24 interested person and technically qualified, to take testimony
25 and make a record and a report of his or her findings to the
26 court in the action.

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

3 Sec. 4304. (1) The court may grant temporary and permanent
4 equitable relief, or may impose conditions on the defendant that
5 are required to protect the air, water, and other natural
6 resources, or the public trust in these resources from pollution,
7 impairment, or destruction.

8 (2) If administrative, licensing, or other proceedings are
9 required or available to determine the legality of the
10 defendant's conduct, the court may direct the parties to seek
11 relief in such proceedings. Proceedings described in this sub-
12 section shall be conducted in accordance with and subject to the
13 administrative procedures act of 1969, Act No. 306 of the Public
14 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
15 Compiled Laws. If the court directs parties to seek relief as
16 provided in this section, the court may grant temporary equitable
17 relief if necessary for the protection of the air, water, and
18 other natural resources, or the public trust in these resources
19 from pollution, impairment, or destruction. In addition, the
20 court retains jurisdiction of the action pending completion of
21 the action to determine whether adequate protection from pollu-
22 tion, impairment, or destruction is afforded.

23 (3) Upon completion of proceedings described in this sec-
24 tion, the court shall adjudicate the impact of the defendant's
25 conduct on the air, water, or other natural resources, and on the
26 public trust in these resources in accordance with this part. In
27 adjudicating an action, the court may order that additional

1 evidence be taken to the extent necessary to protect the rights
2 recognized in this part.

3 (4) If judicial review of an administrative, licensing, or
4 other proceeding is available, notwithstanding the contrary pro-
5 visions of Act No. 306 of the Public Acts of 1969 pertaining to
6 judicial review, the court originally taking jurisdiction shall
7 maintain jurisdiction for purposes of judicial review.

8 Sec. 4305. (1) If administrative, licensing, or other pro-
9 ceedings, and judicial review thereof are available by law, the
10 agency or the court may permit the attorney general or any other
11 person to intervene as a party on the filing of a pleading
12 asserting that the proceeding or action for judicial review
13 involves conduct that has, or is likely to have, the effect of
14 polluting, impairing, or destroying the air, water, or other nat-
15 ural resources or the public trust in these resources.

16 (2) In administrative, licensing, or other proceedings, and
17 in any judicial review of such a proceeding, the alleged pollu-
18 tion, impairment, or destruction of the air, water, or other nat-
19 ural resources, or the public trust in these resources, shall be
20 determined, and conduct shall not be authorized or approved that
21 does, or is likely to have such an effect if there is a feasible
22 and prudent alternative consistent with the reasonable require-
23 ments of the public health, safety, and welfare.

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

26 Sec. 4306. This part is supplementary to existing
27 administrative and regulatory procedures provided by law.

1 PART 45 ENVIRONMENTAL RESPONSE

2 Sec. 4501. The legislature hereby finds and declares:

3 (a) That there exist in this state certain facilities con-
4 taining hazardous substances that pose a danger to the public
5 health, safety, or welfare, or to the environment of this state.

6 (b) That there is a need to provide for a method of elimi-
7 nating the danger of environmental contamination caused by the
8 existence of hazardous substances at sites within the state.

9 (c) That it is the purpose of this part to provide for
10 appropriate response activity to eliminate the environmental con-
11 tamination caused by the presence of hazardous substances at
12 sites within the state.

13 (d) That there is a need for additional administrative and
14 judicial remedies to supplement existing statutory and common law
15 remedies.

16 (e) That the responsibility for the cost of response activi-
17 ties pertaining to a release or threat of release and repairing
18 injury, destruction, or loss to natural resources caused by a
19 release or threat of release should not be placed upon the public
20 except when funds cannot be collected from, or a response activ-
21 ity cannot be undertaken by, a person liable under this part, in
22 conjunction with an appropriate contribution, if applicable, from
23 a fund administered by the orphan share administration.

24 (f) That to the extent possible, consistent with require-
25 ments under this part and rules promulgated under this part,
26 response activities shall be undertaken by persons liable under
27 this part.

1 (g) That this part is intended to provide remedies for
2 facilities posing any threat to the public health, safety, or
3 welfare, or to the environment, regardless of whether the release
4 or threat of release of a hazardous substance occurred before or
5 after October 13, 1982, the effective date of the former environ-
6 mental response act, Act No. 307 of the Public Acts of 1982, and
7 for this purpose this part shall be given retroactive
8 application. However, criminal and civil penalties provided in
9 the amendatory act that added this subdivision to former Act
10 No. 307 of the Public Acts of 1982 shall only apply to violations
11 of this part that occur after July 1, 1991.

12 (h) That money should be appropriated by the legislature for
13 response activities taking into consideration the order that
14 sites are on the list described in section 4505(1)(d) and appli-
15 cable provisions of the environmental protection bond implementa-
16 tion act, Act No. 328 of the Public Acts of 1988, being sections
17 299.671 to 299.685 of the Michigan Compiled Laws.

18 (i) That a site that is owned by the federal government, the
19 state, or a local unit of government, or a site where a release
20 or threat of release is caused by the federal government, the
21 state, or a local unit of government, should not be treated dif-
22 ferently in terms of the expenditure of money for response activ-
23 ities than any other site on the list described in section
24 4505(1)(d).

25 (j) That if a person that may be liable under section 4526
26 is the state or a local unit of government, this part should be
27 enforced by the attorney general and the department in the same

1 manner as it would be for any other person that may be liable
2 under section 4526.

3 (k) That prior to expending money to undertake remedial
4 action at a site, the department should assure a private or
5 public funding source, or a combination of funding sources, that
6 is sufficient to assure that the response activities at the site
7 proceed without interruptions caused by insufficient financial
8 resources until the site meets or exceeds the standards estab-
9 lished by the department for that site.

10 (l) That this part is not intended to impose penalties or
11 exemplary damages upon parties conducting response activities
12 pursuant to a decree or order to which the United States is a
13 party.

14 (m) That this part is intended to foster the redevelopment
15 and reuse of vacant manufacturing facilities and abandoned indus-
16 trial sites that have economic development potential, if that
17 redevelopment or reuse assures the protection of the public
18 health, safety, welfare, and the environment.

19 Sec. 4502. As used in this part:

20 (a) "Act of God" means an unanticipated grave natural
21 disaster or other natural phenomenon of an exceptional, inevita-
22 ble, and irresistible character, the effects of which could not
23 have been prevented or avoided by the exercise of due care or
24 foresight.

25 (b) "Agricultural property" means real property used for
26 farming in any of its branches, including cultivating of soil;
27 growing and harvesting of any agricultural, horticultural, or

1 floricultural commodity; dairying; raising of livestock, bees,
2 fish, fur-bearing animals, or poultry; turf and tree farming; and
3 performing any practices on a farm as an incident to, or in con-
4 junction with, these farming operations. Agricultural property
5 does not include property used for commercial storage, process-
6 ing, distribution, marketing, or shipping operations.

7 (c) "Attorney general" means the department of the attorney
8 general.

9 (d) "Commercial lending institution" means a state or
10 nationally chartered bank, a state or federally chartered savings
11 and loan association or savings bank, or a state or federally
12 chartered credit union, or other state or federally chartered
13 lending institution or a regulated affiliate or a regulated sub-
14 sidiary of any of these entities.

15 (e) "Department" means the director or his or her designee.

16 (f) "Director" means the director of the department of natu-
17 ral resources.

18 (g) "Directors" means the directors or their designees of
19 the departments of natural resources, public health, agriculture,
20 and state police.

21 (h) "Disposal" means the discharge, deposit, injection,
22 dumping, spilling, leaking, or placing of any hazardous substance
23 into or on any land or water so that the hazardous substance or
24 any constituent of the hazardous substance may enter the environ-
25 ment or be emitted into the air or discharged into any groundwa-
26 ter or surface water.

1 (i) "Enforcement costs" means court expenses, reasonable
2 attorney fees of the attorney general, and other reasonable
3 expenses of an executive department that are incurred in relation
4 to enforcement under this part or rules promulgated under this
5 part, or both.

6 (j) "Environment" or "natural resources" means any land,
7 surface water, groundwater, subsurface, strata, air, fish, wild-
8 life, or biota within the state.

9 (k) "Environmental contamination" means the release of a
10 hazardous substance, or the potential release of a discarded haz-
11 ardous substance, in a quantity, which is or may become injurious
12 to the environment, or to the public health, safety, or welfare.

13 (l) "Evaluation" means those activities including but not
14 limited to investigation, studies, sampling, analysis, develop-
15 ment of feasibility studies, and administrative efforts, that are
16 needed to determine the nature, extent, and impact of a release
17 or threat of release and necessary response activities.

18 (m) "Facility" means any area, place, or property where a
19 hazardous substance has been released, deposited, stored, dis-
20 posed of, or otherwise comes to be located.

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

23 (o) "Fund" means the environmental response fund established
24 in section 4508.

25 (p) "Hazardous substance" means 1 or more of the following:

1 (i) A chemical or other material which is or may become
2 injurious to the public health, safety, or welfare or to the
3 environment.

4 (ii) "Hazardous substance" as defined in the comprehensive
5 environmental response, compensation, and liability act of 1980,
6 Public Law 96-510, 94 Stat. 2767.

7 (iii) "Hazardous waste" as defined in part 61.

8 (iv) "Petroleum" as defined in part 49.

9 (q) "Interim response activity" means the cleanup or removal
10 of a released hazardous substance or the taking of other actions,
11 prior to the implementation of a remedial action, as may be nec-
12 essary to prevent, minimize, or mitigate injury to the public
13 health, safety, or welfare, or to the environment. Interim
14 response activity also includes, but is not limited to, measures
15 to limit access, replacement of water supplies, and temporary
16 relocation of people as determined to be necessary by the
17 department. In addition, interim response activity means the
18 taking of other actions as may be necessary to prevent, minimize,
19 or mitigate a threatened release.

20 (r) "Local health department" means that term as defined in
21 section 1105 of the public health code, Act No. 368 of the Public
22 Acts of 1978, being section 333.1105 of the Michigan Compiled
23 Laws.

24 (s) "Local unit of government" means a county, city, town-
25 ship, or village, an agency of a local unit of government, an
26 authority or any other public body or entity created by or

1 pursuant to state law. Local unit of government does not include
2 the state or federal government or a state or federal agency.

3 (t) "Operator" means a person that is in control of or
4 responsible for the operation of a facility. Operator does not
5 include any of the following:

6 (i) A person that, without participating in the management
7 of the facility, holds indicia of ownership primarily to protect
8 the person's security interest in the facility, including, but
9 not limited to, a vendor's interest under a recorded land
10 contract. For the purposes of this part, a commercial lending
11 institution shall not be construed to be participating in the
12 management of a facility by extending credit, providing financial
13 services, providing financial advice, or supervising a plan to
14 resolve financial difficulties for an operator, or conducting or
15 causing to be conducted a prudent or legally required review or
16 investigation of environmental matters related to the facility or
17 the operator of the facility, if the actions of the commercial
18 lending institution do not suggest, condone, or encourage the
19 treatment or handling of a hazardous substance by the operator in
20 a manner that results in a release.

21 (ii) The state or a local unit of government that acquired
22 ownership or control of the facility involuntarily through bank-
23 ruptcy, tax delinquency, abandonment, or other circumstances in
24 which the government involuntarily acquires title or control by
25 virtue of its governmental function, a local unit of government
26 to which ownership or control of the facility is transferred by
27 the state, or the state or a local unit of government that

1 acquired ownership or control of the facility by seizure,
2 receivership, or forfeiture pursuant to the operation of law or
3 by court order. In case of an acquisition described in this sub-
4 paragraph by the state or a local unit of government, operator
5 means a person that was in control of or responsible for opera-
6 tion of the facility immediately before the state or local unit
7 of government acquired ownership or control. The exclusion pro-
8 vided in this subparagraph does not apply to the state or a local
9 unit of government that caused or contributed to the release or
10 threat of a release from the facility.

11 (iii) The operator of an underground storage tank system, as
12 defined in part 49, from which there is a release or threat of
13 release if all of the following conditions are met:

14 (A) The operator reported the release or threat of release
15 to the department of state police, fire marshal division, within
16 24 hours after confirmation of the release or threat of release.

17 (B) The release or threat of release at the facility is
18 solely the result of a release or threat of release of a regu-
19 lated substance as defined in part 49 from an underground storage
20 tank system.

21 (C) The operator is in compliance with the requirements of
22 part 49, and any promulgated rules or any order, agreement, or
23 judgment issued or entered into pursuant to that part.

24 (iv) A state or local unit of government that holds or
25 acquires an easement interest in a facility, holds or acquires an
26 interest in a facility by dedication in a plat, or by dedication
27 pursuant to Act No. 283 of the Public Acts of 1909, being

1 sections 220.1 to 239.6 of the Michigan Compiled Laws. The
2 exclusion provided in this subparagraph does not apply to the
3 state or a local unit of government that holds an easement or
4 dedication if the state or that local unit of government caused
5 or contributed to a release or threat of release, or if equipment
6 owned or operated by the state or that local unit of government
7 caused or contributed to the release or threat of release.

8 (v) A person that holds an easement interest in a facility
9 for the purpose of conveying or providing goods or services,
10 including, but not limited to, utilities, sewers, roads, rail-
11 ways, and pipelines; or a person that acquires access through an
12 easement. The exclusion provided in this subparagraph does not
13 apply to a person that holds an easement if that person caused or
14 contributed to a release or threat of release, or if equipment
15 owned or operated by that person caused or contributed to the
16 release or threat of release.

17 (vi) A person that satisfies all of the following:

18 (A) The release was caused solely by a third party who is
19 not an employee or agent of the person, or whose action was not
20 associated with a contractual relationship with the person.

21 (B) The hazardous substance was not deposited, stored, or
22 disposed of on the property upon which the person operates.

23 (C) The person at the time of transfer of the right to oper-
24 ate on the property discloses any knowledge or information con-
25 cerning the general nature and extent of the release as required
26 in section 4516.

1 (u) "Owner" means a person that owns a facility. Owner does
2 not include any of the following:

3 (i) A person that, without participating in the management
4 of the facility, holds indicia of ownership primarily to protect
5 the person's security interest in the facility, including, but
6 not limited to, a vendor's interest under a recorded land
7 contract. For the purposes of this part, a commercial lending
8 institution shall not be construed to be participating in the
9 management of a facility by extending credit, providing financial
10 services, providing financial advice, or supervising a plan to
11 resolve financial difficulties for an owner, or conducting or
12 causing to be conducted a prudent or legally required review or
13 investigation of environmental matters related to the facility or
14 the owner of the facility, if the actions of the commercial lend-
15 ing institution do not suggest, condone, or encourage the treat-
16 ment or handling of a hazardous substance by the owner in a
17 manner that results in a release.

18 (ii) The state or a local unit of government that acquired
19 ownership or control of the facility involuntarily through bank-
20 ruptcy, tax delinquency, abandonment, or other circumstances in
21 which the government involuntarily acquires title or control by
22 virtue of its governmental function, a local unit of government
23 to which ownership or control of the facility is transferred by
24 the state, or the state or a local unit of government that
25 acquired ownership or control of the facility by seizure, receiv-
26 ership, or forfeiture pursuant to the operation of law or by
27 court order. In case of an acquisition described in this

1 subparagraph by the state or a local unit of government, owner
2 means any person who owned or controlled activities at the facil-
3 ity immediately before the state or local unit of government
4 acquired ownership or control. The exclusion provided in this
5 subparagraph does not apply to the state or a local unit of gov-
6 ernment that caused or contributed to the release or threat of a
7 release from the facility.

8 (iii) A person that satisfies all of the following:

9 (A) The release was caused solely by a third party, who is
10 not an employee or agent of the person, or whose action was not
11 associated with a contractual relationship with the person.

12 (B) The hazardous substance was not deposited, stored, or
13 disposed of on that person's property.

14 (C) The person at the time of transfer of the property dis-
15 closes any knowledge or information concerning the general nature
16 and extent of the release as required in section 4516.

17 (iv) The owner of an underground storage tank system, as
18 defined in part 49, from which there is a release or threat of
19 release if all of the following conditions are met:

20 (A) The owner reported the release or threat of release to
21 the department of state police, fire marshal division, within 24
22 hours after confirmation of the release or threat of release.

23 (B) The release or threat of release at the facility is
24 solely the result of a release or threat of release of a regu-
25 lated substance as defined in part 49 from an underground storage
26 tank system.

1 (C) The owner is in compliance with the requirements of part
2 49, and any promulgated rules or any order, agreement, or
3 judgment issued or entered pursuant to that part.

4 (v) A state or local unit of government that holds or
5 acquires an easement interest in a facility, holds or acquires an
6 interest in a facility by dedication in a plat, or by dedication
7 pursuant to Act No. 283 of the Public Acts of 1909, being sec-
8 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-
9 sion provided in this subparagraph does not apply to the state or
10 a local unit of government that holds an easement or dedication
11 if that state or local unit of government caused or contributed
12 to a release or threat of release, or if equipment owned or oper-
13 ated by the state or that local unit of government caused or con-
14 tributed to the release or threat of release.

15 (vi) A person that holds an easement interest in a facility
16 for the purpose of conveying or providing goods or services,
17 including, but not limited to, utilities, sewers, roads, rail-
18 ways, and pipelines; or a person that acquires access through an
19 easement. The exclusion provided in this subparagraph does not
20 apply to a person that holds an easement if that person caused or
21 contributed to a release or threat of release, or if equipment
22 owned or operated by that person caused or contributed to the
23 release or threat of release.

24 (vii) A person that holds only subsurface mineral rights to
25 the property and has not caused or contributed to a release on
26 the property.

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

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

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

6 (iii) A federally permitted release as defined in the com-
7 prehensive environmental response, compensation, and liability
8 act of 1980, Public Law 96-510, 94 Stat. 2767.

9 (w) "Release" includes, but is not limited to, any spilling,
10 leaking, pumping, pouring, emitting, emptying, discharging,
11 injecting, escaping, leaching, dumping, or disposing of a hazard-
12 ous substance into the environment, or the abandonment or dis-
13 carding of barrels, containers, and other closed receptacles con-
14 taining a hazardous substance. Release does not include any of
15 the following:

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

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

21 (iii) A release of source, by-product, or special nuclear
22 material from a nuclear incident, as those terms are defined in
23 the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if
24 the release is subject to requirements with respect to financial
25 protection established by the nuclear regulatory commission under
26 section 170 of the atomic energy act of 1954, chapter 1073, 71
27 Stat. 576, 42 U.S.C. 2210, or, any release of source by-product,

1 or special nuclear material from any processing site designated
2 under section 102(a)(1) of title I or 302(a) of title III of the
3 uranium mill tailings radiation control act of 1978, Public Law
4 95-604, 42 U.S.C. 7912 and 7942.

5 (iv) If applied according to label directions and according
6 to generally accepted agricultural and management practices, the
7 application of a fertilizer, soil conditioner, agronomically
8 applied manure, or a pesticide, or a combination of these
9 substances. As used in this subparagraph, fertilizer and soil
10 conditioner have the meaning given to these terms in the fertil-
11 izer act of 1975, Act No. 198 of the Public Acts of 1975, being
12 sections 286.751 to 286.767, and pesticide has the meaning given
13 to that term in part 35.

14 (x) "Remedial action" includes, but is not limited to,
15 cleanup, removal, containment, isolation, destruction, or treat-
16 ment of a hazardous substance released or threatened to be
17 released into the environment, monitoring, maintenance, or the
18 taking of other actions that may be necessary to prevent, mini-
19 mize, or mitigate injury to the public health, safety, or wel-
20 fare, or to the environment.

21 (y) "Remedial action plan" means a work plan for performing
22 remedial action under this part.

23 (z) "Response activity" means evaluation, interim response
24 activity, remedial action, or the taking of other actions neces-
25 sary to protect the public health, safety, or welfare, or the
26 environment, or the natural resources. Response activity also
27 includes health assessments or health effect studies carried out

1 under the supervision, or with the approval of, the department of
2 public health, and enforcement actions related to any response
3 activity.

4 (aa) "Response activity costs" or "costs of response
5 activity" means all costs incurred in taking or conducting a
6 response activity, including enforcement costs.

7 (bb) "Science advisory council" means the science advisory
8 council created in section 4523.

9 (cc) "Site" means the location of environmental
10 contamination.

11 (dd) "Threatened release" or "threat of release" means any
12 circumstance that may reasonably be anticipated to cause a
13 release.

14 Sec. 4503. The department shall seek federal assistance for
15 response activities required at facilities in this state.

16 Sec. 4504. The department shall coordinate all activities
17 required under this part and shall promulgate rules to provide
18 for the performance of response activities, to reflect and effec-
19 tuate the powers and duties of the department under this part,
20 and as otherwise necessary to carry out the requirements of this
21 part.

22 Sec. 4505. (1) The department shall do all of the
23 following:

24 (a) Upon discovery of a site, identify and evaluate the site
25 for the purpose of assigning to the site a priority score for
26 response activities. Upon assignment to the site of a priority
27 score for response activity, the site shall retain the same score

1 assignment unless a substantial body of data is provided to or
2 available to the department indicating to the department that a
3 substantial change in the score is warranted, and a person
4 requests rescoring for a site during the annual public comment
5 period following the publication of the list, or the department
6 determines that rescoring is appropriate.

7 (b) Develop 1 or more numerical risk assessment models for
8 assessing the relative present and potential hazards posed to the
9 public health, safety, or welfare, or to the environment by each
10 site identified pursuant to subdivision (a). The model, or
11 models if more than 1 is developed, shall provide a fair and
12 objective site specific numerical score designating the relative
13 risk posed to the public health, safety, or welfare, or to the
14 environment of each site.

15 (c) Include in rules promulgated under this part the numeri-
16 cal risk assessment model, or models if more than 1 is
17 developed. The numerical risk assessment model or models shall
18 be reviewed annually by the department to identify potential
19 improvements.

20 (d) Submit to the legislature in November of each year a
21 list strictly derived from the numerical risk assessment model or
22 models provided for in this section that does all of the
23 following:

24 (i) Includes all sites.

25 (ii) Categorizes sites according to the response activity at
26 the site at the time of listing and according to categories
27 established by rules.

1 (iii) Indicates whether the owner of a site is the federal
2 government, the state, or a local unit of government.

3 (e) Maintain and make available to the public upon request
4 records regarding sites where remedial actions have been com-
5 pleted, including sites where land use restrictions have been
6 imposed, if the records are not otherwise protected from disclo-
7 sure by law.

8 (f) Submit the list for public hearings geographically dis-
9 persed throughout the state. These hearings shall be completed
10 at least 30 days before the governor's annual budget recommenda-
11 tions to the legislature.

12 (g) Report at least annually to the legislature and the gov-
13 ernor those sites that have been removed from the list pursuant
14 to this section and rules promulgated under this part and the
15 source of the funds used to undertake the response activity at
16 each of the sites.

17 (h) Publish a notice annually in the Michigan register of
18 the availability of, and submit annually to the standing commit-
19 tees of the senate and the house of representatives that primar-
20 ily consider issues pertaining to the protection of natural
21 resources and the environment, a report describing the response
22 activity that is undertaken at each site where response activity
23 is or has occurred during the reporting year and the nature of
24 the contamination that resulted in the necessity for that
25 response activity.

26 (2) Following July 1, 1991, if the department has
27 information identifying the owner of property that may be listed

1 as a site, the department shall make reasonable efforts to notify
2 in writing the owner of the property and the local health depart-
3 ment and the municipality in which the site is located prior to
4 including the site on the list. This subsection shall not be
5 construed to provide a defense to liability.

6 (3) A site shall be removed from the list when the
7 department's review of a site shows that the site does not meet
8 the criteria specified in rules promulgated under this part. A
9 site shall not be removed from this list until any necessary
10 response activity that meets the standards specified in rules
11 promulgated under this part is complete.

12 (4) A person may request that a site be removed from the
13 list by submitting a petition to the department. A petition
14 shall include all of the following information:

15 (a) A description and history of the site.

16 (b) A description of the nature and extent of the environ-
17 mental contamination that existed at the site at the time the
18 site was included on the list.

19 (c) A description of the response activity undertaken to
20 remedy the release or threat of a release, consistent with rules
21 promulgated under this part, or a description of the investiga-
22 tion conducted that supports the person's petition that the site
23 should be removed from the list without further response
24 activity.

25 (d) An analysis of the effectiveness of the response activ-
26 ity undertaken to remediate the release or threat of release.

1 The analysis shall include site specific analytical data that
2 documents the effectiveness of the response activity.

3 (e) Other site-specific information required by the
4 department.

5 (5) A person seeking the removal of a site from the list
6 shall prepare and submit to the department the documentation
7 required by subsection (4). If response activities have been
8 conducted by the department at the site, the department shall
9 prepare the documentation required by subsection (4).

10 (6) Within 30 days after receipt of the petition, the
11 department shall determine whether a petition submitted under
12 subsection (4) is administratively complete. Within 60 days
13 after a determination that a petition is administratively com-
14 plete, the petitioner shall be notified by the department of the
15 department's intent to remove the site from the list, or the
16 petitioner shall be notified that the petition for removal of the
17 site from the list does not meet the criteria for removal of the
18 site from the list as determined by rule. Removal of sites from
19 the list shall be accomplished as part of the process described
20 in rules promulgated under this part. However, if the department
21 concludes pursuant to subsection (3) that the circumstances war-
22 rant removal of the site from the list before or at the next reg-
23 ularly scheduled hearing to be held in accordance with rules
24 promulgated under this part, the department shall prepare a
25 notice of intent to remove the site from the list. A notice of
26 intent shall include information considered appropriate by the
27 department and shall be published in at least 1 newspaper of

1 general circulation that serves the area of the site and the
2 notice of intent shall be provided to the local health department
3 and the municipality in which the site is located. Public com-
4 ment on the notice of intent to remove the site from the site
5 list shall be accepted for a period of not less than 30 days from
6 the date of publication. The department may hold a public hear-
7 ing on the proposed action.

8 (7) The department shall make a final determination whether
9 to include the site on the next list. The department shall con-
10 sider any comments received in response to the notice described
11 in subsection (6).

12 (8) The department shall notify the person who requested
13 that the site be removed from the list and the local health
14 department, and the municipality in which the site is located of
15 the decision within 45 days of the end of the public comment
16 period provided for in the notice published pursuant to
17 subsection (6).

18 (9) As used in this section, "list" means the list described
19 in subsection (1)(d).

20 Sec. 4506. (1) The governor shall include in his or her
21 annual budget recommendations to the legislature a recommended
22 level of funding to provide for the activities necessary to
23 implement this part.

24 (2) The governor's recommendations under this section shall
25 be accompanied by a site specific description of the extent of
26 known or suspected environmental contamination, the recommended

1 response activities to be undertaken, and an estimate of cost of
2 those response activities.

3 Sec. 4507. A person who willfully tears down, removes, or
4 destroys any sign or notice warning of the presence of hazardous
5 substances or marking boundaries of a site subject to response
6 activity under this part is guilty of a misdemeanor, punishable
7 by imprisonment for not more than 90 days, or a fine of not more
8 than \$500.00, or both.

9 Sec. 4508. (1) An environmental response fund is estab-
10 lished in the department of the treasury. The environmental
11 response fund shall be administered by the governor or the
12 governor's designee.

13 (2) The fund shall receive as revenue any money from any
14 source, as appropriated by the legislature and the interest and
15 earnings of the fund shall be credited to the fund.

16 (3) In addition to the money received under subsection (2),
17 the fund shall receive as revenue money collected by the attorney
18 general in actions filed under this part, collected by the state
19 under this part, or collected by a person under section 4535(2).

20 (4) An unexpended balance within the fund at the close of
21 the fiscal year shall be carried forward to the following fiscal
22 year.

23 Sec. 4509. (1) A Michigan unclaimed bottle fund is estab-
24 lished as a separate revolving fund in the state treasury. The
25 money in the Michigan unclaimed bottle fund shall not revert to
26 the general fund. The Michigan unclaimed bottle fund shall be
27 administered by the department of treasury.

1 (2) The Michigan unclaimed bottle fund shall receive money
2 as disbursed by the department of treasury from the bottle
3 deposit fund under section 3c of the Initiated Law of 1976, being
4 section 445.573c of the Michigan Compiled Laws.

5 (3) The money deposited in the Michigan unclaimed bottle
6 fund shall be used in the manner and for the purposes described
7 in subsection (5).

8 (4) The Michigan unclaimed bottle fund shall consist of the
9 following:

10 (a) Money received from the bottle deposit fund under
11 section 3c of the Initiated Law of 1976.

12 (b) Any interest earned on the money described in subdivi-
13 sion (a) while that money is in the Michigan unclaimed bottle
14 fund.

15 (5) During the first 10 years that money is disbursed by the
16 bottle deposit fund under section 3c of the Initiated Law of
17 1976, the money received by the Michigan unclaimed bottle fund
18 and any interest earned on that money shall remain permanently in
19 the Michigan unclaimed bottle fund and shall not be disbursed
20 except that the legislature may appropriate from the unclaimed
21 bottle fund an amount sufficient to cover the reasonable adminis-
22 trative costs incurred by the long-term maintenance trust fund
23 board created in section 4510. After the expiration of those
24 first 10 years, all of the money thereafter deposited annually in
25 the Michigan unclaimed bottle fund, interest earned on the money
26 thereafter deposited annually in the Michigan unclaimed bottle
27 fund, and any interest earned on the money already in that fund

1 shall be disbursed annually by the department of treasury in the
2 following manner:

3 (a) One-third to the environmental response fund created in
4 section 4508.

5 (b) One-third to the long-term maintenance trust fund cre-
6 ated in section 4511.

7 (c) One-third to the clean Michigan fund created in
8 section 9104.

9 Sec. 4510. (1) Not earlier than 8 years after July 27,
10 1989, the long-term maintenance trust fund board shall be created
11 within the department of natural resources and shall consist of 5
12 members, 1 of whom is the director of the department of natural
13 resources, or his or her designee, as an ex officio voting
14 member, and 4 of whom shall be appointed by the governor with the
15 advice and consent of the senate in the following manner:

16 (a) One member of the general public representing the inter-
17 ests of persons involved in advancing the cause of conservation
18 in all its phases including natural resources management, envi-
19 ronmental education, enhancement of fish and wildlife population,
20 and prevention of environmental degradation.

21 (b) One member of the general public representing the inter-
22 ests of environmentally concerned citizens and groups.

23 (c) Two members of the general public who are knowledgeable
24 in scientific and technical areas of study that are relevant to
25 the long-term monitoring and maintenance of sites.

26 (2) The term of each appointed member shall be 4 years,
27 except that of those members first appointed 1 shall be appointed

1 for a term of 4 years, 1 shall be appointed for a term of 3
2 years, 1 shall be appointed for a term of 2 years, and 1 shall be
3 appointed for a term of 1 year. Vacancies shall be filled for
4 the unexpired term in the same manner as the original
5 appointment.

6 (3) Members of the long-term maintenance trust fund board
7 shall receive per diem compensation and reimbursement for the
8 actual and necessary expenses incurred through the performance of
9 their duties as established annually by the legislature and shall
10 not receive compensation for those expenses from any other
11 source.

12 (4) The long-term maintenance trust fund board shall elect a
13 chairperson and other officers as are necessary for conducting
14 business.

15 (5) The long-term maintenance trust fund board shall promul-
16 gate rules setting forth criteria for projects designed to imple-
17 ment the purposes for which the long-term maintenance trust fund
18 was established.

19 (6) The long-term maintenance trust fund board shall meet
20 not less than twice per year and shall consider and approve or
21 disapprove recommendations by the department for projects
22 designed to implement the purposes for which the long-term main-
23 tenance trust fund was established.

24 (7) The business which the long-term maintenance trust fund
25 board may perform shall be conducted at a public meeting held in
26 compliance with the open meetings act, Act No. 267 of the Public
27 Acts of 1976, being sections 15.261 to 15.275 of the Michigan

1 Compiled Laws. Public notice of the time, date, and place of the
2 meeting shall be given in a manner required by Act No. 267 of the
3 Public Acts of 1976.

4 (8) The long-term maintenance trust fund board shall annu-
5 ally file a report with the governor and the legislature summa-
6 rizing the project proposals reviewed, the amount of expenditures
7 authorized, and the effectiveness of the expenditures in attain-
8 ing the goals for which the long-term maintenance trust fund is
9 established.

10 Sec. 4511. (1) A long-term maintenance trust fund is estab-
11 lished as a separate revolving fund in the state treasury. The
12 money in the long-term maintenance trust fund shall not revert to
13 the general fund. The long-term maintenance trust fund shall be
14 administered by the long-term maintenance trust fund board.

15 (2) The long-term maintenance trust fund shall receive money
16 as disbursed from the Michigan unclaimed bottle fund created in
17 section 4509.

18 (3) The money deposited in the long-term maintenance trust
19 fund shall be used in a manner and for the purposes described in
20 rules promulgated by the department for 1 or more of the
21 following:

22 (a) The operation, maintenance, and monitoring of sites
23 where the department determines such activities are necessary.

24 (b) The enforcement of this act or part 63, or both.

25 (c) Any project the long-term maintenance trust fund board
26 determines by rule as having for its purpose the prevention of
27 environmental contamination.

1 Sec. 4512. By December 27, 1989, the department of
2 management and budget shall enter into a contract for the prepa-
3 ration of a study that analyzes the public and private costs
4 associated with various levels of cleanup standards for response
5 activities under this part. The study shall also include, but is
6 not limited to, an analysis of how quickly various levels of
7 cleanup have been and can be accomplished. The contract shall
8 provide for the study to be completed within 6 months. Prior to
9 entering into the contract, the department of management and
10 budget shall consult with the department and the chairpersons of
11 the standing committees of the senate and the house of represen-
12 tatives responsible for issues pertaining to the protection of
13 natural resources and the environment regarding the design and
14 the scope of the study. The study required under this section
15 may be conducted in conjunction with other related studies. Upon
16 completion of the study, the department of management and budget
17 shall submit copies of the study to the legislature.

18 Sec. 4513. (1) Money required to pay for response activi-
19 ties recommended under this part and to reimburse state depart-
20 ments and agencies for expenditures for those purposes shall be
21 appropriated from the fund and any other source the legislature
22 considers necessary to carry out the requirements of this part.

23 (2) Money from the fund shall be appropriated only for
24 response activities at facilities that have been subjected to the
25 risk assessment process described in section 4505.

26 (3) The fund may be used for match, operation, and
27 maintenance purposes as required under the comprehensive

1 environmental response, compensation, and liability act of 1980,
2 Public Law 96-510, 94 Stat. 2767, and under subtitle I of the
3 solid waste disposal act, title II of Public Law 89-272, 42
4 U.S.C. 6991 to 6991i.

5 (4) The governor shall recommend an annual appropriation for
6 the fund in his or her annual budget recommendations to the
7 legislature.

8 Sec. 4514. (1) Except as provided in subsection (3), an
9 owner or operator of a facility that obtains information that
10 there may be a release at that facility shall immediately take
11 appropriate action, consistent with applicable laws and rules
12 promulgated by the department, to do all of the following:

13 (a) Confirm the existence of the release.

14 (b) Determine the nature and extent of the release.

15 (c) Report the release to the department within 24 hours
16 after obtaining knowledge of the release. The requirements of
17 this subdivision shall apply to reportable quantities of hazard-
18 ous substances established pursuant to 40 C.F.R. 302.4, unless
19 the department establishes through rules alternate or additional
20 reportable quantities as necessary to protect the public health,
21 safety, or welfare, or the environment.

22 (d) Immediately stop or prevent the release at the source.

23 (e) Immediately identify and eliminate any threat of fire or
24 explosion or any direct contact hazards.

25 (f) Immediately initiate removal of a hazardous substance
26 that is in a liquid phase, that is not dissolved in water, and
27 that has been released.

1 (2) Except as provided in subsection (3), a person that
2 holds an easement interest in a portion of a property that has
3 knowledge that there may be a release within that easement shall
4 report the release to the department within 24 hours after
5 obtaining knowledge of the release. Unless the department estab-
6 lishes through rules alternate or additional reportable quanti-
7 ties as necessary to protect the public health, safety, or wel-
8 fare, or the environment, this subsection shall apply to report-
9 able quantities of hazardous substances established pursuant to
10 40 C.F.R. 302.4.

11 (3) The requirements of subsections (1) and (2) do not apply
12 to a permitted release or a release in compliance with applicable
13 federal, state, and local air pollution control laws.

14 (4) An owner or operator of a facility or a person notified
15 by the department as potentially liable pursuant to section 4526,
16 upon written request by the director, shall take the following
17 additional actions:

18 (a) Provide a plan for and undertake interim response
19 activities.

20 (b) Provide a plan for and undertake evaluation activities.

21 (c) Take any other response activity determined by the
22 department to be technically sound and necessary to protect the
23 public health, safety, welfare, or the environment.

24 (d) Submit to the department for approval a remedial action
25 plan that, when implemented, will achieve the cleanup levels
26 specified in rules promulgated under this part.

1 (e) Implement an approved remedial action plan in accordance
2 with a schedule approved by the department pursuant to this
3 part.

4 (5) Upon a determination by the department that a person has
5 completed all response activity at a facility pursuant to an
6 approved remedial action plan prepared and implemented in compli-
7 ance with rules promulgated under this part, the department, upon
8 request of a person, shall execute and present a document stating
9 that all response activities required in the approved remedial
10 action plan have been completed.

11 (6) A person in charge of a facility from which a hazardous
12 substance is released that is determined to be reportable under
13 subsection (1)(c), other than a permitted release, that fails to
14 notify the department within 24 hours after obtaining knowledge
15 of the release or that submits in such notification any informa-
16 tion that the person knows to be false or misleading is subject
17 to a civil fine of not more than \$25,000.00 for each day in which
18 the violation occurs or the failure to comply continues. A fine
19 imposed under this subsection shall be based upon the seriousness
20 of the violation and any good faith efforts by the violator to
21 comply with this subsection.

22 (7) If a state or local unit of government obtains informa-
23 tion that there is a release or threat of release on public prop-
24 erty, and is requested by the department to undertake response
25 activity, or takes emergency action that has been approved by the
26 department, and the state or local unit of government incurs
27 expenses in taking the actions, the expenses of the state or

1 local unit of government shall be reimbursed from the Michigan
2 environmental assurance fund if enabling legislation creating the
3 fund is enacted into law and if each of the following is
4 established:

5 (a) The release or threat of release was not discovered or
6 should not have been discovered pursuant to section
7 4527(2)(b)(ii).

8 (b) The state or local unit of government did not cause or
9 contribute to the release or threat of release.

10 (c) The state or local unit of government is not liable
11 under section 4526 for the release or threat of release.

12 (8) This section does not do either of the following:

13 (a) Limit the authority of the department to take or conduct
14 response activities pursuant to this part.

15 (b) Limit the liability of a person that may be liable under
16 section 4526.

17 Sec. 4515. (1) The department, upon confirmation of a
18 release or threat of release of a substance that is regulated by
19 the department of agriculture, shall notify the department of
20 agriculture. The department shall consult with the department of
21 agriculture in the development of response activities if a
22 release or threat of a release of a substance regulated by the
23 department of agriculture occurs. The department of agriculture
24 shall provide to the department information necessary to identify
25 substances regulated by the department of agriculture. This
26 information shall include but is not limited to the list of state
27 registered pesticides.

1 (2) As used in this section, "substance regulated by the
2 department of agriculture" means a fertilizer or soil conditioner
3 as defined in the fertilizer act of 1975, Act No. 198 of the
4 Public Acts of 1975, being sections 286.751 to 286.767 of the
5 Michigan Compiled Laws, or a pesticide as defined in part 35.

6 Sec. 4516. (1) A person that has knowledge or information
7 or is on notice through a recorded instrument that a parcel of
8 his or her real property is a facility at which there has been a
9 release, in a quantity required to be reported pursuant to
10 section 4514(1)(c), shall not transfer an interest in that real
11 property unless he or she provides written notice to the pur-
12 chaser or other person to whom the property is transferred that
13 the real property is such a facility and discloses the general
14 nature and extent of the release. The written notice provided by
15 the transferor shall be a separate instrument and, if the instru-
16 ment conveying the interest in real property is recorded, the
17 written notice shall be recorded with the register of deeds in
18 the same county.

19 (2) The owner of real property for which a notice required
20 in subsection (1) has been recorded may, upon completion of all
21 response activities for the facility as approved by the depart-
22 ment, record with the register of deeds for the appropriate
23 county a certification that all response activity required in an
24 approved remedial action plan has been completed.

25 Sec. 4517. (1) To determine the need for response activity,
26 or selecting or taking a response activity or otherwise enforcing
27 this part or a rule promulgated under this part, the directors or

1 their authorized representatives may upon reasonable notice
2 require a person to furnish any information that the person may
3 have relating to any of the following:

4 (a) The identification, nature, and quantity of materials
5 that have been or are generated, treated, stored, handled, or
6 disposed of at a facility or transported to a facility.

7 (b) The nature or extent of a release or threatened release
8 at or from a facility.

9 (2) Upon reasonable notice, a person required to furnish
10 information pursuant to subsection (1) shall either:

11 (a) Grant the directors or their authorized representatives
12 access at all reasonable times to any place, property, or loca-
13 tion to inspect and copy the related information.

14 (b) Copy and furnish to the directors or their authorized
15 representatives the related information.

16 (3) If there is a reasonable basis to believe that there may
17 be a release or threat of release, the directors or their autho-
18 rized representatives have the right to enter at all reasonable
19 times any public or private property for any of the following
20 purposes:

21 (a) Identifying a facility.

22 (b) Investigating the existence, origin, nature, or extent
23 of a release or threatened release.

24 (c) Inspecting, testing, taking photographs or videotapes,
25 or sampling of any of the following: soils, air, surface water,
26 groundwater, suspected hazardous substances, or any containers or
27 labels of suspected hazardous substances.

1 (d) Determining the need for or selecting any response
2 activity.

3 (e) Taking or monitoring implementation of any response
4 activity.

5 (4) A person who enters public or private property pursuant
6 to subsection (3) shall present credentials; make a reasonable
7 effort to contact the person in charge of the facility or that
8 person's designee; describe the nature of the activities autho-
9 rized under subsection (3) to be undertaken; and inform the
10 person that is in charge of the facility that he or she is enti-
11 tled to participate in the collection of split samples, and is
12 entitled to a copy of the results of any analysis of samples and
13 a copy of any photograph or videotape taken. The person in
14 charge or his or her agent may accompany the directors or their
15 authorized representatives during the activities authorized under
16 subsection (3) that take place and may participate in the collec-
17 tion of any split samples on the property. The absence or
18 unavailability of the person in charge or that person's agent
19 shall not delay or limit the authority of the directors or their
20 authorized representatives to enter the property or proceed with
21 the activities authorized under subsection (3).

22 (5) If the directors or their authorized representatives
23 obtain any samples, before leaving the property they shall give
24 to the person in charge of the property from which the samples
25 were obtained a receipt describing the sample. A copy of the
26 results of any analysis of the samples shall upon request be
27 furnished promptly to the person in charge. A copy of any

1 photograph or videotape taken pursuant to subsection (3)(c) shall
2 upon request be furnished promptly to the person in charge.

3 (6) All inspections and investigations undertaken by the
4 directors or their authorized representatives under this section
5 shall be completed with reasonable promptness.

6 (7) If refused entry or information under subsections (1) to
7 (4), for the purposes of enforcing the information gathering and
8 entry authority provided in this section, the attorney general,
9 on behalf of the state, may do either of the following:

10 (a) Petition the court of appropriate jurisdiction for a
11 warrant authorizing access to property or information pursuant to
12 this section.

13 (b) Commence a civil action to compel compliance with a
14 request for information or entry pursuant to this section, to
15 authorize information gathering and entry provided for in this
16 section, and to enjoin interference with the exercise of the
17 authority provided in this section.

18 (8) In a civil action brought pursuant to subsection (7), if
19 there is a reasonable basis to believe there may be a release or
20 a threatened release, the court shall in the case of interference
21 or noncompliance with information requests pursuant to
22 subsection (1), or with entry or inspection requests pursuant to
23 subsection (3), enjoin interference with and direct compliance
24 with the requests unless the defendant establishes that, under
25 the circumstances of the case, the request is arbitrary and
26 capricious, an abuse of discretion, or otherwise not in
27 accordance with law.

1 (9) In a civil action brought pursuant to subsection (7), if
2 there is a reasonable basis to believe there may be a release or
3 a threatened release, the court may assess a civil fine not to
4 exceed \$25,000.00 for each day of noncompliance against a person
5 who unreasonably fails to comply with the provisions of subsec-
6 tion (1), (2), or (3).

7 (10) Information obtained by the directors or their autho-
8 rized representatives as authorized under subsection (1) or (2)
9 shall be available to the public to the extent provided by the
10 freedom of information act, Act No. 442 of the Public Acts of
11 1976, being sections 15.231 to 15.246 of the Michigan Compiled
12 Laws. A person that provides information pursuant to
13 subsection (1) or (2), or the person in charge of a facility at
14 which photographs or videotapes are taken pursuant to
15 subsection (3), may designate the information that the person
16 believes to be entitled to protection as if the information was
17 exempt from disclosure as being either trade secrets or informa-
18 tion of a personal nature under section 13(1)(a) or (g) of the
19 freedom of information act, Act No. 442 of the Public Acts of
20 1976, being section 15.243 of the Michigan Compiled Laws, and
21 submit that specifically designated information separately from
22 other information required to be provided under this section.

23 (11) Notwithstanding subsection (10), the following informa-
24 tion obtained by the directors or their authorized representa-
25 tives as required by this section shall be available to the
26 public:

1 (a) The trade name, common name, or generic class or
2 category of the hazardous substance.

3 (b) The physical properties of a hazardous substance,
4 including its boiling point, melting point, flash point, specific
5 gravity, vapor density, solubility in water, and vapor pressure
6 at 20 degrees Celsius.

7 (c) The hazards to the public health, safety, or welfare, or
8 the environment posed by a hazardous substance, including physi-
9 cal hazards, such as explosion, and potential acute and chronic
10 health hazards.

11 (d) The potential routes of human exposure to the hazardous
12 substance at the facility being investigated, entered, or
13 inspected under this section.

14 (e) The location of disposal of any waste stream released or
15 threatened to be released from the facility.

16 (f) Monitoring data or analysis of monitoring data pertain-
17 ing to disposal activities related to the facility.

18 (g) Hydrogeologic data.

19 (h) Groundwater monitoring data.

20 (12) To collect information for the purpose of identifying
21 persons that may be liable under section 4526 or to otherwise
22 enforce this part or a rule promulgated under this part, the
23 attorney general may by administrative subpoena require the
24 attendance and testimony of witnesses and production of papers,
25 reports, documents, answers to questions, and other information
26 the attorney general considers necessary. Witnesses shall be
27 paid the same fees and mileage that are paid witnesses in the

1 courts of this state. If a person fails or refuses to obey the
2 administrative subpoena, the circuit court for the county of
3 Ingham or for the county in which that person resides has juris-
4 diction to order that person to comply with the subpoena. A
5 failure to obey the order of the court is punishable by the court
6 as contempt.

7 (13) As used in this section, "information" includes, but is
8 not limited to, documents, materials, records, photographs, and
9 videotapes.

10 Sec. 4518. (1) The department may take response activity or
11 approve of response activity proposed by a person that is consis-
12 tent with rules promulgated under this part relating to the
13 selection and implementation of response activity that the
14 department concludes is necessary and appropriate to protect the
15 public health, safety, welfare, or the environment.

16 (2) Remedial action undertaken under subsection (1) at a
17 minimum shall accomplish all of the following:

18 (a) Assure the protection of the public health, safety, wel-
19 fare, or the environment.

20 (b) Attain a degree of cleanup and control of hazardous sub-
21 stances that complies with all applicable or relevant and appro-
22 priate requirements, rules, criteria, limitations, and standards
23 of state and federal environmental law.

24 (c) Be consistent with any cleanup standards incorporated in
25 any rules promulgated under this part.

26 (3) The cost effectiveness of alternative means of complying
27 with this section shall be considered by the department only in

1 selecting among alternatives that meet all of the criteria of
2 subsection (2).

3 (4) Remedial actions that permanently and significantly
4 reduce the volume, toxicity, or mobility of the hazardous sub-
5 stances are to be preferred.

6 (5) The department shall encourage the use of innovative
7 cleanup technologies. Before July 1, 1995, the department shall
8 undertake 3 pilot projects to demonstrate innovative cleanup
9 technologies at facilities where money from the fund is used.

10 (6) At a facility where state funds will be spent to plan or
11 implement a remedial action plan or where the director determines
12 there is a significant public interest, within 30 days after the
13 completion of a remedial investigation for the facility, the
14 department shall provide the county and the municipality in which
15 the facility is located a notice of the completion of the reme-
16 dial investigation, a summary of the remedial investigation, and
17 notice of an opportunity for the people in the local unit of gov-
18 ernment to meet with the department regarding the remedial inves-
19 tigation and any proposed feasibility study for the facility.
20 Upon a request for a public meeting by the governing body of the
21 local unit of government or by 25 citizens of the local unit of
22 government, the department shall, within 30 days of the request,
23 meet with persons in the local unit of government. The person or
24 persons requesting the public meeting shall publicize and provide
25 accommodations for the meeting. The meeting shall be held in the
26 local unit of government in which the facility is located. The
27 department shall provide copies of the notices and summary

1 required in this subsection to the governing body of the local
2 unit of government, to the known persons that may be liable under
3 section 4526, and to the main public library of the local unit of
4 government in which the facility is located. The department
5 shall send representatives to the meeting who are familiar with
6 the facility and who are involved with determining the appropri-
7 ate remedial actions to be taken at the facility. Persons that
8 may be responsible under section 4526 for the facility may send
9 representatives to the meeting.

10 (7) Before approval of a proposed remedial action plan at a
11 facility included on the list pursuant to section 4505 that is
12 not an interim response activity, if money from the fund is to be
13 used or as specified in rules promulgated under this part, the
14 department shall do all of the following:

15 (a) Publish a notice and brief summary of the proposed reme-
16 dial action plan.

17 (b) Provide for public review and comment pertinent to docu-
18 ments relating to the proposed remedial action plan, including,
19 if applicable, the feasibility study that outlines alternative
20 remedial action measures considered.

21 (c) Provide an opportunity for a public meeting at or near
22 the facility when any of the following occur:

23 (i) The department determines that there is a significant
24 public interest or that for any other reason a public meeting is
25 appropriate.

26 (ii) A municipality in which the facility is located, by a
27 majority vote of its governing body, requests a public meeting.

1 (iii) A local health department with jurisdiction in the
2 area in which the facility is located requests a public meeting.

3 (d) Provide a document that summarizes the major issues
4 raised by the public and how they are to be addressed by the
5 final approved remedial action plan.

6 (8) For purposes of this section, publication includes, at a
7 minimum, publication in a major local newspaper of general circu-
8 lation in this state. In addition, the administrative record
9 shall be made available by the department for inspection by mem-
10 bers of the public at or near the facility and in Lansing.

11 (9) The department shall prepare a summary document that
12 explains the reasons for the selection or approval of a remedial
13 action plan. In addition, the department shall compile an admin-
14 istrative record of the decision process that results in the
15 selection of a remedial action plan. The administrative record
16 shall contain all of the following:

17 (a) Remedial investigation data regarding the facility.

18 (b) If applicable, a feasibility study and potential reme-
19 dial actions.

20 (c) If applicable, a summary document that explains the rea-
21 sons why a remedial investigation or feasibility study was not
22 conducted.

23 (d) Applicable comments and information received from the
24 public, if any.

25 (e) If applicable, a document that summarizes the signifi-
26 cant concerns raised by the members of the public and how they
27 are to be addressed.

1 (f) Other information appropriate to the facility.

2 (10) If comments or information are submitted for inclusion
3 in the administrative record that are not included in the admin-
4 istrative record, a brief explanation of why the information was
5 not considered relevant shall be sent to the party by the depart-
6 ment and included in the record.

7 Sec. 4519. (1) In accordance with this section, if the
8 department determines that there may be an imminent and substan-
9 tial endangerment to the public health, safety, welfare, or the
10 environment, because of a release or threatened release, the
11 department may require persons that may be liable under section
12 4526 to take necessary action to abate the danger or threat.

13 (2) The department may issue an administrative order to a
14 person identified by the department as a person that may be
15 liable under section 4526 requiring that person to perform
16 response activity relating to a facility for which that person
17 may be liable, or to take any other action required by this
18 part. An order issued under this section shall state with rea-
19 sonable specificity the basis for issuance of the order and spec-
20 ify a reasonable time for compliance.

21 (3) Within 30 days after issuance of an administrative order
22 under this section, a person to whom the order was issued shall
23 indicate in writing whether the person intends to comply with the
24 order.

25 (4) A person that, without sufficient cause, violates or
26 fails to properly comply with an administrative order issued

1 under this section is liable for either or both of the
2 following:

3 (a) A civil fine of not more than \$25,000.00 for each day in
4 which the violation occurs or the failure to comply continues. A
5 fine imposed under this subsection shall be based upon the seri-
6 ousness of the violation and any good faith efforts by the viola-
7 tor to comply with the administrative order.

8 (b) For exemplary damages in an amount at least equal to the
9 amount of any costs of response activity incurred by the state as
10 a result of a failure to comply with an administrative order but
11 not more than 3 times the amount of these costs.

12 (5) A person to whom an administrative order was issued
13 under this section and who complied with the terms of the order
14 who believes that the order was arbitrary and capricious or
15 unlawful may petition the department, within 60 days after com-
16 pletion of the required action, for reimbursement from the fund
17 for the reasonable costs of the action plus interest at the rate
18 described in section 4526(4) and other necessary costs incurred
19 in seeking reimbursement under this subsection. If the depart-
20 ment refuses to grant all or part of the petition, the petitioner
21 may, within 30 days of receipt of the refusal, file an action
22 against the department in the court of claims seeking this
23 relief. A failure by the department either to grant or deny all
24 or any part of a petition within 120 days of receipt constitutes
25 a denial of that part of the petition which is reviewable as
26 final agency action in the court of claims. To obtain
27 reimbursement, the petitioner shall establish by a preponderance

1 of the evidence that the petitioner is not liable under
2 section 4526 or that the action ordered was arbitrary and capri-
3 cious or unlawful, and in either instance that costs for which
4 the petitioner seeks reimbursement are reasonable in light of the
5 action required by and undertaken pursuant to the relevant
6 order.

7 Sec. 4520. (1) The department shall develop a proposed
8 schedule for submittal of work plans for undertaking necessary
9 response activity for sites identified on a list prepared pursu-
10 ant to section 4505. Each work plan submitted shall include a
11 schedule for submittal of a proposed remedial action plan for the
12 site. The proposed schedule shall be consistent with any sched-
13 ule required under part 49. The proposed schedule shall be
14 reviewed by the commission, and after a public hearing regarding
15 the proposed schedule, the commission shall establish a
16 schedule. The department shall give written notice of the sched-
17 ule to all identified persons that may be liable under
18 section 4526 and shall publish the schedule in the Michigan reg-
19 ister listing each facility by township and range coordinates,
20 address, and, if available, common identity. The department may
21 grant an extension to a requirement in the schedule only after
22 holding a public hearing in the county in which the facility
23 subject to the schedule is located.

24 (2) The persons that may be liable under section 4526 for a
25 facility may submit a proposed remedial action plan to the
26 department at any time in advance of the date provided in the
27 schedule under subsection (1).

1 (3) A proposed remedial action plan submitted to the
2 department under this part shall include a schedule for implemen-
3 tation of response activity at the facility. Within 6 months
4 after receiving a proposed remedial action plan under this part,
5 the department shall review the plan and shall either approve the
6 plan or submit to the persons that may be liable under
7 section 4526 changes in the proposed remedial action plan that
8 would result in approval of the plan. If the department submits
9 changes to the proposed remedial action plan, within 60 days
10 after the persons that may be liable under section 4526 receive
11 the department's changes, the persons that may be liable under
12 section 4526 may incorporate these changes into their proposed
13 remedial action plan and resubmit the proposed remedial action
14 plan to the department. Upon receipt of a proposed remedial
15 action plan that meets the requirements of the department, the
16 department shall approve the remedial action plan.

17 (4) If the department approves a remedial action plan under
18 subsection (3), the persons that may be liable under section 4526
19 shall implement the approved remedial action plan.

20 (5) If the participating persons that may be liable under
21 section 4526 reject the department's changes to the proposed
22 remedial action plan under subsection (3), the persons that may
23 be liable under section 4526 shall notify the department within
24 60 days after receiving the department's changes. Within 60 days
25 after the persons that may be liable under section 4526 reject
26 the department's changes, the department and the persons that may
27 be liable under section 4526 shall attempt to resolve their

1 differences, or identify items of difference between them for
2 submittal to the science advisory council pursuant to
3 section 4522. If the department and the persons that may be
4 liable under section 4526 are unable to jointly agree to the
5 items of difference, the department shall notify the office of
6 environmental cleanup facilitation and the list of items of dif-
7 ference shall be prepared as provided in section 4521(2).

8 (6) The department shall publish a notice in the Michigan
9 register each quarter identifying those sites not in compliance
10 with the schedule for submittal of response activity work plans
11 and those sites in which the department has not acted on a pro-
12 posed remedial action plan, as provided in this section.

13 (7) This section does not preclude the department from
14 taking action as provided in sections 4518 and 4519.

15 (8) This section is repealed effective July 1, 1996.

16 Sec. 4521. (1) The office of environmental cleanup facili-
17 tation is created within the department of management and
18 budget. The office of environmental cleanup facilitation shall
19 contract with individuals who are impartial, qualified facilita-
20 tors or contract with an organization that can provide impartial,
21 qualified facilitators, who are capable of assisting in the reso-
22 lution of disputes over the development of remedial action
23 plans.

24 (2) Within 14 days after receiving notification of submittal
25 to facilitation from the department under section 4520, the
26 office of environmental cleanup facilitation shall randomly
27 assign a facilitator to prepare a detailed list of items of

1 difference between the department and the persons that may be
2 liable under section 4526. The facilitator assigned to the dis-
3 pute shall conduct discussions to identify those items of differ-
4 ence and, within 30 days after being assigned, shall prepare the
5 items of difference and shall forward this list to the science
6 advisory council.

7 (3) Unless otherwise agreed by the department and the per-
8 sons that may be liable under section 4526 and except as provided
9 in section 4522(3), the department and the persons that may be
10 liable under section 4526 shall each pay their costs associated
11 with facilitation under this section and section 4522 and they
12 shall share equally the costs of the facilitator.

13 (4) This section is repealed effective July 1, 1996.

14 Sec. 4522. (1) Upon receipt of the items of difference pur-
15 suant to section 4520 or 4521, the chairperson of the science
16 advisory council shall give notice of the dispute and of the par-
17 ties to the dispute to each member of the science advisory
18 council. Upon receipt of this notice, the members of the science
19 advisory council shall make full disclosure of any present or
20 past personal, contractual, financial, business, or employment
21 interest in matters related to the persons involved in the
22 dispute. After reviewing these disclosures, the chairperson
23 shall appoint 3 members of the science advisory council to serve
24 on a panel to provide recommendations for resolving the items of
25 difference and shall give notice of these appointments to the
26 department and the persons that may be liable under section 4526
27 for that facility. The chairperson shall not appoint a person to

1 serve on a panel who has any present personal, contractual,
2 financial, business, or employment interest in a matter related
3 to the persons involved in the dispute before the panel.

4 (2) Within 60 days after appointment of the science advisory
5 council panel under subsection (1), the department and the per-
6 sons that may be liable under section 4526 may each submit a
7 written statement not exceeding 20 pages in support of its
8 position. An interested member of the general public may also
9 submit a written statement, not exceeding 20 pages, in support of
10 a position on any item of difference. The science advisory coun-
11 cil panel shall schedule a meeting to deliberate and prepare rec-
12 ommendations on resolving the items of difference. A meeting of
13 the science advisory council panel shall be held pursuant to the
14 open meetings act, Act No. 267 of the Public Acts of 1976, being
15 sections 15.261 to 15.275 of the Michigan Compiled Laws. The
16 science advisory council panel shall, within 90 days of receiving
17 the written statements allowed to be submitted in this subsec-
18 tion, forward its recommendations on the items of difference to
19 the department, the persons that may be liable under
20 section 4526, and the office of environmental cleanup
21 facilitation. The recommendations of the science advisory coun-
22 cil panel are part of the administrative record.

23 (3) Within 30 days after receipt of the recommendations of
24 the science advisory council panel pursuant to subsection (2), a
25 facilitator assigned by the office of environmental cleanup
26 facilitation shall conduct additional discussions with the
27 department and the persons that may be liable under section 4526

1 and shall schedule a facilitation conference. Through these
2 discussions, the facilitator shall attempt to facilitate an
3 agreement between the department and the persons that may be
4 liable under section 4526 regarding the contents of a remedial
5 action plan. If the department and the persons that may be
6 liable under section 4526 are unable to agree to a remedial
7 action plan at the facilitation conference, the department shall
8 approve a remedial action plan that includes the recommendations
9 of the science advisory council panel, unless the department pre-
10 pares and approves an alternative remedial action plan. The
11 department shall approve a remedial action plan pursuant to this
12 subsection within 90 days after the department receives the rec-
13 ommendations from the science advisory council panel. If the
14 department does not approve a remedial action plan during this
15 time period, the persons that may be liable under section 4526
16 may implement a remedial action plan that includes all of the
17 recommendations of the science advisory council panel and is oth-
18 erwise in compliance with this part and the rules promulgated
19 under this part. This remedial action plan shall be considered
20 an approved remedial action plan.

21 (4) A person that participates in the allocation process
22 under section 4525 does not have standing in a civil action to
23 challenge the recommendations of the science advisory council
24 panel, pursuant to subsection (2), which are included in an
25 approved remedial action plan. Additionally, if a court later
26 upholds the contents of the approved remedial action plan, the
27 court shall assess against the persons that may be liable under

1 section 4526 for the facility the full costs of facilitation
2 under this section and section 4521 and enforcement costs. If
3 the department approves a remedial action plan that does not con-
4 tain the recommendations endorsed by a majority of the science
5 advisory council panel and if a court later does not uphold the
6 contents of that remedial action plan, the court shall assess
7 against the department the full costs of facilitation under this
8 section and section 4521, court costs, and the reasonable attor-
9 ney fees for the persons that may be liable under section 4526.
10 Additionally, if the action is for cost recovery of response
11 activities at a facility in which remedial action has been com-
12 pleted, the court shall only assess against the persons that may
13 be liable under section 4526 the cost of remedial action that the
14 court determines should have been undertaken.

15 (5) In any court proceeding pursuant to this section, there
16 is a rebuttable presumption that the recommendations of the
17 science advisory council panel on the items of difference are
18 supported by a preponderance of scientific evidence.

19 (6) This section does not preclude the department from
20 taking action as provided in sections 4518 and 4519.

21 (7) This section is repealed effective July 1, 1996.

22 Sec. 4523. (1) The science advisory council is created as
23 an independent, autonomous entity within the department of man-
24 agement and budget. The council shall consist of 7 individuals
25 appointed by the governor, with the advice and consent of the
26 senate, who have expertise in 1 or more of the following areas:

- 1 (a) Toxicology.
- 2 (b) Environmental engineering.
- 3 (c) Biology.
- 4 (d) Environmental chemistry.
- 5 (e) Hydrogeology.
- 6 (f) Soil science.
- 7 (g) Statistics.

8 (2) The first meeting of the science advisory council shall
9 be called by the governor. At the first meeting, the science
10 advisory council shall elect from among its members a chairperson
11 and other officers as the council considers appropriate. After
12 the first meeting, the science advisory council shall meet at the
13 call of the chairperson, or upon request of 4 or more members of
14 the council.

15 (3) A member of the science advisory council shall serve for
16 a term of 3 years, or until a successor is appointed by the gov-
17 ernor, whichever is later, except of the members first appointed,
18 3 shall serve for 3 years, 2 shall serve for 2 years, and 2 shall
19 serve for 1 year.

20 (4) The governor may remove a member of the science advisory
21 council for incompetency, dereliction of duty, malfeasance in
22 office, or any other good cause.

23 (5) For a period of 6 months after an individual ceases to
24 serve on the science advisory council, that individual shall not
25 be employed by the department, a person that has had a dispute
26 before a science advisory council panel in which that individual
27 served, or a consulting firm associated with the department or a

1 person that has had a dispute before a science advisory council
2 panel in which that individual served.

3 (6) Three members of the science advisory council who have
4 expertise related to the issues in dispute shall be appointed by
5 the chairperson of the science advisory council on a rotating
6 basis to serve on panels to make recommendations on resolving the
7 items of difference between the department and the persons that
8 may be liable under section 4526 for a facility with regard to
9 the contents of a remedial action plan pursuant to this part. A
10 science advisory council panel need not recommend a position
11 advocated by either the department or the persons that may be
12 liable under section 4526, but may recommend an alternative that
13 is supported by scientific evidence and is consistent with this
14 part and the rules promulgated under this part.

15 (7) A science advisory council panel shall make recommenda-
16 tions only on the scientific and technical issues in dispute con-
17 sistent with the rules promulgated under this part, including,
18 but not limited to:

19 (a) Risk assessment assumptions and calculations.

20 (b) Data collection and interpretation.

21 (c) Technological effectiveness of remedial action
22 alternatives.

23 (d) Chemical, biological, and physical properties.

24 (e) Impacts on various media.

25 (8) A science advisory council panel shall not make recom-
26 mendations on issues that are not primarily scientific or

1 technical in nature including, but not limited to, any of the
2 following:

3 (a) Cost effectiveness of remedial action alternatives.

4 (b) Current and reasonably foreseeable uses of natural
5 resources.

6 (c) Reasonably foreseeable uses of the facility.

7 (9) The members of a science advisory council panel who make
8 recommendations regarding the contents of a remedial action plan
9 for a facility shall not have any present personal, contractual,
10 financial, business, or employment interest in matters related to
11 the persons that have disputes before the science advisory coun-
12 cil panel. Additionally, the members of a science advisory coun-
13 cil panel who make recommendations regarding the contents of a
14 remedial action plan for a facility shall make full disclosure of
15 any past personal, contractual, financial, business, or employ-
16 ment interest in matters related to persons that have disputes
17 before the science advisory panel.

18 (10) Upon request of the science advisory council, the
19 department shall provide the science advisory council with all
20 information the department has in its possession related to a
21 facility.

22 (11) The science advisory council shall prepare a plan of
23 operation for the internal operations and procedures of the
24 science advisory council and may promulgate rules it considers
25 necessary to implement this section.

26 (12) This section is repealed effective July 1, 1996.

1 Sec. 4524. By July 1, 1994, the department shall report to
2 the legislature on all of the following with regard to the
3 dispute resolution process under sections 4520 to 4523:

4 (a) Whether the dispute resolution process is effectively
5 resolving disputes.

6 (b) The number of disputes addressed by the dispute resolu-
7 tion process.

8 (c) The results of disputes subject to the dispute resolu-
9 tion process.

10 (d) Recommendations regarding legislative action to improve
11 the dispute resolution process.

12 (e) The cost of the resolution of disputes through the use
13 of the dispute resolution process.

14 Sec. 4525. (1) As used in this section:

15 (a) "Allocation process" means a voluntary system for deter-
16 mining the percentage share of response costs pursuant to this
17 section of each person that may be liable under section 4526 and
18 the orphan share, if any.

19 (b) "Allocation review panel" or "panel" means the alloca-
20 tion review panel appointed by the orphan share administration.

21 (c) "Orphan share" means the percentage share of response
22 costs for a facility that the orphan share administration agrees
23 or the allocation review panel determines is not reasonably allo-
24 cable to any person that may be liable under section 4526 using
25 the criteria in subsection (10).

26 (d) "Orphan share administration" means the orphan share
27 administration created in subsection (21).

1 (e) "Response costs" means all costs incurred in taking or
2 conducting a response activity, enforcement costs, and all costs
3 incurred by the orphan share administration for the services of
4 the allocation review panel.

5 (2) This section only applies to a facility where 2 or more
6 persons that may be liable under section 4526 are identified by
7 the department. However, if only 1 person that may be liable
8 under section 4526 is identified for a facility by the depart-
9 ment, that person may submit a written request within 14 days
10 after the department approves a remedial action plan, or a reme-
11 dial action plan is considered approved under section 4522 to the
12 orphan share administration to commence the allocation process.
13 A facility for which only 1 person that may be liable under
14 section 4526 is identified shall be considered by the allocation
15 review panel as provided in this section in a manner and at a
16 time that will not impede the allocation process for other
17 facilities.

18 (3) After the department approves a remedial action plan, or
19 a remedial action plan is considered approved under section 4522,
20 for a facility pursuant to this part and any rules promulgated
21 under this part, the department shall notify in writing each
22 identified person that may be liable under section 4526 for a
23 facility and the orphan share administration of the approval of
24 the remedial action plan for the facility. The department shall
25 also send the orphan share administration a list of the names and
26 addresses of all identified persons that may be liable under
27 section 4526, and if requested by the orphan share

1 administration, the department shall at any time provide the
2 orphan share administration with all information in the posses-
3 sion of the department that is related to the release. Upon the
4 request of the orphan share administration, the allocation pro-
5 cess may commence prior to the approval of the remedial action
6 plan. A person that may be liable under section 4526 may peti-
7 tion the orphan share administration to commence the allocation
8 process prior to the approval of the remedial action plan or the
9 time the remedial action plan is considered approved under
10 section 4522(2).

11 (4) Not later than 7 days after receipt of the notice of
12 approval of a remedial action plan for the facility, the orphan
13 share administration shall notify each of the persons that may be
14 liable under section 4526 in writing of the opportunity to par-
15 ticipate in an allocation process. A person that may be liable
16 under section 4526 that intends to participate in the allocation
17 process shall notify the orphan share administration in writing
18 within 14 days of receiving notice from the orphan share
19 administration.

20 (5) If, within the 14-day period during which a person that
21 may be liable under section 4526 may indicate their intention to
22 participate in the allocation process, 1 or more of the persons
23 that may be liable under section 4526 identified in regard to a
24 facility notify the orphan share administration that the person
25 intends to participate in the allocation process, the orphan
26 share administration shall develop a schedule and plan to
27 facilitate negotiations to determine the percentage share of

1 response costs of each person that may be liable under
2 section 4526 and any orphan share. The negotiations shall be
3 completed within 21 days after the last day on which persons that
4 may be liable under section 4526 may notify the orphan share
5 administration of the intent to participate, unless all of the
6 participants agree to extend the negotiations. An extension of
7 the negotiations does not result in an extension of the time lim-
8 itations provided in subsections (8) and (10).

9 (6) If, during the negotiation period provided in
10 subsection (5), all of the persons that may be liable under
11 section 4526 that are participating in the allocation process and
12 the orphan share administration agree in writing to a complete
13 percentage allocation of response costs related to the facility,
14 the orphan share administration shall, within 3 days of reaching
15 the agreement, send a copy of the agreement to the director and
16 the attorney general.

17 (7) The attorney general on behalf of the state may enter
18 into a legally enforceable consent order with 1 or more of the
19 participants in the allocation process providing for implementa-
20 tion of the remedial action plan, payment of response costs, and
21 resolution of other potential liability under this part, includ-
22 ing liability for damages and civil fines.

23 (8) If, within the negotiation period provided in
24 subsection (5), all of the persons that may be liable under
25 section 4526 for a facility and the orphan share administration
26 do not agree in writing to a complete percentage allocation of
27 response costs related to the facility, the orphan share

1 administration shall convene an allocation review panel to
2 determine an allocation of the percentage share of response costs
3 of each person that may be liable under section 4526 including
4 the orphan share, if any. Regardless of when the allocation pro-
5 cess commences, the allocation review panel shall be convened no
6 later than 50 days after notification of the persons that may be
7 liable under section 4526 of the approval of the remedial action
8 plan for a facility. The allocation review panel shall consist
9 of 3 members selected by the orphan share administration. In
10 selecting the members for an allocation review panel, the orphan
11 share administration shall determine that a member selected for a
12 panel does not have a personal or financial interest in the out-
13 come of the allocation process.

14 (9) According to the procedures established by the orphan
15 share administration, each of the participating persons that may
16 be liable under section 4526 and the orphan share administration
17 may submit to the panel documentation and other information as
18 considered relevant by a person that may be liable under
19 section 4526 or the orphan share administration. In addition,
20 the director may submit to the panel information related to the
21 facility or allocation process that the director considers
22 relevant.

23 (10) Not later than 90 days after notification of the per-
24 sons that may be liable under section 4526 of approval of the
25 remedial action plan for a facility, the allocation review panel
26 shall issue a written determination allocating the percentage
27 share of response costs of each person that may be liable under

1 section 4526 and the orphan share, if any. In reaching a
2 determination, the allocation review panel shall do all of the
3 following:

4 (a) Consider each of the following as these items relate to
5 each person that may be liable under section 4526 and the orphan
6 share, if any:

7 (i) The volume of hazardous substances transported to the
8 facility. For purposes of determining volume, a shipment of a
9 hazardous substance shall be counted 1 time when allocating a
10 percentage share of response costs between a generator and a
11 transporter of a hazardous substance.

12 (ii) The anticipated impact of the hazardous substance on
13 the cost of response activity at the facility.

14 (iii) The degree of care exercised in the disposal or treat-
15 ment, or both of the hazardous substance by each person that may
16 be liable under section 4526.

17 (iv) The manner in which the facility was operated and the
18 degree of care exercised by the owner or operator.

19 (v) The degree of involvement in facility operations.

20 (vi) Whether all applicable permits and licenses required by
21 law were obtained and complied with.

22 (vii) The degree of cooperation by the person with federal,
23 state, or local officials to prevent, minimize, respond to, or
24 remedy the release or threat of release.

25 (viii) Any other aggravating or mitigating factor that the
26 allocation review panel determines to be relevant.

1 (b) Consider the quality of documentation and other
2 information submitted.

3 (c) If information gaps exist, make reasonable extrapola-
4 tions from the available information as considered advisable by
5 the allocation review panel.

6 (11) A copy of the written determination of the allocation
7 review panel shall be forwarded by the panel to the director, the
8 attorney general, and to each of the participants in the alloca-
9 tion process. Within 10 days of receipt of the determination of
10 the allocation review panel, each participant shall notify the
11 orphan share administration of the participant's acceptance or
12 rejection of the panel's determination. The orphan share admin-
13 istration shall notify the allocation review panel, the director,
14 and the attorney general of the participants' decision.

15 (12) Upon completion of the allocation process under this
16 section, the percentage allocated to the orphan share and the
17 portion allocated to a person that is uncollectible for a facili-
18 ty, if any, shall be funded in full by the other persons that may
19 be liable under section 4526 for that facility in proportion to
20 the percentage that each person was assigned pursuant to the
21 allocation process.

22 (13) The attorney general on behalf of the state may enter
23 into a legally enforceable consent order with 1 or more of the
24 participants in the allocation process who are in agreement with
25 the determination of the allocation review panel providing for
26 implementation of the remedial action plan, payment of response

1 costs, and resolution of other potential liability under this
2 part, including liability for damages and civil fines.

3 (14) This section shall not be construed to limit the
4 authority of the department or the attorney general at any time
5 to enter into an agreement in the public interest to resolve in
6 whole or in part the liability of a person under this part.

7 (15) Any allocation of percentage shares of response costs
8 under this section shall not be admissible as evidence in any
9 proceeding, except to prove, if disputed, the financial obliga-
10 tions under the terms of an allocation agreement pursuant to sub-
11 section (6) or (11) of a person who has limited its liability
12 under subsection (16). A court does not have jurisdiction to
13 review an allocation or the procedures used to determine an
14 allocation. The allocation of percentage share of response costs
15 or the procedures used to determine an allocation do not consti-
16 tute an apportionment or other statement on the divisibility of
17 harm or causation.

18 (16) The liability under this part of a person that may be
19 liable under section 4526, that accepts and pays its allocated
20 share of response activity costs as determined through a volun-
21 tary allocation agreement pursuant to subsection (6) or by the
22 allocation review panel pursuant to subsection (10), and who by
23 consent order or administrative order pays its portion of the
24 orphan share and the uncollectible portion pursuant to subsection
25 (12) which results in implementation of an approved remedial
26 action plan shall with respect to matters covered by the order be
27 limited to that person's allocated share of response costs. The

1 department may issue an administrative order pursuant to
2 section 4519 to require a person that may be liable under
3 section 4526 to implement the plan approved by the department.
4 To be enforceable, the order described in this subsection shall
5 not require that the department determine that there may be an
6 imminent and substantial endangerment to the public health,
7 safety, or welfare, or the environment prior to issuance of the
8 order. In an action for reimbursement pursuant to
9 section 4519(5), if the court upholds the order, the court shall
10 assess against the petitioner the full costs of defending this
11 proceeding, including attorney fees.

12 (17) If a person that may be liable under section 4526 par-
13 ticipates in the allocation process set forth in this subsection,
14 the director and the attorney general shall not commence an
15 action under section 4519 or 4537 against the participating
16 person for a period of 120 days after the persons that may be
17 liable under section 4526 are notified of the approval of a reme-
18 dial action plan. If the director and the attorney general
19 determine that the parties are bargaining in good faith and that
20 an extension of this moratorium would facilitate an agreement
21 with the persons that may be liable under section 4526 for taking
22 response activity, they may extend the moratorium for an addi-
23 tional period of up to 30 days.

24 (18) Notwithstanding subsection (17), this section does not
25 limit the department's authority to undertake response activity
26 at any time or the attorney general's authority to undertake
27 enforcement action against any person that may be liable under

1 section 4526 that does not participate in the allocation
2 process.

3 (19) The attorney general may file an action under
4 section 4537 to recover all costs incurred by the orphan share
5 administration from persons that refuse to participate in the
6 allocation process or in the remedial action on the basis of
7 their allocated share.

8 (20) The orphan share administration shall promulgate rules
9 establishing a loan program to provide loans to small businesses
10 that may be liable under section 4526. A loan shall be provided
11 to assist a small business in fulfilling any of its responsibili-
12 ties in undertaking a response activity in compliance with this
13 part and the rules promulgated under this part, except if the
14 small business is convicted of violating section 4539. A loan
15 shall not be made under this section until rules are promulgated
16 establishing the loan program described in this subsection. To
17 be eligible for a loan under this section, a small business shall
18 submit to the orphan share administration evidence that is satis-
19 factory to the orphan share administration that the small busi-
20 ness has taken or is taking action necessary to prevent future
21 releases and to otherwise comply with this part and applicable
22 state and federal environmental law. As used in this subsection,
23 small business means a business concern incorporated or doing
24 business in this state that has a net worth of less than
25 \$10,000,000.00, including the affiliates of the business concern
26 that are independently owned and operated.

1 (21) The orphan share administration is created within the
2 department of management and budget. The orphan share
3 administration shall administer the allocation process as pro-
4 vided in this section. The department of management and budget
5 shall provide the orphan share administration with sufficient
6 staff and services to allow it to carry out its responsibilities
7 under this section.

8 Sec. 4526. (1) Notwithstanding any other provision or rule
9 of law and subject only to the defenses set forth in sections
10 4527 and 4528, if there is a release or threatened release from a
11 facility that causes the incurrence of response activity costs,
12 the following persons shall be liable under this section:

13 (a) The owner or operator of the facility.

14 (b) The owner or operator of the facility at the time of
15 disposal of a hazardous substance.

16 (c) The owner or operator of the facility since the time of
17 disposal of a hazardous substance not included in subdivision (a)
18 or (b).

19 (d) A person that by contract, agreement, or otherwise
20 arranged for disposal or treatment, or arranged with a trans-
21 porter for transport for disposal or treatment, of a hazardous
22 substance owned or possessed by the person, by any other person,
23 at the facility owned or operated by another person and contain-
24 ing the hazardous substance.

25 (e) A person that accepts or accepted any hazardous sub-
26 stance for transport to the facility selected by that person.

1 (2) A person described in subsection (1) is liable for all
2 of the following:

3 (a) All costs of response activity lawfully incurred by the
4 state relating to the selection and implementation of response
5 activity under this part.

6 (b) Any other necessary costs of response activity incurred
7 by any other person consistent with rules relating to the selec-
8 tion and implementation of response activity promulgated under
9 this part.

10 (c) Damages for the full value of injury to, destruction of,
11 or loss of natural resources, including the reasonable costs of
12 assessing the injury, destruction, or loss resulting from the
13 release.

14 (3) The costs of response activity recoverable under subsec-
15 tion (2) shall also include:

16 (a) All costs of response activity reasonably incurred by
17 the state prior to the date upon which rules were promulgated
18 relating to the selection and implementation of response activity
19 under former Act No. 307 of the Public Acts of 1982, excepting
20 those cases where cost recovery actions have been filed before
21 July 11, 1990. A person challenging the recovery of costs under
22 this subdivision has the burden of establishing that the costs
23 were not reasonably incurred under the circumstances that existed
24 at the time the costs were incurred. Recoverable costs include
25 costs incurred reasonably consistent with the rules relating to
26 the selection and implementation of response activity in effect
27 on July 11, 1990.

1 (b) Any other necessary costs of response activity
2 reasonably incurred by any other person prior to June 26, 1990,
3 the date upon which rules were promulgated relating to the selec-
4 tion and implementation of response activity under former Act
5 No. 307 of the Public Acts of 1982. A person seeking recovery of
6 these costs has the burden of establishing that the costs were
7 reasonably incurred under the circumstances that existed at the
8 time the costs were incurred.

9 (4) The amounts recoverable in an action under this section
10 include interest on the amounts recoverable under subsections (2)
11 and (3). This interest accrues from the date payment is demanded
12 in writing, or the date of the expenditure or damage, whichever
13 is later. The rate of interest on the outstanding unpaid balance
14 of the amounts recoverable under this section is the same rate as
15 is specified in section 6013(5) of the revised judicature act of
16 1961, Act No. 236 of the Public Acts of 1961, being section
17 600.6013 of the Michigan Compiled Laws.

18 (5) A person shall not be required under this part to under-
19 take response activity for a permitted release. Recovery by any
20 person for response activity costs or damages resulting from a
21 permitted release shall be pursuant to other applicable law, in
22 lieu of this part. This subsection does not affect or modify in
23 any way the obligations or liability of any person under any
24 other state law, including common law, for damages, injury, or
25 loss resulting from a release of a hazardous substance or for
26 response activity or the costs of response activity.

1 (6) If the director determines that there may be an imminent
2 and substantial endangerment to the public health or welfare or
3 the environment because of an actual or threatened release from a
4 facility, the attorney general may bring an action against any
5 person described in subsection (1) or any other appropriate
6 person to secure the relief that may be necessary to abate the
7 danger or threat. The court has jurisdiction to grant such
8 relief as the public interest and the equities of the case may
9 require.

10 (7) In establishing liability under this section, the
11 department bears the burden of proof. If the department proves a
12 prima facie case against a person, the person shall bear the
13 burden of showing by a preponderance of the evidence that they
14 are not liable under this section.

15 Sec. 4527. (1) A person is not liable under section 4526 if
16 that person establishes by a preponderance of the evidence that
17 the release or threat of release was caused solely by:

18 (a) An act of God.

19 (b) An act of war.

20 (c) An act or omission of a third party other than an
21 employee or agent of the person that may be liable under
22 section 4526, or other than one whose act or omission occurs in
23 connection with a contractual relationship, existing directly or
24 indirectly, with the person that may be liable under section 4526
25 if the person that may be liable under section 4526 establishes
26 by a preponderance of the evidence both of the following:

1 (i) That he or she exercised due care with respect to the
2 hazardous substance, taking into consideration the
3 characteristics of the hazardous substance, in light of all rele-
4 vant facts and circumstances.

5 (ii) That he or she took reasonable precautions against rea-
6 sonably foreseeable acts or omissions of a third party and the
7 consequences that foreseeably could result from those acts or
8 omissions.

9 (d) Any combination of subdivision (a), (b), or (c).

10 (2) The term contractual relationship, as used in subsection
11 (1)(c), includes, but is not limited to, land contracts, deeds,
12 or other instruments transferring title or possession, unless
13 both of the following are established:

14 (a) The real property on which the facility is located was
15 acquired by the person that may be liable under section 4526
16 after the disposal or placement of the hazardous substance on,
17 in, or at the property.

18 (b) The person that may be liable under section 4526 by a
19 preponderance of the evidence proves 1 or more of the following:

20 (i) At the time the person that may be liable under
21 section 4526 acquired the property, that person did not know and
22 had no reason to know that a hazardous substance that is the
23 subject of the release or threat of a release was disposed of on,
24 in, or at the facility.

25 (ii) The person that may be liable under section 4526 is a
26 state or local unit of government that acquired the property by
27 purchase, gift, transfer, dedication, or condemnation, and, for

1 property acquired after July 1, 1991, the state or local unit of
2 government does all of the following:

3 (A) Conducts or causes to be conducted a visual inspection
4 of the property and a review of the ownership and use history of
5 the property to determine whether a probability exists that the
6 property is a facility. If the visual inspection or the owner-
7 ship and use history, or both, show that there may be a release
8 or threat of release, the state or local unit of government shall
9 conduct, or cause to be conducted, an environmental assessment of
10 the property that includes an on-site evaluation of the nature
11 and extent, if any, of the release or threat of release, and an
12 inspection of all permanent structures on the property for the
13 presence of a hazardous substance.

14 (B) Prior to final acquisition, if the environmental assess-
15 ment required in subparagraph (ii)(A) discloses a release or
16 threat of release, the state or local unit of government shall do
17 all of the following:

18 (I) Provide a report of the findings and conclusions of the
19 environmental assessment to the governing body of the unit of
20 government.

21 (II) Provide a public notice of the availability of the
22 report of the findings and conclusions of the environmental
23 assessment.

24 (III) Submit the report and the environmental assessment to
25 the department.

26 (C) After final acquisition, if the environmental assessment
27 required in subparagraph (ii)(A) disclosed a release or threat of

1 release, the state or local unit of government shall provide the
2 department with a right of entry to the property at all reason-
3 able times for any of the purposes listed in section 4517(3)(a)
4 through (e).

5 (D) After final acquisition, unless waived by the director
6 through the exercise of his or her discretion, if the environmen-
7 tal assessment required in subparagraph (ii)(A) disclosed a
8 release or threat of release, the state or local unit of govern-
9 ment shall not transfer any legal interest, or any equitable or
10 possessory interest that relinquishes control over that property
11 for more than 45 days, unless the state or local unit of govern-
12 ment does all of the following:

13 (I) Provide any transferee with a copy of the environmental
14 assessment required in subparagraph (ii)(A) prior to the transfer
15 of the property.

16 (II) Include in any contract for transfer of the property a
17 statement that, absent a covenant not to sue from the state as
18 provided by section 4533, the transferee will be a person that
19 may be liable under section 4526 of this part.

20 (III) Include as a condition to the transfer in any contract
21 for the transfer of the property that the transferee agrees to
22 provide the department with a right of entry to the property at
23 all reasonable times for any of the purposes listed in
24 section 4517(3)(a) through (e) related to a release or threat of
25 release disclosed in the environmental assessment required in
26 subparagraph (ii)(A).

1 (IV) Provide the department with a copy of the contract for
2 transfer of the property and a description of the intended use of
3 the property by the transferee within 14 days of the execution of
4 the transfer.

5 (iii) The person that may be liable under section 4526
6 acquired the property by inheritance.

7 (3) In addition to establishing 1 or more of the circum-
8 stances described in subsection (2)(b)(i), (ii), or (iii), the
9 person that may be liable under section 4526 shall establish that
10 he or she has satisfied the requirements of subsection (1)(c)(i)
11 and (ii).

12 (4) To establish that the person that may be liable under
13 section 4526 had no reason to know, as required under subsection
14 (2)(b)(i), the person that may be liable under section 4526 shall
15 have undertaken, at the time of acquisition, all appropriate
16 inquiry into the previous ownership and uses of the property con-
17 sistent with good commercial or customary practice in an effort
18 to minimize liability. For purposes of the preceding sentence,
19 the court shall take into account any specialized knowledge or
20 experience on the part of the person that may be liable under
21 section 4526, the relationship of the purchase price to the value
22 of the property if uncontaminated by a hazardous substance, com-
23 monly known or reasonably ascertainable information about the
24 property, the obviousness of the presence or likely presence of a
25 release or threat of release at the property, and the ability to
26 detect a release or threat of release by appropriate inspection.

1 (5) This section does not diminish the liability of a
2 previous owner or operator of a facility that would otherwise be
3 liable under this part. Notwithstanding this section, if the
4 person that may be liable under section 4526 obtained actual
5 knowledge of the release or threat of release at the facility
6 when that person owned the real property and then transferred
7 ownership of the property to another person without disclosing
8 this knowledge, the person is liable under section 4526 and a
9 defense under this section is not available to that person. This
10 section does not affect the liability under this part of a person
11 that may be liable under section 4526 that, by an act or omis-
12 sion, caused or contributed to the release or threat of release
13 that is the subject of a response activity at the facility.

14 (6) The state or a local unit of government is not liable
15 under this part for costs or damages as a result of response
16 activity taken in response to a release or threat of release.
17 This subsection does not preclude liability for costs or damages
18 as a result of gross negligence, including reckless, willful, or
19 wanton misconduct, or intentional misconduct by the state or
20 local unit of government.

21 (7) A commercial lending institution that has not partici-
22 pated in the management of a facility prior to taking title
23 acquires a property that is a facility through foreclosure or
24 through acceptance of a deed in lieu of foreclosure for the sole
25 purpose of realizing on a security interest is not liable under
26 this part, if 1 or more of the following are true:

1 (a) The property is a residential property.

2 (b) The property is an agricultural property.

3 (c) The commercial lending institution acquired ownership or
4 control of the property involuntarily through a court order or
5 other involuntary circumstance.

6 (d) The commercial lending institution would otherwise be
7 liable solely under section 4526(1)(c) and the commercial lending
8 institution acquired ownership or control of the property prior
9 to August 1, 1990.

10 (8) If a commercial lending institution that has not partic-
11 ipated in the management of a facility prior to taking title,
12 other than those properties described in subsection (7)(a) or
13 (b), conducts, within 180 days before or after taking title to
14 the property, a valid foreclosure environmental assessment prior
15 to disposition of that property, and that foreclosure environmen-
16 tal assessment does not indicate that there was a release or
17 threat of release on the property, there is a rebuttable presump-
18 tion that the commercial lending institution has satisfied the
19 criteria specified in subsection (1)(c) with respect to that
20 property. The defense to liability in this subsection does not
21 apply to a release that started after the date on which the com-
22 mercial lending institution acquired title to the property and
23 during the time the commercial lending institution held title to
24 the property.

25 (9) If a commercial lending institution that prior to taking
26 title of a property through foreclosure or through acceptance of
27 a deed in lieu of foreclosure has not participated in the

1 management of property, other than a property described in
2 subsection (7)(a) or (b), performs a foreclosure environmental
3 assessment on the property within 180 days before or after taking
4 title to the property, and that foreclosure environmental assess-
5 ment indicates that there is a release or threat of release on
6 that property, the commercial lending institution shall not dis-
7 pose of that property unless the commercial lending institution
8 provides the department with a complete copy of the results of
9 the foreclosure environmental assessment, and the commercial
10 lending institution enters into an agreement with the department
11 regarding disposition of the property. If a commercial lending
12 institution submits a proposal to the department regarding dispo-
13 sition of the property, the department shall, within 6 months,
14 review the proposal and either approve the proposal or submit
15 changes to the commercial lending institution that would result
16 in approval of the proposal. However, if the commercial lending
17 institution and the department are unable to reach an agreement
18 pertaining to disposition of the property, the commercial lending
19 institution shall not transfer the property, other than to the
20 state. A commercial lending institution that establishes that it
21 has met the requirements of this subsection shall not be liable
22 under section 4526 with respect to that property.

23 (10) A commercial lending institution or other person that
24 has not participated in the management of a property prior to
25 assuming ownership or control of the property as a fiduciary, as
26 defined by section 5 of the revised probate code, Act No. 642 of
27 the Public Acts of 1978, being section 700.5 of the Michigan

1 Compiled Laws, and that is acting or has acted in a capacity
2 permitted by the revised probate code, Act No. 642 of the Public
3 Acts of 1978, being sections 700.1 to 700.993 of the Michigan
4 Compiled Laws, is not personally liable as an owner or operator
5 of the property under this part. This subsection does not do
6 either of the following:

7 (a) Relieve the fiduciary from personal liability as the
8 result of the fiduciary's assumption of personal liability, or
9 negligence, gross negligence, or reckless, willful, or inten-
10 tional misconduct.

11 (b) Prevent claims against the assets that are part of or
12 all of the estate or trust that contains the facility; any other
13 estate or trust of the decedent, grantor, ward, or other person
14 whose estate or trust contains the facility that is administered
15 by the commercial lending institution or other person; or any
16 other estate or trust of the decedent, grantor, ward, or other
17 person whose estate or trust contains the facility. Such claims
18 may be asserted against the fiduciary in its representative
19 capacity, whether or not the fiduciary is personally liable.

20 (11) A commercial lending institution that has not partici-
21 pated in the management of a property prior to assuming ownership
22 or control of the property in a fiduciary capacity, and pursuant
23 to a fiduciary agreement entered into on or before August 1, 1990
24 owns or controls the property in a fiduciary capacity that is not
25 regulated by Act No. 642 of the Public Acts of 1978 but is autho-
26 rized by the banking code of 1969, Act No. 319 of the Public Acts
27 of 1969, being sections 487.301 to 487.598 of the Michigan

1 Compiled Laws, or the national bank act, chapter 106, 13
2 Stat. 99, is not personally liable as an owner or operator of the
3 property under this part. This subsection does not do either of
4 the following:

5 (a) Relieve the fiduciary from personal liability as the
6 result of the fiduciary's assumption of personal liability, neg-
7 ligence, gross negligence, or reckless, willful, or intentional
8 misconduct.

9 (b) Prevent claims against the assets that are part of or
10 all of the estate or trust that contains the facility; any other
11 estate or trust of the decedent, grantor, ward, or other person
12 whose estate or trust contains the facility that is administered
13 by the commercial lending institution; or any other estate or
14 trust of the decedent, grantor, ward, or other person whose
15 estate or trust contains the facility. Such claims may be
16 asserted against the fiduciary in its representative capacity,
17 whether or not the fiduciary is personally liable.

18 (12) A commercial lending institution that has not partici-
19 pated in the management of a property prior to assuming ownership
20 or control of the property in a fiduciary capacity, and pursuant
21 to a fiduciary agreement entered into after August 1, 1990 owns
22 or controls the property in a fiduciary capacity that is not reg-
23 ulated by Act No. 642 of the Public Acts of 1978 but is autho-
24 rized by the banking code of 1969, Act No. 319 of the Public Acts
25 of 1969, being sections 487.301 to 487.598 of the Michigan
26 Compiled Laws, or the national bank act, chapter 106, 13
27 Stat. 99, that has served only in an administrative, custodial,

1 or financial capacity with respect to the property, and has not
2 exercised sufficient involvement to control the owner's or
3 operator's handling of a hazardous substance, is not personally
4 liable as an owner or operator of the property under this part.
5 This subsection does not do either of the following:

6 (a) Relieve the fiduciary from personal liability as the
7 result of the fiduciary's assumption of personal liability, neg-
8 ligence, gross negligence, or reckless, willful, or intentional
9 misconduct.

10 (b) Prevent claims against the assets that are part of or
11 all of the estate or trust that contains the facility; any other
12 estate or trust of the decedent, grantor, ward, or other person
13 whose estate or trust contains the facility that is administered
14 by the commercial lending institution; or any other estate or
15 trust of the decedent, grantor, ward, or other person whose
16 estate or trust contains the facility. Such claims may be
17 asserted against the fiduciary in its representative capacity,
18 whether or not the fiduciary is personally liable.

19 (13) The defenses to liability under section 4526 in
20 subsections (7) to (12) in regard to a facility do not apply when
21 a commercial lending institution, or its agent, employee, or a
22 person retained by the commercial lending institution, caused or
23 contributed to a release or threat of release.

24 (14) As used in subsections (8) and (9), "foreclosure envi-
25 ronmental assessment" means to conduct, or cause to be conducted,
26 a visual inspection of property and a review of the ownership and
27 use history of the property to determine whether there is a

1 release or threat of release. If a visual inspection or the
2 ownership and use history, or both, show that there may be a
3 release or threat of release, a site specific on-site evaluation
4 of the nature and extent, if any, of the release or threat of
5 release shall be conducted, and an inspection of all permanent
6 structures on the property to determine the presence of a hazard-
7 ous substance shall be conducted.

8 Sec. 4528. (1) Except as otherwise provided in this sec-
9 tion, a person that is a response activity contractor for any
10 release or threatened release is not liable to any person for
11 injuries, costs, damages, expenses, or other liability, includ-
12 ing, but not limited to, claims for indemnification or contribu-
13 tion and claims by third parties for death, personal injuries,
14 illness, or loss of or damages to property or economic loss that
15 result from the release or threatened release. This subsection
16 does not apply if a release or threatened release is caused by
17 conduct of the response activity contractor that is negligent,
18 grossly negligent, or that constitutes intentional misconduct.

19 (2) Subsection (1) does not affect the liability of a person
20 under any warranty under federal, state, or common law. This
21 subsection does not affect the liability of an employer who is a
22 response activity contractor to any employee of the employer
23 under law, including any law relating to worker's compensation.

24 (3) An employee of this state or a local unit of government
25 who provides services relating to a response activity while
26 acting within the scope of his or her authority as a governmental

1 employee has the same exemption from liability as is provided to
2 the response activity contractor under subsection (1).

3 (4) The defense provided by section 4527(1)(c) is not avail-
4 able to any person that may be liable under section 4526 with
5 respect to any costs or damages caused by any act or omission of
6 a response activity contractor. Except as provided in this sec-
7 tion, this section does not affect the liability under this part
8 or under any other federal or state law of any person.

9 (5) As used in subsections (1) to (4):

10 (a) "Response activity contract" means a written contract or
11 agreement entered into by a response activity contractor with 1
12 or more of the following:

13 (i) The department.

14 (ii) The department of public health.

15 (iii) A person that may be liable under section 4526 that is
16 carrying out an agreement to undertake a response activity under
17 this part.

18 (b) "Response activity contractor" means 1 or both of the
19 following:

20 (i) A person that enters into a response activity contract
21 with respect to a release or threatened release and is carrying
22 out the terms of a contract.

23 (ii) A person that is retained or hired by a person
24 described in subparagraph (i) to provide any service relating to
25 a response activity.

26 (6) Notwithstanding any other provision of law, a person is
27 not liable for response activity costs or damages that result

1 from an act or the failure to act in the course of rendering
2 care, assistance, or advice with respect to a release of petro-
3 leum into or on the surface waters of the state or on the adjoin-
4 ing shorelines to the surface waters of the state if the act or
5 failure to act was consistent with the national contingency plan
6 or as otherwise directed by the federal on-scene coordinator or
7 the director. This subsection does not apply to any of the
8 following:

9 (a) A person who may be liable under section 4526 who is a
10 responsible party.

11 (b) An action with respect to personal injury or wrongful
12 death.

13 (c) A person who is grossly negligent or who engages in
14 willful misconduct.

15 (7) A person who may be liable under section 4526 who is a
16 responsible party is liable for any response activity costs and
17 damages that another person is relieved of under subsection (6).

18 (8) As used in this subsection and subsections (6) and (7):

19 (a) "Damages" means damages of any kind for which liability
20 may exist under the laws of this state resulting from, arising
21 out of, or related to the release or threatened release of
22 petroleum.

23 (b) "Federal on-scene coordinator" means the federal offi-
24 cial predesignated by the United States environmental protection
25 agency or the United States coast guard to coordinate and direct
26 federal responses under the national contingency plan, or the

1 official designated by the lead agency to coordinate and direct
2 response activity under the national contingency plan.

3 (c) "National contingency plan" means the national contin-
4 gency plan prepared and published under section 311 of title III
5 of the federal water pollution control act, chapter 758,
6 86 Stat. 844, 33 U.S.C. 1321.

7 (d) "Petroleum" means that term as it is defined in part
8 49.

9 (e) "Responsible party" means a responsible party as defined
10 under section 1001 of title I of the oil pollution act of 1990,
11 Public Law 101-380, 33 U.S.C. 2701.

12 (9) This section does not affect a plaintiff's burden of
13 establishing liability under this act.

14 Sec. 4529. (1) If 2 or more persons acting independently
15 cause a release or threat of release that results in response
16 activity costs, or damages for injury to, destruction of, or loss
17 of natural resources, and there is a reasonable basis for divi-
18 sion of harm according to contribution of each person, each
19 person is subject to liability under section 4526 only for the
20 portion of the total harm that the person caused. However, a
21 person seeking to limit its liability on the ground that the
22 entire harm is capable of division has the burden of proof as to
23 the divisibility of the harm and as to the apportionment of
24 liability.

25 (2) If 2 or more persons cause or contribute to an indivisi-
26 ble harm that results in response activity costs, or damages for
27 injury to, destruction of, or loss of natural resources, each

1 person is subject to liability under section 4526 for the entire
2 harm.

3 (3) A person may seek contribution from any other person who
4 is liable or may be liable under section 4526 during or following
5 a civil action brought under this part. However, a person that
6 is participating in the allocation process described in section
7 4525 is not subject to a contribution action during the pendency
8 of that allocation process. This subsection does not diminish
9 the right of a person to bring an action for contribution in the
10 absence of a civil action by the state under this part. The
11 court shall consider all of the following factors in allocating
12 response activity costs and damages among liable persons:

13 (a) Each person's relative degree of responsibility in caus-
14 ing the release or threat of release.

15 (b) The principles of equity pertaining to contribution.

16 (c) The degree of involvement of and care exercised by the
17 person with regard to the hazardous substance.

18 (d) The degree of cooperation by the person with federal,
19 state, or local officials to prevent, minimize, respond to, or
20 remedy the release or threat of release.

21 (e) Whether equity requires that the liability of some of
22 the persons should constitute a single share.

23 (4) If, in an action for contribution under subsection (3),
24 the court determines that all or part of a person's share of
25 liability is uncollectible from that person, then the court may
26 reallocate any uncollectible amount among the other persons
27 according to the factors listed in subsection (3). A person

1 whose share is determined to be uncollectible continues to be
2 subject to contribution and to any continuing liability to the
3 state.

4 (5) A person that has resolved its liability to the state in
5 an administrative or judicially approved consent order is not
6 liable for claims for contribution regarding matters addressed in
7 the consent order. The consent order does not discharge any of
8 the other persons liable under section 4526 unless the terms of
9 the consent order provide for this discharge, but the potential
10 liability of the other persons is reduced by the amount of the
11 consent order.

12 (6) If the state obtains less than complete relief from a
13 person that has resolved its liability to the state in an admin-
14 istrative or judicially approved consent order under this part,
15 the state may bring an action against any other person liable
16 under section 4526 that has not resolved its liabilities.

17 (7) A person that has resolved its liability to the state
18 for some or all of a response activity in an administrative or
19 judicially approved consent order may seek contribution from any
20 person that is not a party to the consent order described in sub-
21 section (5).

22 (8) In an action for contribution under this section, the
23 rights of any person that has resolved its liability to the state
24 shall be subordinate to the rights of the state, if the state
25 files an action under this part.

26 Sec. 4530. (1) An indemnification, hold harmless, or
27 similar agreement or conveyance is not effective to transfer from

1 a person that may be liable under section 4526 to the state for
2 evaluation or response activity costs or damages for a release or
3 threat of release to any other person the liability imposed under
4 this part. This section does not bar an agreement to insure,
5 hold harmless, or indemnify a party to the agreement for liabil-
6 ity under this part.

7 (2) This part does not bar a cause of action that a person
8 subject to liability under this part, or a guarantor, has or
9 would have, by reason of subrogation or otherwise against any
10 person.

11 Sec. 4531. (1) Except as provided in subsection (2), the
12 liability under this part for each release or threat of release
13 shall not exceed the total of all the costs of response activi-
14 ties, fines, and exemplary damages, plus \$50,000,000.00 damages
15 for injury to, destruction of, or loss of natural resources
16 resulting from the release or threat of release, including the
17 reasonable costs of assessing the injury, destruction, or loss
18 resulting from the release or threat of release.

19 (2) Notwithstanding the limitations in subsection (1), the
20 liability of a person under this part shall be the full and total
21 costs and damages listed in subsection (1), in either of the fol-
22 lowing circumstances:

23 (a) The release or threatened release of a hazardous sub-
24 stance was the result of willful misconduct or gross negligence
25 of the party.

1 (b) The primary cause of the release or threat of release
2 was a knowing violation of applicable safety, construction, or
3 operating standards or regulations.

4 Sec. 4532. (1) The state may, in its discretion, provide a
5 person with a covenant not to sue concerning any liability to the
6 state under this part, including future liability, resulting from
7 a release or threatened release addressed by response activities,
8 whether that action is on a facility or off a facility, if each
9 of the following is met:

10 (a) The covenant not to sue is in the public interest.

11 (b) The covenant not to sue would expedite response activity
12 consistent with rules promulgated under this part.

13 (c) There is full compliance with a consent order under this
14 part for response to the release or threatened release
15 concerned.

16 (d) The response activity has been approved by the
17 department.

18 (2) The state shall provide a person to whom the department
19 is authorized under subsection (1) to issue a covenant not to sue
20 for the portion of response activity described in subdivision (a)
21 or (b) with a covenant not to sue with respect to future liabil-
22 ity to the state under this part for a future release or threat-
23 ened release, and a person provided the covenant not to sue is
24 not liable to the state under section 4526 with respect to that
25 release or threatened release at a future time. The portion of
26 response activity to which the covenant not to sue pertains is
27 either of the following:

1 (a) The transport and secure disposition off site of
2 hazardous substances in a facility meeting the requirements of
3 sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v)
4 and 3005(c) of subtitle C of the solid waste disposal act, title
5 II of Public Law 89-272, 42 U.S.C. 6924 and 6925, if the depart-
6 ment has required off-site disposition and has rejected proposed
7 remedial action that is consistent with the rules promulgated
8 under this part that does not include off-site disposition.

9 (b) The treatment of hazardous substances so as to destroy,
10 eliminate, or permanently immobilize the hazardous constituents
11 of the substances, so that, in the judgment of the department,
12 the substances no longer present any current or currently fore-
13 seeable future significant risk to the public health, safety, or
14 welfare, or to the environment, no by-product of the treatment or
15 destruction process presents any significant hazard to the public
16 health, safety, or welfare, or the environment, and all
17 by-products are themselves treated, destroyed, or contained in a
18 manner that assures that the by-products do not present any cur-
19 rent or currently foreseeable future significant risk to the
20 public health, safety, or welfare, or the environment.

21 (3) A covenant not to sue concerning future liability to the
22 state shall not take effect until the department certifies that
23 remedial action has been completed in accordance with the
24 requirements of this part at the facility that is the subject of
25 the covenant.

26 (4) In assessing the appropriateness of a covenant not to
27 sue granted under subsection (1) and any condition to be included

1 in a covenant not to sue under subsection (1) or (2), the state
2 shall consider whether the covenant or condition is in the public
3 interest on the basis of factors such as the following:

4 (a) The effectiveness and reliability of the remedial
5 action, in light of the other alternative remedial actions con-
6 sidered for the facility concerned.

7 (b) The nature of the risks remaining at the facility.

8 (c) The extent to which performance standards are included
9 in the consent order.

10 (d) The extent to which the response activity provides a
11 complete remedy for the facility, including a reduction in the
12 hazardous nature of the substances at the facility.

13 (e) The extent to which the technology used in the response
14 activity is demonstrated to be effective.

15 (f) Whether the fund or other sources of funding would be
16 available for any additional response activities that might even-
17 tually be necessary at the facility.

18 (g) Whether response activity will be carried out, in whole
19 or in significant part, by persons that may be liable under
20 section 4526.

21 (5) A covenant not to sue under this section is subject to
22 the satisfactory performance by a person of its obligations under
23 the agreement concerned.

24 (6) Except for the portion of the remedial action that is
25 subject to a covenant not to sue under subsection (2) or under
26 section 4525, a covenant not to sue a person concerning future
27 liability to the state shall include an exception to the covenant

1 that allows the state to sue that person concerning future
2 liability resulting from the release or threatened release that
3 is the subject of the covenant if the liability arises out of
4 conditions that are unknown at the time the department certifies
5 under subsection (3) that remedial action has been completed at
6 the facility concerned.

7 (7) In extraordinary circumstances, the state may determine,
8 after assessment of relevant factors such as those referred to in
9 subsection (4) and volume, toxicity, mobility, strength of evi-
10 dence, ability to pay, litigative risks, public interest consid-
11 erations, precedential value, and inequities and aggravating fac-
12 tors, not to include the exception in subsection (6) if other
13 terms, conditions, or requirements of the agreement containing
14 the covenant not to sue are sufficient to provide all reasonable
15 assurances that the public health and the environment will be
16 protected from any future releases at or from the facility.

17 (8) The state is authorized to include any provisions pro-
18 viding for future enforcement action under section 4519 or 4537
19 that in the discretion of the department are necessary and appro-
20 priate to assure protection of the public health, safety, wel-
21 fare, and the environment.

22 Sec. 4533. (1) The state may provide a person who proposes
23 to redevelop or reuse a facility, including a vacant manufactur-
24 ing or abandoned industrial site, with a covenant not to sue con-
25 cerning liability under section 4526, if all of the following
26 conditions are met:

1 (a) The covenant not to sue is in the public interest.

2 (b) The covenant not to sue will yield new resources to
3 facilitate implementation of response activity.

4 (c) The covenant not to sue would expedite response activity
5 consistent with the rules promulgated under this part.

6 (d) Based upon available information, the department deter-
7 mines that the redevelopment or reuse of the facility is not
8 likely to do any of the following:

9 (i) Exacerbate or contribute to the existing release or
10 threat of release.

11 (ii) Interfere with the implementation of response
12 activities.

13 (iii) Pose health risks related to the release or threat of
14 release to persons who may be present at or in the vicinity of
15 the facility.

16 (e) The proposal to redevelop or reuse the facility has eco-
17 nomic development potential.

18 (2) A person that requests a covenant not to sue under
19 subsection (1) shall demonstrate to the satisfaction of the state
20 all of the following:

21 (a) That the person is financially capable of redeveloping
22 and reusing the facility in accordance with the covenant not to
23 sue.

24 (b) That the person is not affiliated in any way with any
25 person that may be liable under section 4526 for a release or
26 threat of release at the facility.

1 (c) That the redevelopment or reuse of the facility by the
2 person will not result in a release or threat of release.

3 (3) A covenant not to sue issued under this section shall
4 address only past releases or threats of release at a facility
5 and shall expressly reserve the right of the state to assert all
6 other claims against the person who proposes to redevelop or
7 reuse the facility, including, but not limited to, those claims
8 arising from any of the following:

9 (a) The release or threat of release of any hazardous sub-
10 stance resulting from the redevelopment or reuse of the
11 facility.

12 (b) Exacerbation or contribution of the existing release or
13 threat of release.

14 (c) Interference with, or failure to cooperate with the
15 department, its contractors, or other persons conducting response
16 activities approved by the department.

17 (d) Failure to exercise due care with respect to any release
18 or threat of release at the facility.

19 (4) A covenant not to sue issued under this section shall
20 provide for an irrevocable right of entry to the department, its
21 contractors, or other persons performing response activity
22 related to the release or threat of release addressed by the cov-
23 enant not to sue for the purposes listed in section 4517(3)(a)
24 through (e) and for monitoring compliance with the covenant not
25 to sue.

26 Sec. 4534. (1) The director and the attorney general may
27 enter into a consent order with a person liable under section

1 4526 or any group of persons liable under section 4526 to perform
2 a response activity if the director and the attorney general
3 determine that the persons liable under section 4526 will prop-
4 erly implement the response activity, and that the consent order
5 is in the public interest, will expedite effective response
6 activity, and will minimize litigation. The consent order may
7 provide, as determined appropriate by the director and the attor-
8 ney general, for implementation by a person or any group of per-
9 sons liable under section 4526 of any portion of response activ-
10 ity at the facility. A decision of the attorney general not to
11 enter into a consent order under this part is not subject to
12 judicial review.

13 (2) Whenever practicable and in the public interest, as
14 determined by the director, the director and the attorney general
15 shall as promptly as possible reach a final settlement with a
16 person in an administrative or civil action under this part if
17 this settlement involves only a minor portion of the response
18 costs at the facility concerned and, in the judgment of the
19 director and the attorney general, the conditions in either of
20 the following are met:

21 (a) Both of the following are minimal in comparison to other
22 hazardous substances at the facility:

23 (i) The amount of the hazardous substances contributed by
24 that person to the facility.

25 (ii) The toxic or other hazardous effects of the substances
26 contributed by that person to the facility.

1 (b) Except as provided in subsection (3), the person meets
2 all of the following conditions:

3 (i) The person is the owner of the real property on or in
4 which the facility is located.

5 (ii) The person did not conduct or permit the generation,
6 transportation, storage, treatment, or disposal of any hazardous
7 substance at the facility.

8 (iii) The person did not contribute to the release or threat
9 of release of a hazardous substance at the facility through any
10 action or omission.

11 (3) A settlement shall not be made under subsection (2)(b)
12 if the person purchased the real property with actual or con-
13 structive knowledge that the property was used for the genera-
14 tion, transportation, storage, treatment, or disposal of a haz-
15 ardous substance.

16 (4) A settlement under subsection (2) may be set aside if
17 information obtained after the settlement indicates that the
18 person settling does not meet the conditions set forth in subsec-
19 tion (2)(a) or (b).

20 Sec. 4535. (1) Except as otherwise provided in this part, a
21 person, including a local unit of government on behalf of its
22 citizens, whose health or enjoyment of the environment is or may
23 be adversely affected by a release from a facility or threat of
24 release from a facility, other than a permitted release or a
25 release in compliance with applicable federal, state, and local
26 air pollution control laws, by a violation of this part or a rule
27 promulgated or order issued under this part, or by the failure of

1 the directors to perform a nondiscretionary act or duty under
2 this part, may commence a civil action against any of the
3 following:

4 (a) An owner or operator for injunctive relief necessary to
5 prevent irreparable harm to the public health, safety, or wel-
6 fare, or the environment from a release or threatened release in
7 relation to that facility.

8 (b) A person that is alleged to be in violation of this part
9 or a rule promulgated or order issued under this part in relation
10 to that facility.

11 (c) One or more of the directors if it is alleged that 1 or
12 more of the directors failed to perform a nondiscretionary act or
13 duty under this part.

14 (2) The circuit court has jurisdiction in actions brought
15 under subsection (1)(a) to grant injunctive relief necessary to
16 protect the public health, safety, or welfare, or the environment
17 from a release or threatened release. The circuit court has
18 jurisdiction in actions brought under subsection (1)(b) to
19 enforce this part or a rule promulgated or order issued under
20 this part by ordering such action as may be necessary to correct
21 the violation, and to impose any civil fine provided for in this
22 part for the violation. A civil fine recovered under this sec-
23 tion shall be deposited in the fund. The circuit court has
24 jurisdiction in actions brought under subsection (1)(c) to order
25 1 or more of the directors to perform the nondiscretionary act or
26 duty concerned.

1 (3) An action shall not be filed under subsection (1)(a) or
2 (b) unless all of the following conditions exist:

3 (a) The plaintiff has given at least 60 days' notice in
4 writing of the plaintiff's intent to sue, the basis for the suit,
5 and the relief to be requested to each of the following:

6 (i) The department.

7 (ii) The attorney general.

8 (iii) The proposed defendants.

9 (b) The state has not commenced and is not diligently prose-
10 cuting an action under this part or under other appropriate legal
11 authority to obtain injunctive relief concerning the facility or
12 to require compliance with this part or a rule or an order under
13 this part.

14 (4) An action shall not be filed under subsection (1)(c)
15 until the plaintiff has given in writing at least 60 days' notice
16 to the directors of the plaintiff's intent to sue, the basis for
17 the suit, and the relief to be requested.

18 (5) In issuing a final order in an action brought pursuant
19 to this section, the court may award costs of litigation, includ-
20 ing reasonable attorney and expert witness fees to the prevailing
21 or substantially prevailing party if the court determines that an
22 award is appropriate.

23 (6) This section does not affect or otherwise impair the
24 rights of any person under federal, state, or common law.

25 (7) An action under subsection (1)(a) or (b) shall be
26 brought in the circuit court for the circuit in which the alleged
27 release, threatened release, or other violation occurred. An

1 action under subsection (1)(c) shall be brought in the circuit
2 court for Ingham county.

3 Sec. 4536. (1) The department may promulgate rules to
4 establish a grant program to provide grants to individuals who
5 may be adversely affected by hazardous substances from a site
6 that is listed under section 4505 and who live within 2 miles of
7 the listed site. The grants shall be provided only to enable
8 individuals to obtain expert advice and technical assistance
9 regarding the response activities at sites that affect them.
10 Grants shall not be issued under this section until the depart-
11 ment promulgates rules to establish criteria for the issuing of
12 grants. In determining which applicants receive grants, the
13 department shall consider the potential health impacts of the
14 site on the applicant, the complexity and scope of the necessary
15 remedial action at the site, and the ability of the applicant to
16 obtain expert advice and technical assistance in the absence of
17 the grant.

18 (2) Persons that may be liable under section 4526 are not
19 eligible for grants under this section.

20 (3) Grants shall be provided under this section subject to
21 the availability of appropriations from the general fund.

22 Sec. 4537. (1) In addition to other relief authorized by
23 law, the attorney general may, on behalf of the state, commence a
24 civil action seeking 1 or more of the following:

25 (a) Temporary or permanent injunctive relief necessary to
26 protect the public health, safety, or welfare, or the environment
27 from the release or threat of release.

1 (b) Recovery of state response activity costs pursuant to
2 section 4526.

3 (c) Damages for the full value of injury to, destruction of,
4 or loss of natural resources resulting from the release or threat
5 of release, including the reasonable costs of assessing the
6 injury, destruction, or loss resulting from the release or threat
7 of release.

8 (d) A declaratory judgment on liability for future response
9 costs and damages.

10 (e) A civil fine of not more than \$1,000.00 for each day of
11 noncompliance without sufficient cause with a written request of
12 the director pursuant to section 4514(4). A fine imposed under
13 this subdivision shall be based on the seriousness of the viola-
14 tion and any good faith efforts of the person to comply with the
15 request of the director.

16 (f) A civil fine of not more than \$10,000.00 for each day of
17 violation of this part or a rule promulgated under this part. A
18 fine imposed under this subdivision shall be based upon the seri-
19 ousness of the violation and any good faith efforts of the person
20 to comply with this part or a rule promulgated under this part.

21 (g) A civil fine of not more than \$25,000.00 for each day of
22 violation of a judicial order or an administrative order issued
23 pursuant to section 4519, including exemplary damages pursuant to
24 section 4519.

25 (h) Enforcement of an administrative order issued pursuant
26 to section 4519.

1 (i) Enforcement of information gathering and entry authority
2 pursuant to section 4517.

3 (j) Enforcement of the reporting requirements under section
4 4514.

5 (k) Any other relief necessary for the enforcement of this
6 part.

7 (2) If an action is brought under this part by a plaintiff
8 other than the attorney general, the plaintiff shall, at the time
9 of filing, provide a copy of the complaint to the attorney
10 general.

11 (3) Except as otherwise provided in this part, an action
12 brought under this part may be brought in the circuit court for
13 the county of Ingham, in the county in which the defendant
14 resides, has a place of business, or in which the registered
15 office of a defendant corporation is located, or in the county
16 where the release occurred.

17 (4) A state court does not have jurisdiction to review chal-
18 lenges to a response activity selected or approved by the depart-
19 ment under this part or to review an administrative order issued
20 under this part in any action except an action that is 1 of the
21 following:

22 (a) An action to recover response costs, damages, or for
23 contribution.

24 (b) An action by the state to enforce an administrative
25 order under this part or by any other person under
26 section 4535(1)(b) to enforce an administrative order or to
27 recover a fine for violation of an order.

1 (c) An action pursuant to section 4519(5) for review of a
2 decision by the department denying or limiting reimbursement.

3 (d) An action pursuant to section 4535 challenging a
4 response activity selected or approved by the department, if the
5 action is filed after the completion of the response activity.

6 (e) An action by the state pursuant to section 4526(6) to
7 compel response activity.

8 (5) In any judicial action under this part, judicial review
9 of any issues concerning the selection or adequacy of a response
10 activity taken, ordered, or agreed to by the state are limited to
11 the administrative record. If the court finds that the record is
12 incomplete or inadequate, the court may consider supplemental
13 material in the action. In considering objections raised in a
14 judicial action under this part, the court shall uphold the
15 state's decision in selecting a response activity unless the
16 objecting party can demonstrate based on the administrative
17 record that the decision was arbitrary and capricious or other-
18 wise not in accordance with law. In reviewing alleged procedural
19 errors, the court may disallow costs or damages only to the
20 extent the errors were so serious and related to matters of such
21 central importance that the activity would have been signifi-
22 cantly changed had the errors not been made.

23 (6) In an action commenced under this part, any person may
24 intervene as a matter of right if that person claims an interest
25 relating to the subject matter of the action and is situated so
26 that the disposition of the action may, as a practical matter,
27 impair or impede the person's ability to protect that interest,

1 unless the court finds the person's interest is adequately
2 represented by an existing party.

3 Sec. 4538. (1) All unpaid costs and damages for which a
4 person is liable under section 4526 constitutes a lien in favor
5 of the state upon a facility that has been the subject of
6 response activity by the state and is owned by that person. A
7 lien under this subsection has priority over all other liens and
8 encumbrances except liens and encumbrances recorded before the
9 date the lien under this subsection is recorded. A lien under
10 this subsection arises when the state first incurs costs for
11 response activity at the facility for which the person is
12 responsible.

13 (2) If the attorney general determines that the lien pro-
14 vided in subsection (1) is insufficient to protect the interest
15 of the state in recovering response costs at a facility, the
16 attorney general may file a petition in the circuit court of the
17 county in which the facility is located seeking either or both of
18 the following:

19 (a) A lien upon the facility subject to response activity
20 that takes priority over all other liens and encumbrances that
21 are or have been recorded on the facility.

22 (b) A lien upon real or personal property or rights to real
23 or personal property, other than the facility, owned by the
24 person described in subsection (1), having priority over all
25 other liens and encumbrances except liens and encumbrances
26 recorded prior to the date the lien under this subsection is

1 recorded. However, the following are not subject to the lien
2 provided for in this subdivision:

3 (i) Assets of a qualified pension plan or individual retire-
4 ment account under the internal revenue code.

5 (ii) Assets held expressly for the purpose of financing a
6 dependent's college education.

7 (iii) Up to \$500,000.00 in nonbusiness real or personal
8 property or rights to nonbusiness real or personal property,
9 except that not more than \$25,000.00 of this amount may be cash
10 or securities.

11 (3) A petition submitted pursuant to subsection (2) shall
12 set forth with as much specificity as possible the type of lien
13 sought, the property that would be affected, and the reasons the
14 attorney general believes the lien is necessary. Upon receipt of
15 a petition under subsection (2), the court shall promptly sched-
16 ule a hearing to determine whether the petition should be
17 granted. Notice of the hearing shall be provided to the attorney
18 general, the property owner, and any persons holding liens or
19 perfected security interests in the real property subject to
20 response activity.

21 (4) In addition to the lien provided in subsections (1) and
22 (2), if the state incurs costs for response activity that
23 increases the market value of real property that is the location
24 of a release or threatened release, the increase in value caused
25 by the state funded response activity, to the extent the state
26 incurred unpaid costs and damages, constitutes a lien in favor of
27 the state upon the real property. This lien has priority over

1 all other liens or encumbrances that are or have been recorded
2 upon the property.

3 (5) A lien provided in subsection (1), (2), or (4) is per-
4 fected against real property when a notice of lien is filed by
5 the department with the register of deeds in the county in which
6 the real property is located. A lien upon personal property pro-
7 vided in subsection (2) is perfected when a notice of lien is
8 filed by the department in accordance with applicable law and
9 regulation for the perfection of a lien on that type of personal
10 property. In addition, the department shall, at the time of the
11 filing of the notice of lien, provide a copy of the notice of
12 lien to the owner of that property by certified mail.

13 (6) A lien under this section continues until the liability
14 for the costs and damages is satisfied or resolved or becomes
15 unenforceable through the operation of the statute of limitations
16 provided in section 4540.

17 (7) Upon satisfaction of the liability secured by the lien,
18 the department shall file a notice of release of lien in the same
19 manner as provided in subsection (5).

20 (8) If the department, at or prior to the time of filing the
21 notice of release of lien pursuant to subsection (7), has made a
22 determination that the person liable under section 4526 has com-
23 pleted all of the response activity at the real property pursuant
24 to the approved remedial action plan, the department shall exe-
25 cute and file with the notice of release of lien a document stat-
26 ing that all response activities required in the approved
27 remedial action plan have been completed.

1 Sec. 4539. (1) The penalties provided in this section only
2 apply to a release that occurs after July 1, 1991.

3 (2) A person that knowingly releases or causes the release
4 of a hazardous substance contrary to applicable federal, state,
5 or local requirements or contrary to any permit or license held
6 by that person, and that knew or should have known that the
7 release could cause personal injury or property damage, or that
8 intentionally makes a false statement, representation, or certi-
9 fication in any application, record, report, plan, or other docu-
10 ment filed or required to be maintained under this part and rules
11 promulgated under this part, or that intentionally renders inac-
12 curate any monitoring device or record required to be maintained
13 under this part or a rule promulgated under this part, is guilty
14 of a felony and shall be fined not less than \$2,500.00 or more
15 than \$25,000.00 for each violation. The court may impose an
16 additional fine of not more than \$25,000.00 for each day during
17 which the release occurred. If the conviction is for a violation
18 committed after a first conviction of the person under this sub-
19 section, the court shall impose a fine of not less than
20 \$25,000.00 and not more than \$50,000.00 per day of violation.
21 Upon conviction, in addition to a fine, the court in its discre-
22 tion may sentence the defendant to imprisonment for not more than
23 2 years or impose probation upon a person for a violation of this
24 part. With the exception of the issuance of criminal complaints,
25 issuance of warrants, and the holding of an arraignment, the cir-
26 cuit court for the county in which the violation occurred has
27 exclusive jurisdiction.

1 (3) Upon a finding by the court that the action of a
2 criminal defendant poses or posed a substantial endangerment to
3 public health, safety, or welfare, the court shall impose, in
4 addition to the penalties set forth in subsection (2), a fine of
5 not less than \$1,000,000.00 and, in addition to a fine, a sen-
6 tence of 5 years' imprisonment.

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

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

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

18 (5) Knowledge possessed by a person other than the defendant
19 under subsection (4) may be attributable to the defendant if the
20 defendant took affirmative steps to shield himself or herself
21 from the relevant information.

22 (6) The department may pay an award of up to \$10,000.00 to
23 an individual who provides information leading to the arrest and
24 conviction of a person for a violation of this section. The
25 department shall promulgate rules that prescribe criteria for
26 granting awards under this section. An award shall not be made
27 under this section until rules are promulgated prescribing the

1 criteria for making awards. Awards under this subsection may be
2 paid from the Michigan environmental assurance fund, if enabling
3 legislation creating the fund is enacted into law.

4 (7) "Serious bodily injury" means bodily injury that
5 involves a substantial risk of death, unconsciousness, extreme
6 physical pain, protracted and obvious disfigurement, or pro-
7 tracted loss or impairment of the function of a bodily member,
8 organ, or mental faculty.

9 Sec. 4540. (1) Except as provided in subsection (2), the
10 limitation period for filing actions under this part is as
11 follows:

12 (a) For the recovery of response activity costs and natural
13 resources damages pursuant to section 4526(2)(a), (b), or (c),
14 within 6 years of initiation of physical on-site construction
15 activities for the remedial action selected or approved by the
16 department at a facility, except as provided in subdivision (b).

17 (b) For 1 or more subsequent actions for recovery of
18 response activity costs pursuant to section 4526, at any time
19 during the response activity, if commenced not later than 3 years
20 after the date of completion of all response activity at the
21 facility.

22 (c) For civil fines under this part, within 3 years after
23 discovery of the violation for which the civil fines are
24 assessed.

25 (2) For recovery of response activity costs and natural
26 resources damages that accrued prior to July 1, 1991, the

1 limitation period for filing actions under this part is July 1,
2 1994.

3 Sec. 4541. (1) By July 1, 1993, a citizens review board
4 shall be established. The review board shall consist of 6 mem-
5 bers of the general public and the director of the legislative
6 service bureau division of science and technology who shall serve
7 as the nonvoting chairperson. The public members of the review
8 board shall reflect a cross section of small business, large cor-
9 porate business, local units of government, and environmental
10 organizations. Specifically, the review board shall have 3 mem-
11 bers representative of the environmental community and 3 members
12 representative of business interests or local units of govern-
13 ment, or both.

14 (2) Two members of the review board shall be appointed by
15 the governor, 2 members shall be appointed by the speaker of the
16 house of representatives, and 2 members shall be appointed by the
17 senate majority leader.

18 (3) The review board shall submit to the standing committees
19 of the senate and the house of representatives that primarily
20 consider issues pertaining to the protection of natural resources
21 and the environment a report that contains a full review of the
22 operation of the amendments to former Act No. 307 of the Public
23 Acts of 1982 that became effective July 1, 1991. The report
24 shall include a summary of the effectiveness of those amendments,
25 recommendations for amendments to this part, and other informa-
26 tion that the legislative committees described in this subsection

1 may request at the time of the establishment of the review
2 board.

3 (4) The department shall provide the review board with both
4 of the following:

5 (a) The department's recommendations regarding amendments to
6 this part that the department concludes would improve this part.

7 (b) The department's evaluation of the effectiveness of this
8 part.

9 (5) Within 6 months after the establishment of the review
10 board, the review board shall issue its report as provided in
11 this section and the review board shall be disbanded. Funding
12 for the review board shall be provided from the fund and shall
13 not exceed \$100,000.00. Members of the review board shall
14 receive as compensation a per diem allotment equal to the per
15 diem received by the commission and shall receive actual and nec-
16 essary expenses incurred by review board members in carrying out
17 their responsibilities under this section.

18 PART 46 VOLUNTEER IMMUNITY

19 Sec. 4601. As used in this part:

20 (a) "Hazardous material" means a chemical or other material
21 which is or may become injurious to the public health, safety, or
22 welfare, or to the environment.

23 (b) "Remedial action" means an activity to protect the
24 public health, safety, welfare, or the environment, and includes
25 but is not limited to, cleanup, removal, containment, or isola-
26 tion of spills.

1 (c) "Spill" means any leaking, pumping, pouring, emptying,
2 emitting, discharging, escaping, leaching, or disposing of a
3 hazardous material in a quantity which is or may become injurious
4 to the public health, safety, welfare, or to the environment.

5 (d) "Volunteer" means an individual who is designated as a
6 volunteer by the public entity designated by the governor and is
7 acting solely on behalf of that entity without remuneration
8 beyond reimbursement for out-of-pocket expenses in connection
9 with the assistance.

10 (e) "Waters of the state" means all groundwaters, lakes,
11 rivers, streams, and other watercourses including the Great Lakes
12 and their connecting waterways within the jurisdiction of the
13 state.

14 Sec. 4602. (1) A volunteer who assists in remedial actions
15 associated with a spill of a hazardous material into the waters
16 of the state following a declaration by the governor pursuant to
17 section 3 of the emergency preparedness act, Act No. 390 of the
18 Public Acts of 1976, being section 30.403 of the Michigan
19 Compiled Laws, that the spill has caused a state of disaster
20 shall not be liable in a civil action for damages resulting from
21 an act or omission arising out of and in the course of the
22 volunteer's good faith rendering of that assistance.

23 (2) Subsection (1) does not apply to a volunteer whose act
24 or omission was the result of the volunteer's gross negligence or
25 willful misconduct.

1 PART 47 UNDERGROUND STORAGE TANK REGULATION

2 Sec. 4701. As used in this part:

3 (a) "Board" means the state fire safety board created in
4 section 3b of the fire prevention code, Act No. 207 of the Public
5 Acts of 1941, being section 29.3b of the Michigan Compiled Laws.

6 (b) "Department" means the department of state police, fire
7 marshal division.

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

10 (d) "Fund" means the underground storage tank regulatory
11 enforcement fund created in section 4704.

12 (e) "Local unit of government" means a municipality, county,
13 or governmental authority, or any combination of municipalities,
14 counties, or governmental authorities.

15 (f) "Natural gas" means natural gas, synthetic gas, and man-
16 ufactured gas.

17 (g) "Operator" means a person who is presently, or was at
18 the time of a release, in control of, or responsible for, the
19 operation of an underground storage tank system.

20 (h) "Owner" means a person who holds, or at the time of a
21 release held, a legal, equitable, or possessory interest of any
22 kind in an underground storage tank system, or in the property on
23 which an underground storage tank system is located, including,
24 but not limited to, a trust, vendor, vendee, lessor, or lessee.
25 However, owner does not include a person or a regulated financial
26 institution who, without participating in the management of an
27 underground storage tank system and who is not otherwise engaged

1 in petroleum production, refining, or marketing relating to the
2 underground storage tank system, is acting in a fiduciary capac-
3 ity or who holds indicia of ownership primarily to protect the
4 person's or the regulated financial institution's security inter-
5 est in the underground storage tank system or the property on
6 which it is located. This exclusion does not apply to a grantor,
7 beneficiary, remainderman, or other person who could directly or
8 indirectly benefit financially from the exclusion other than by
9 the receipt of payment for fees and expenses related to the
10 administration of a trust.

11 (i) "Release" means any spilling, leaking, emitting, dis-
12 charging, escaping, leaching, or disposing from an underground
13 storage tank system into groundwater, surface water, or subsur-
14 face soils.

15 (j) "Regulated substance" means either of the following:

16 (i) A substance defined in section 101(14) of title I of the
17 comprehensive environmental response, compensation, and liability
18 act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including
19 a substance regulated as a hazardous waste under subtitle C of
20 the solid waste disposal act, title II of Public Law 89-272, 42
21 U.S.C. 6921 to 6931 and 6933 to 6939b.

22 (ii) Petroleum, including crude oil or any fraction of crude
23 oil that is liquid at standard conditions of temperature and
24 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch
25 absolute). Petroleum includes but is not limited to mixtures of
26 petroleum with de minimis quantities of other regulated
27 substances, and petroleum-based substances comprised of a complex

1 blend of hydrocarbons derived from crude oil through processes of
2 separation, conversion, upgrading, or finishing such as motor
3 fuels, jet fuels, distillate fuel oils, residual fuel oils,
4 lubricants, and petroleum solvents.

5 (k) "Underground storage tank system" means a tank or combi-
6 nation of tanks, including underground pipes connected to the
7 tank or tanks, which is, was, or may have been, used to contain
8 an accumulation of regulated substances, and the volume of which,
9 including the volume of the underground pipes connected to the
10 tank or tanks, is 10% or more beneath the surface of the ground.
11 An underground storage tank system does not include any of the
12 following:

13 (i) A farm or residential tank of 1,100 gallons or less
14 capacity used for storing motor fuel for noncommercial purposes.

15 (ii) A tank used for storing heating oil for consumptive use
16 on the premises where the tank is located.

17 (iii) A septic tank.

18 (iv) A pipeline facility, including gathering lines regu-
19 lated under either of the following:

20 (A) The natural gas pipeline safety act of 1968, Public Law
21 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to
22 1687.

23 (B) Sections 201 to 215, 217, and 219 of the hazardous
24 liquid pipeline safety act of 1979, title II of Public Law
25 96-129, 49 U.S.C. Appx 2001 to 2015.

26 (v) A surface impoundment, pit, pond, or lagoon.

1 (vi) A storm water or wastewater collection system.

2 (vii) A flow-through process tank.

3 (viii) A liquid trap or associated gathering lines directly
4 related to oil or gas production and gathering operations.

5 (ix) A storage tank situated in an underground area, such as
6 a basement, cellar, mineworking, drift, shaft, or tunnel if the
7 storage tank is situated upon or above the surface of the floor.

8 (x) Any pipes connected to a tank that is described in sub-
9 paragraphs (i) to (xvi).

10 (xi) An underground storage tank system holding hazardous
11 wastes listed or identified under subtitle C of the solid waste
12 disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to
13 6931 and 6933 to 6939b or a mixture of such hazardous waste and
14 other regulated substances.

15 (xii) A wastewater treatment tank system that is part of a
16 wastewater treatment facility regulated under section 307(b) of
17 title III of the federal water pollution control act,
18 chapter 758, 86 Stat. 856, or section 402 of title IV of the fed-
19 eral water pollution control act, chapter 758, 86 Stat. 880, 33
20 U.S.C. 1317 and 1342.

21 (xiii) Equipment or machinery that contains regulated sub-
22 stances for operational purposes such as hydraulic lift tanks and
23 electrical equipment tanks.

24 (xiv) An underground storage tank system with a capacity of
25 110 gallons or less.

26 (xv) An underground storage tank system that contains a de
27 minimis concentration of regulated substances.

1 (xvi) An emergency spill or overflow containment underground
2 storage tank system that is expeditiously emptied after use.

3 Sec. 4702. (1) The owner of an underground storage tank
4 system shall register and annually renew the registration on the
5 underground storage tank system with the department.

6 (2) The owner of an underground storage tank system shall
7 register the underground storage tank system with the department
8 prior to bringing the underground storage tank system into use.

9 (3) The department shall accept the registration or renewal
10 of registration of an underground storage tank system under this
11 section only if the owner of the underground storage tank system
12 pays the registration fee specified in subsection (8).

13 (4) Except as otherwise provided in subsections (5) and (6),
14 the owner of an underground storage tank system registered under
15 subsection (1) or (2) shall notify the department of any change
16 in the information required under section 4703 or of the removal
17 of an underground storage tank system from service.

18 (5) The owner of an underground storage tank system, the
19 contents of which are changed routinely, may indicate all the
20 materials which are stored in the underground storage tank system
21 on the registration form described in section 4703. A person
22 providing the information described in this subsection is not
23 required to notify the department of changes in the contents of
24 the underground storage tank system unless the material to be
25 stored in the system differs from the information provided on the
26 registration form.

1 (6) Except as otherwise provided in section 4703(2), the
2 owner of an underground storage tank system registered under
3 subsection (1) or (2) is not required to notify the department of
4 a test conducted on the tank system but shall furnish this infor-
5 mation upon request of the department.

6 (7) Upon the request of a local unit of government in which
7 an underground storage tank system is located, the department
8 shall forward a copy of registration or notification of change to
9 the local unit of government where the underground storage tank
10 system is located.

11 (8) Except as provided in section 4704(3), the owner of an
12 underground storage tank system, upon registration or renewal of
13 registration, shall pay a registration fee of \$100.00 for each
14 underground storage tank included in that underground storage
15 tank system. The department shall deposit all registration fees
16 it collects into the fund.

17 (9) The board may promulgate rules that require proof of
18 registration under this part to be attached to the underground
19 storage tank system or to the property where the underground
20 storage tank system is located.

21 (10) Except as otherwise provided in this subsection, an
22 underground storage tank system or an underground storage tank
23 that is part of the system that has been closed or removed pursu-
24 ant to rules promulgated under this part is exempt from the
25 requirements of this section. However, the owner of an under-
26 ground storage tank system or an underground storage tank that is
27 part of the system that has been closed or removed shall notify

1 the department of the closure or removal pursuant to rules
2 promulgated by the board under this part. The owner of an under-
3 ground storage tank system shall continue to pay registration
4 fees on underground storage tanks that have been closed or
5 removed until notification of the closure or removal is provided
6 pursuant to these rules.

7 Sec. 4703. (1) The registration required by section 4702
8 shall be provided on either of the following:

9 (a) A form provided by the department and in compliance with
10 section 9002 of subtitle I of the solid waste disposal act, title
11 II of Public Law 89-272, 42 U.S.C. 6991a.

12 (b) A form approved by the department and in compliance with
13 section 9002 of subtitle I of the solid waste disposal act.

14 (2) If there is a suspected or confirmed release from an
15 underground storage tank system, the owner or operator of the
16 underground storage tank system shall notify the department and
17 if requested by the department shall file the following supple-
18 mentary information if known:

19 (a) The owner of the property where the underground storage
20 tank system is located.

21 (b) A history of the current and previous contents of the
22 underground storage tank system, including the generic chemical
23 name, chemical abstract service number, or trade name, whichever
24 is most descriptive of the contents, and including the date or
25 dates on which the contents were changed or removed.

1 (c) A history of the monitoring procedures and leak
2 detection tests and methods employed with respect to the
3 underground storage tank system, and the resulting findings.

4 Sec. 4704. (1) The underground storage tank regulatory
5 enforcement fund is created in the state treasury. The fund may
6 receive money as provided in this part and as otherwise provided
7 by law. The state treasurer shall direct the investment of the
8 fund. Interest and earnings of the fund shall be credited to the
9 fund. Money in the fund at the close of the fiscal year shall
10 remain in the fund and shall not revert to the general fund.

11 (2) Money in the fund shall be used only by the department
12 to enforce this part and the rules promulgated under this part
13 and the rules promulgated under the fire prevention code, Act
14 No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33
15 of the Michigan Compiled Laws, pertaining to the delivery and
16 dispensing operations of regulated substances.

17 (3) Notwithstanding section 4702(8), if at the close of any
18 fiscal year the amount of money in the fund exceeds
19 \$8,000,000.00, the department shall not collect a registration
20 fee for the following year from existing underground storage tank
21 systems. After the registration fee has been suspended under
22 this subsection, it shall only be reinstated if, at the close of
23 any succeeding fiscal year, the amount of money in the fund is
24 less than \$2,000,000.00.

25 (4) The department of treasury shall, before November 1 of
26 each year, notify the department of the balance in the fund at
27 the close of the preceding fiscal year.

1 Sec. 4705. The department shall collect and evaluate the
2 information obtained through the registration of underground
3 storage tanks required by section 4702.

4 Sec. 4706. The board shall promulgate rules relating to
5 underground storage tank systems that are at least as stringent
6 as the rules promulgated by the United States environmental pro-
7 tection agency under subtitle I of the solid waste disposal act,
8 title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i. These
9 rules shall include a requirement that the owner or operator of
10 an underground storage tank system provide financial responsibil-
11 ity in the event of a release from the underground storage tank
12 system.

13 Sec. 4707. (1) The department shall enforce this part and
14 the rules promulgated under this part.

15 (2) The department may delegate the authority to enforce
16 this part and the rules promulgated under this part to a local
17 unit of government that has sufficient employees who are certi-
18 fied by the department under subsection (3) as underground stor-
19 age tank system inspectors. A local unit of government may apply
20 for delegation under this section by submitting a resolution of
21 the governing body of the local unit of government and an appli-
22 cation containing the information required by the department.
23 The department may revoke a delegation under this section for a
24 violation of this part, the rules promulgated under this part, or
25 a contract entered between the department and the local unit of
26 government.

1 (3) The department may certify individuals who are qualified
2 to enforce this part and the rules promulgated under this part as
3 underground storage tank system inspectors. The department may
4 revoke an individual's certification under this section for vio-
5 lating this part or rules promulgated under this part.

6 (4) If the department elects to delegate enforcement author-
7 ity under subsection (2), the board shall promulgate rules that
8 do both of the following:

9 (a) Establish criteria for delegation under subsection (2).

10 (b) Establish qualifications for certification of individu-
11 als as underground storage tank system inspectors under subsec-
12 tion (3).

13 (5) The department may contract with a local unit of govern-
14 ment for the purpose of enforcing this part and the rules promul-
15 gated under this part.

16 Sec. 4708. (1) The department may, upon resolution of the
17 governing body of a local unit of government in whose jurisdic-
18 tion an underground storage tank system is being installed,
19 require additional safeguards, other than those specified in
20 rules, when the public health, safety, welfare, or the environ-
21 ment is endangered.

22 (2) A local unit of government shall not enact or enforce a
23 provision of an ordinance that is inconsistent with this part or
24 rules promulgated under this part.

25 (3) A local unit of government shall not enact or enforce a
26 provision of an ordinance that requires a permit, license,
27 approval, inspection, or the payment of a fee or tax for the

1 installation, use, closure, or removal of an underground storage
2 tank system.

3 Sec. 4709. (1) A person shall not knowingly deliver a regu-
4 lated substance into an underground storage tank system that is
5 not registered under this part.

6 (2) A person shall not repair or test an underground storage
7 tank system that is not registered under this part.

8 Sec. 4710. The following are deferred from regulation under
9 this part until the director determines that they should be
10 regulated:

11 (a) Wastewater treatment tank systems.

12 (b) An underground storage tank system containing radioac-
13 tive material that is regulated under the atomic energy act of
14 1954, chapter 1073, 68 Stat. 919.

15 (c) An underground storage tank system that is part of an
16 emergency generator system at nuclear power generation facilities
17 regulated by the nuclear regulatory commission under appendix A
18 to 10 C.F.R. part 50.

19 (d) Airport hydrant fuel distribution systems.

20 (e) Underground storage tank systems with field-constructed
21 tanks.

22 Sec. 4711. (1) A person who violates this part or a rule
23 promulgated under this part or who knowingly submits false infor-
24 mation when registering an underground storage tank system under
25 this part is guilty of a misdemeanor, punishable by imprisonment
26 for not more than 6 months, or a fine of not more than \$500.00,
27 or both.

1 (2) A person who violates this part or a rule promulgated
2 under this part or who knowingly submits false information when
3 registering an underground storage tank system under this part is
4 subject to a civil fine of not more than \$5,000.00 for each
5 underground storage tank system for each day of violation. A
6 civil fine imposed under this subsection shall be based upon the
7 seriousness of the violation and any good faith efforts by the
8 violator to comply with this part and the rules promulgated under
9 this part.

10 (3) A civil fine collected under subsection (2) shall be
11 deposited into the fund.

12 Sec. 4712. This part is repealed upon the expiration of 12
13 months after part 51 becomes invalid pursuant to section
14 5123(3).

15 PART 49

16 LEAKING UNDERGROUND STORAGE TANKS

17 Sec. 4901. The words and phrases defined in sections 4902
18 and 4903 shall have the meanings ascribed to them in those
19 sections.

20 Sec. 4902. (1) "Corrective action" means an action to stop,
21 minimize, eliminate, or clean up a release or its effects, as may
22 be necessary to protect the public health, safety, welfare, or
23 the environment. Corrective action includes, but is not limited
24 to, release investigation, mitigation of fire and safety hazards,
25 tank repair or removal, soil remediation, hydrogeological inves-
26 tigations, free product removal, groundwater remediation and
27 monitoring, exposure assessments, the temporary or permanent

1 relocation of residents, and the provision of alternate water
2 supplies.

3 (2) "Department" means the department of natural resources,
4 its employees, agents, or contractors.

5 (3) "Director" means the director of the department or his
6 or her designee.

7 (4) "Free product" means a regulated substance in a liquid
8 phase that is not dissolved in water, that has been released into
9 the environment.

10 (5) "Local unit of government" means a city, village, town-
11 ship, county, fire department, or local health department as
12 defined in section 1105 of the public health code, Act No. 368 of
13 the Public Acts of 1978, being section 333.1105 of the Michigan
14 Compiled Laws.

15 Sec. 4903. (1) "Operator" means a person who is presently,
16 or was at the time of a release, in control of, or responsible
17 for, the operation of an underground storage tank system.

18 (2) "Owner" means a person who holds, or at the time of a
19 release held, a legal, equitable, or possessory interest of any
20 kind in an underground storage tank system, or in the property on
21 which an underground storage tank system is located, including,
22 but not limited to, a trust, vendor, vendee, lessor, or lessee.
23 However, owner does not include a person or a regulated financial
24 institution who, without participating in the management of an
25 underground storage tank system and who is not otherwise engaged
26 in petroleum production, refining, or marketing relating to the
27 underground storage tank system, is acting in a fiduciary

1 capacity or who holds indicia of ownership primarily to protect
2 the person's or the regulated financial institution's security
3 interest in the underground storage tank system or the property
4 on which it is located. This exclusion does not apply to a
5 grantor, beneficiary, remainderman, or other person who could
6 directly or indirectly benefit financially from the exclusion
7 other than by the receipt of payment for fees and expenses
8 related to the administration of a trust.

9 (3) "Release" means any spilling, leaking, emitting, dis-
10 charging, escaping, leaching, or disposing from an underground
11 storage tank system into groundwater, surface water, or subsur-
12 face soils.

13 (4) "Regulated substance" means either of the following:

14 (a) A substance defined in section 101(14) of title I of the
15 comprehensive environmental response, compensation, and liability
16 act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including
17 a substance regulated as a hazardous waste under subtitle C of
18 the solid waste disposal act, title II of Public Law 89-272, 42
19 U.S.C. 6921 to 6931 and 6933 to 6939b.

20 (b) Petroleum, including crude oil or any fraction of crude
21 oil that is liquid at standard conditions of temperature and
22 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch
23 absolute). Petroleum includes but is not limited to mixtures of
24 petroleum with de minimis quantities of other regulated sub-
25 stances, and petroleum-based substances comprised of a complex
26 blend of hydrocarbons derived from crude oil through processes of
27 separation, conversion, upgrading, or finishing such as motor

1 fuels, jet fuels, distillate fuel oils, residual fuel oils,
2 lubricants, and petroleum solvents.

3 (5) "Underground storage tank system" means a tank or combi-
4 nation of tanks, including underground pipes connected to the
5 tank or tanks, which is, was, or may have been, used to contain
6 an accumulation of regulated substances, and the volume of which,
7 including the volume of the underground pipes connected to the
8 tank or tanks, is 10% or more beneath the surface of the ground.
9 An underground storage tank system does not include any of the
10 following:

11 (a) A farm or residential tank of 1,100 gallons or less
12 capacity used for storing motor fuel for noncommercial purposes.

13 (b) A tank used for storing heating oil for consumptive use
14 on the premises where the tank is located.

15 (c) A septic tank.

16 (d) A pipeline facility, including gathering lines regulated
17 under either of the following:

18 (i) The natural gas pipeline safety act of 1968, Public Law
19 90-481, 49 U.S.C. APP 1671 to 1677, 1679a to 1682, and 1683 to
20 1687.

21 (ii) Sections 201 to 215, 217, and 219 of the hazardous
22 liquid pipeline safety act of 1979, title II of Public Law
23 96-129, 49 U.S.C. APP 2001 to 2015.

24 (e) A surface impoundment, pit, pond, or lagoon.

25 (f) A storm water or wastewater collection system.

26 (g) A flow-through process tank.

1 (h) A liquid trap or associated gathering lines directly
2 related to oil or gas production and gathering operations.

3 (i) A storage tank situated in an underground area, such as
4 a basement, cellar, mineworking, drift, shaft, or tunnel if the
5 storage tank is situated upon or above the surface of the floor.

6 (j) Any pipes connected to a tank that is described in sub-
7 divisions (a) to (i).

8 (k) An underground storage tank system holding hazardous
9 wastes listed or identified under subtitle C of the solid waste
10 disposal act, or a mixture of such hazardous waste and other reg-
11 ulated substances.

12 (l) A wastewater treatment tank system that is part of a
13 wastewater treatment facility regulated under section 307(b) of
14 title III of the federal water pollution control act,
15 chapter 758, 86 Stat. 856, 33 U.S.C. 1317, or section 402 of
16 title IV of the federal water pollution control act, chapter 758,
17 86 Stat. 880, 33 U.S.C. 1342.

18 (m) Equipment or machinery that contains regulated sub-
19 stances for operational purposes such as hydraulic lift tanks and
20 electrical equipment tanks.

21 (n) An underground storage tank system with a capacity of
22 110 gallons or less.

23 (o) An underground storage tank system that contains a de
24 minimis concentration of regulated substances.

25 (p) An emergency spill or overflow containment underground
26 storage tank system that is expeditiously emptied after use.

1 Sec. 4904. The department of state police, fire marshal
2 division shall promulgate rules that provide for reporting of
3 suspected releases from underground storage tank systems and con-
4 firmation of releases from underground storage tank systems.

5 Sec. 4905. (1) Upon confirmation of a release or the dis-
6 covery of a release in any other manner from an underground stor-
7 age tank system, the owner or operator shall perform all of the
8 following initial response actions within 24 hours:

9 (a) Identify and mitigate fire, explosion, and vapor
10 hazards.

11 (b) Take immediate action to prevent further release of the
12 regulated substance into the environment.

13 (c) Report the release to the department of state police,
14 fire marshal division within 24 hours after confirmation.

15 (2) Upon learning of a confirmed release, the department of
16 state police, fire marshal division shall immediately notify the
17 department.

18 Sec. 4906. (1) Upon confirmation of a release, unless
19 directed to do otherwise by the director, the owner or operator
20 shall promptly perform all of the following abatement measures:

21 (a) Remove as much of the regulated substance from the
22 underground storage tank system as is necessary to prevent fur-
23 ther release to the environment.

24 (b) Visually inspect any aboveground releases or exposed
25 below-ground releases and prevent further migration of the
26 released substance into surrounding soils, groundwater, and
27 surface water.

1 (c) Continue to monitor and mitigate any additional fire and
2 safety hazards posed by vapors or free product that have migrated
3 from the underground storage tank system excavation zone and
4 entered into subsurface structures.

5 (d) Remove and dispose, or properly remediate, contaminated
6 soil. The director shall be given reasonable notice and opportu-
7 nity to monitor these activities.

8 (e) Measure for the presence of a release where contamina-
9 tion is most likely to be present at the underground storage tank
10 system site. In selecting sample types, sample locations, and
11 measurement methods, the owner and operator shall consider the
12 nature of the stored substance, the type of backfill, the depth
13 to groundwater, and other factors as appropriate for identifying
14 the presence and source of the release.

15 (f) Investigate to determine the possible presence of free
16 product and begin free product removal as soon as practicable.

17 (2) Within 20 days after confirmation of a release or within
18 another reasonable period of time determined by the director, the
19 owner or operator shall submit a report to the director summariz-
20 ing the initial abatement steps taken under subsection (1) and
21 any resulting information or data.

22 (3) Following confirmation of a release, unless directed to
23 do otherwise by the director, the owner or operator shall assem-
24 ble information about the site and the nature of the release,
25 including information gained while confirming the release or com-
26 pleting the initial abatement measures in subsection (1). This
27 information shall include, but is not limited to, the following:

1 (a) Data on the nature and estimated quantity of the
2 release.

3 (b) Data from available sources and site investigations con-
4 cerning the following factors: surrounding populations, water
5 quality, use and approximate locations of wells potentially
6 affected by the release, subsurface soil conditions, locations of
7 subsurface sewers, climatological conditions, and land use.

8 (c) Results of the site characterization required by subsec-
9 tion (1).

10 (d) Results of the free product investigations required by
11 subsection (1).

12 (4) Within 45 days after confirmation of a release or
13 another reasonable period of time determined by the director, the
14 owner or operator shall submit the information collected in com-
15 pliance with subsection (3) to the director in a manner that
16 demonstrates its applicability and technical adequacy.

17 (5) Following confirmation of a release, at a site where an
18 investigation indicates presence of free product, the owner or
19 operator shall promptly remove free product to the maximum extent
20 practicable as determined by the director while continuing, as
21 necessary, any actions initiated under subsection (1), or prepar-
22 ing for further actions required under this section. In meeting
23 the requirements of this section, owners and operators shall do
24 all of the following:

25 (a) Conduct free product removal in a manner that minimizes
26 the spread of contamination into previously uncontaminated zones
27 by using recovery and disposal techniques appropriate to the

1 hydrogeologic conditions at the site, and that properly treats,
2 discharges, or disposes of recovery by-products as required by
3 law.

4 (b) Use abatement of free product migration as a minimum
5 objective for the design of the free product removal system.

6 (c) Handle any flammable products in a safe and competent
7 manner to prevent fires or explosions.

8 (d) Unless directed to do otherwise by the director, prepare
9 and submit to the director, within 45 days after confirming a
10 release, a free product removal report that provides at least all
11 of the following information:

12 (i) The name of the person or persons responsible for imple-
13 menting the free product removal measures.

14 (ii) The estimated quantity, type, and thickness of free
15 product observed or measured in wells, boreholes, and
16 excavations.

17 (iii) The type of free product recovery system used.

18 (iv) Whether any discharge will take place on-site or
19 off-site during the recovery operation and where this discharge
20 will be located.

21 (v) The type of treatment applied to, and the effluent qual-
22 ity expected from, any discharge.

23 (vi) The steps that have been or are being taken to obtain
24 necessary permits for any discharge.

25 (vii) The disposition of the recovered free product.

26 (6) Within 45 days after confirmation of a release, in order
27 to determine the full extent and location of soils, groundwater,

1 and surface water contaminated by the release, and also to
2 determine the presence and concentrations of the regulated sub-
3 stance that has contaminated the groundwater, surface water, and
4 soils, the owner or operator shall submit a work plan to conduct
5 an investigation to the director for his or her review and
6 approval.

7 (7) The director shall approve or disapprove the work plan
8 submitted under subsection (6) within 30 days. Upon approval by
9 the director of the work plan, the owner or operator shall con-
10 duct the investigation and submit the results in accordance with
11 the schedule established in the approved work plan.

12 Sec. 4907. (1) At any point after reviewing the information
13 submitted in compliance with section 4906, the director may
14 require the owner or operator to submit additional information or
15 to develop and submit a corrective action plan for responding to
16 contaminated soils, groundwater, and surface water. If a plan is
17 required, the owner or operator shall submit the plan according
18 to a schedule established by the director. Alternatively, the
19 owner or operator may, after fulfilling the requirements of
20 section 4906, choose to submit a corrective action plan for
21 responding to contaminated soil, groundwater, and surface water.
22 In either case, the owner or operator is responsible for submit-
23 ting a plan that provides for adequate protection of human health
24 and the environment as determined by the director, and shall
25 modify his or her plan as necessary to meet this standard.

1 (2) The director shall approve the corrective action plan
2 only after ensuring that implementation of the plan will
3 adequately protect human health, safety, and the environment.

4 (3) The director shall approve or disapprove the corrective
5 action plan within 45 days after it has been received. If the
6 director disapproves the corrective action plan, he or she shall
7 provide the owner or operator with a list of deficiencies, and
8 recommendations that if incorporated would result in the plan's
9 approval, along with a schedule for resubmittal. The owner or
10 operator shall submit an amended corrective action plan according
11 to the schedule specified by the director.

12 (4) Upon approval of the corrective action plan or as
13 directed by the director, the owner or operator shall implement
14 the plan, including modifications to the plan required by the
15 director. The owner or operator shall monitor, evaluate, and
16 report the results of implementing the plan in accordance with a
17 schedule established by the director.

18 (5) The owner or operator may, in the interest of minimizing
19 environmental contamination and promoting more effective cleanup,
20 begin cleanup of soil and groundwater before the corrective
21 action plan is approved, if he or she does all of the following:

22 (a) Notify the director of his or her intention to begin
23 cleanup.

24 (b) Comply with any conditions imposed by the director,
25 including halting cleanup or mitigating adverse consequences from
26 cleanup activities.

1 (c) Incorporate these self-initiated cleanup measures in the
2 corrective action plan that is submitted to the director for
3 approval.

4 (6) After the director approves a corrective action plan
5 under this section, and the owner or operator has completed in
6 full all corrective actions required in the plan, and is in com-
7 pliance with this part, the director shall execute a document
8 stating that the corrective actions have been completed. If an
9 owner or operator delivers to the director a written statement
10 asserting that all corrective actions have been completed and
11 includes with this statement documentation sufficient to show
12 full compliance with the approved corrective action plan and this
13 part, the director shall respond within 60 days of receipt of
14 that statement by either executing a document stating that the
15 corrective actions have been completed or by executing a document
16 indicating what corrective actions remain to be completed.
17 Failure to respond shall be considered as if it were a response
18 that corrective action remains to be completed, and the owner or
19 operator may request a hearing before the commission in the same
20 manner as provided in section 4909.

21 (7) The director may issue corrective action orders pursuant
22 to section 4909 to the owner or operator as necessary to carry
23 out the purposes of this part.

24 Sec. 4908. (1) For each confirmed release that requires a
25 corrective action plan under section 4907, the director shall
26 provide notice to the public by means designed to reach those
27 members of the public directly affected by the release and the

1 planned corrective action as determined appropriate by the
2 director. The director shall ensure that site release informa-
3 tion and the corrective action plan are made available to the
4 public for inspection upon request.

5 (2) If implementation of an approved corrective action plan
6 does not achieve the established cleanup levels in the plan and
7 termination of that plan is under consideration by the director,
8 the director shall give public notice that complies with
9 subsection (1).

10 Sec. 4909. (1) The director may issue a corrective action
11 order requiring compliance with this part. A corrective action
12 order issued under this section shall state with reasonable spec-
13 ificity the basis for issuance of the order, and specify a rea-
14 sonable time for compliance.

15 (2) Within 14 days after issuance of a corrective action
16 order, the owner or operator may do either of the following:

17 (a) Consent in writing to the corrective action order.

18 (b) Request an opportunity for hearing before the
19 commission.

20 (3) A hearing requested under subsection (2)(b) shall be
21 held at the next regular meeting of the commission which is
22 scheduled at least 10 days after issuance of the order. At the
23 hearing, the commission may do any of the following:

24 (a) Make a final decision with respect to the order.

25 (b) Refer the matter to a hearings officer for contested
26 case proceedings pursuant to the administrative procedures act of

1 1969, Act No. 306 of the Public Acts of 1969, being sections
2 24.201 to 24.328 of the Michigan Compiled Laws.

3 (c) Take other actions as may be necessary to protect the
4 public health, safety, welfare, or the environment.

5 (4) If the commission has not taken 1 of the actions pro-
6 vided in subsection (3) within 30 days after a request made pur-
7 suant to subsection (2), then the owner or operator may request a
8 contested case hearing pursuant to Act No. 306 of the Public Acts
9 of 1969.

10 (5) A final decision in an administrative proceeding pursu-
11 ant to subsection (3) or (4) may be reviewed by a circuit court
12 for the county of Ingham or the county where the release occurred
13 or where the owner or operator resides.

14 (6) The pendency of any administrative or judicial proceed-
15 ing on a corrective action order does not preclude the director
16 from taking corrective action pursuant to section 4910.

17 Sec. 4910. If the director learns of a suspected or con-
18 firmed release from an underground storage tank system, the
19 director may undertake corrective actions necessary to protect
20 the public health, safety, welfare, or the environment.

21 Sec. 4911. (1) Except as otherwise provided in this sec-
22 tion, liability imposed upon an owner or operator under this part
23 is strict and without regard to fault, as applied to either or
24 both of the following:

25 (a) The obligation to carry out all corrective action
26 requirements pursuant to this part.

1 (b) Any liability for other relief provided in
2 section 4912(1).

3 (2) An owner or operator is not liable under this part if
4 any of the following occur:

5 (a) The owner or operator proves that the release was caused
6 solely by any of the following:

7 (i) An act of God.

8 (ii) An act of war.

9 (iii) An act or omission of a third party without regard to
10 whether the act or omission was or was not negligent.

11 (iv) Any combination of subparagraphs (i) to (iii).

12 (b) The owner would otherwise be liable solely as the owner
13 of the real property on which the underground tank system is or
14 was located, the owner acquired that property after the release
15 of a regulated substance, and the owner can establish 1 or more
16 of the circumstances described in the following subparagraphs by
17 a preponderance of the evidence:

18 (i) At the time the owner acquired the property, the owner
19 did not know and had no reason to know that any release of a reg-
20 ulated substance had occurred on, in, or at the property.

21 (ii) The owner is a government entity that acquired the
22 property through an involuntary transfer or acquisition.

23 (iii) The owner acquired the property by inheritance or
24 devise.

25 (iv) The owner is a government entity that acquired the
26 property from the state by statutory transfer pursuant to Act

1 No. 73 of the Public Acts of 1970, being sections 259.801 to
2 259.823 of the Michigan Compiled Laws.

3 (3) To establish that the owner had no reason to know, as
4 provided in subsection (2)(b)(i), the owner must have undertaken,
5 at the time of acquisition, all appropriate inquiry into the pre-
6 vious ownership and uses of the property consistent with good
7 commercial or customary practice in an effort to minimize
8 liability. For purposes of the preceding sentence, the court
9 shall take into account any specialized knowledge or experience
10 on the part of the owner, the relationship of the purchase price
11 to the value of the property if uncontaminated, commonly known or
12 reasonably ascertainable information about the property, the
13 obviousness of the presence or likely presence of contamination
14 at the property, and the ability to detect the contamination by
15 appropriate investigation.

16 (4) Notwithstanding subsection (2), if the owner obtained
17 actual knowledge of the release of a regulated substance at the
18 property when the owner owned the property and then subsequently
19 transferred ownership of the property to another person without
20 disclosing this knowledge, the owner shall be treated as liable
21 under this part and a defense under subsection (2)(b) is not
22 available to the owner.

23 (5) This section does not affect the liability under this
24 part of a person who, by any act or omission, caused or contrib-
25 uted to the release of a regulated substance that is the subject
26 of the action relating to the property.

1 (6) An indemnification, hold harmless, or similar agreement
2 or conveyance is not effective to transfer from the owner or
3 operator or from any person who may be liable for a release or
4 threat of release under this part, to any other person the
5 liability imposed under this part. This subsection does not bar
6 any agreement to insure, hold harmless, or indemnify a party to
7 the agreement for any liability under this part.

8 (7) A cause of action that an owner or operator or any other
9 person subject to liability under this part, or a guarantor, has
10 or would have by reason of subrogation or otherwise against any
11 person is not barred by this part.

12 (8) The owner or operator, or both, is liable to the state
13 for costs that are incurred by the state for taking corrective
14 action or enforcement action pursuant to this part.

15 (9) Unpaid costs incurred by the state for taking corrective
16 action constitute a lien in favor of the state against the land
17 on which the underground storage tank system is located and the
18 tank system itself and shall have priority over all other liens
19 and encumbrances except such liens and encumbrances recorded
20 before the date the lien under this part is recorded. This lien
21 arises when the agency first incurs costs for taking corrective
22 action.

23 (10) The lien provided in subsection (9) is perfected
24 against real property when a notice of lien is recorded with the
25 register of deeds in the county in which real property is
26 located. Subject to subsection (9), recording of the notice of
27 lien relates back to the date on which the lien arose and

1 perfects the lien as of that date. The recording of the notice
2 of lien relates only to those unpaid costs arising during the 12
3 months immediately preceding the recording date, unless this pro-
4 vision is specifically waived, in writing, by the owner as part
5 of an approved corrective action plan.

6 Sec. 4912. (1) The attorney general may, on behalf of the
7 director, commence a civil action seeking any of the following:

8 (a) A temporary or permanent injunction.

9 (b) Recovery of all costs incurred by the state for taking
10 corrective action.

11 (c) Damages for the full injury done to the natural
12 resources of this state along with enforcement and litigation
13 costs incurred by the state.

14 (d) A civil fine of not more than \$10,000.00 for each under-
15 ground storage tank system for each day of noncompliance with a
16 requirement of this part, or a rule promulgated pursuant to
17 section 4914. A fine imposed under this subdivision shall be
18 based upon the seriousness of the violation and any good faith
19 efforts by the violator to comply with this part or a rule
20 promulgated under this part.

21 (e) A civil fine of not more than \$25,000.00 for each day of
22 noncompliance with a corrective action order issued pursuant to
23 this part. A fine imposed under this subdivision shall be based
24 upon the seriousness of the violation and any good faith efforts
25 by the violator to comply with the corrective action order.

1 (f) Recovery of funds provided to the state from the United
2 states environmental protection agency's leaking underground
3 storage tank trust fund.

4 (2) A civil action brought under subsection (1) may be
5 brought in the circuit court for the county of Ingham, in the
6 county where the release occurred, or in the county where the
7 defendant resides.

8 (3) The state may, when appropriate, return to the United
9 States environmental protection agency any federal funds recov-
10 ered under this part. The state may also retain any federal
11 funds recovered under this part in a separate account for use in
12 implementing this part with the use of those funds subject to
13 approval of the United States environmental protection agency.

14 Sec. 4913. (1) Upon request of the director for the purpose
15 of developing or assisting in the development of a rule, conduct-
16 ing an investigation, taking corrective action, or enforcing this
17 part, the owner or operator shall furnish the director with all
18 information about all of the following:

19 (a) The underground storage tank system and its associated
20 equipment.

21 (b) The past or present contents of the underground storage
22 tank system.

23 (c) Any releases and investigations of releases.

24 (2) The department has the right to enter at all reasonable
25 times in or upon any private or public property for any of the
26 following purposes:

- 1 (a) Inspecting an underground storage tank system.
- 2 (b) Obtaining samples of any substance from an underground
3 storage tank system.
- 4 (c) Requiring and supervising the conduct of monitoring or
5 testing of an underground storage tank system, its associated
6 equipment, or contents.
- 7 (d) Conducting monitoring or testing of an underground stor-
8 age tank system if there is no identified responsible party.
- 9 (e) Conducting monitoring or testing, or taking samples of
10 soils, air, surface water, or groundwater.
- 11 (f) Taking corrective action.
- 12 (3) All inspections and investigations undertaken by the
13 department under this section shall be commenced and completed
14 with reasonable promptness.
- 15 (4) The attorney general, on behalf of the director, may do
16 either of the following:
- 17 (a) Petition a court of appropriate jurisdiction for a war-
18 rant to authorize access to any private or public property to
19 carry out this part.
- 20 (b) Commence a civil action pursuant to section 4912 for an
21 order authorizing the department to enter any private or public
22 property as necessary to carry out this part.
- 23 Sec. 4914. The director may promulgate rules as are neces-
24 sary to implement this part.
- 25 Sec. 4915. The director may enter into an agreement with a
26 local unit of government, or a state or federal agency, to aid in

1 the implementation or enforcement of this part, and to obtain
2 financial assistance.

3 Sec. 4916. This part does not prohibit the department of
4 state police, state fire marshal division, from taking action in
5 any situation if it is otherwise authorized by law to act.

6 Sec. 4917. This part is repealed upon the expiration of 12
7 months after part 51 becomes invalid pursuant to section 5123(3)
8 of part 51.

9 PART 51

10 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE

11 Sec. 5101. The objectives of this part are to assist per-
12 sons in this state in meeting the financial responsibility
13 requirements provided for in subtitle I of the solid waste dis-
14 posal act, title II Public Law 89-272, 42 U.S.C. 6991 to 6991i,
15 to address certain problems associated with releases from petro-
16 leum underground storage tank systems, and to promote compliance
17 with parts 47 and 49.

18 Sec. 5102. For purposes of this part, the words and phrases
19 defined in sections 5103 and 5104 have the meanings ascribed to
20 them in those sections.

21 Sec. 5103. As used in this part:

22 (a) "Administrator" means the fund administrator provided
23 for in section 5112.

24 (b) "Bid" means a proposal signed by a contractor listed on
25 the approved contractor list provided for in section 5121 stating
26 the name and address of the contractor, a specific itemized list

1 of the work proposed to be completed by the contractor, and the
2 itemized cost of the work proposed to be completed.

3 (c) "Board" means the Michigan underground storage tank
4 financial assurance policy board created in section 5120.

5 (d) "Corrective action" means an action to stop, minimize,
6 eliminate, or clean up a release or its effects, as may be neces-
7 sary to protect the public health, safety, welfare, or the
8 environment. Corrective action includes, but is not limited to,
9 release investigation, mitigation of fire and safety hazards,
10 tank repair or removal, soil remediation, hydrogeological inves-
11 tigations, free product removal, groundwater remediation and mon-
12 itoring, exposure assessments, the temporary or permanent reloca-
13 tion of residents, and providing alternate water supplies.

14 (e) "Corrective action plan" means a corrective action plan
15 submitted under section 4907 of part 49.

16 (f) "Deductible" means the deductible provided for in
17 section 5113.

18 (g) "Department" means the department of management and
19 budget.

20 (h) "Financial responsibility requirements" means the finan-
21 cial responsibility for taking corrective action and for compen-
22 sating third parties for bodily injury and property damage caused
23 by a release from an underground storage tank system that the
24 owner or operator of an underground storage tank system is
25 required to demonstrate under subtitle I of the solid waste dis-
26 posal act, title II of Public Law 89-272, 42 U.S.C. 6991 to
27 6991i.

1 (i) "Fund" means the Michigan underground storage tank
2 financial assurance fund created in section 5105.

3 (j) "Heating oil" means petroleum that is No. 1, No. 2,
4 No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6
5 technical grades of fuel oil; other residual fuel oils including
6 navy special fuel oil and bunker C; and other fuels when used as
7 substitutes for 1 of these fuel oils.

8 (k) "Indemnification" means indemnification of a person for
9 a judgment entered against that person in a court of law or for a
10 settlement entered into by that person and approved by the attor-
11 ney general, if the judgment or settlement arises out of an
12 injury suffered because of a release from a petroleum underground
13 storage tank system operated by that person.

14 (l) "Location" means a facility or parcel of property where
15 petroleum underground storage tank systems are situated as iden-
16 tified by the underground storage tank notification filed pursu-
17 ant to part 47.

18 (m) "Occurrence" means an accident, including continuous or
19 repeated exposure to conditions, that results in a release from
20 an underground storage tank system.

21 (n) "Operator" means a person who is presently, or was at
22 the time of a release, in control of, or responsible for, the
23 operation of a petroleum underground storage tank system.

24 (o) "Owner" means a person who holds, or at the time of a
25 release held, a legal, equitable, or possessory interest of any
26 kind in an underground storage tank system, or in the property on
27 which an underground storage tank system is located, including,

1 but not limited to, a trust, vendor, vendee, lessor, or lessee.
2 However, owner does not include a person or a regulated financial
3 institution who, without participating in the management of an
4 underground storage tank system and who is not otherwise engaged
5 in petroleum production, refining, or marketing relating to the
6 underground storage tank system, is acting in a fiduciary capac-
7 ity or who holds indicia of ownership primarily to protect the
8 person's or the regulated financial institution's security inter-
9 est in the underground storage tank system or the property on
10 which it is located. This exclusion does not apply to a grantor,
11 beneficiary, remainderman, or other person who could directly or
12 indirectly benefit financially from the exclusion other than by
13 the receipt of payment for fees and expenses related to the
14 administration of a trust.

15 Sec. 5104. (1) "Petroleum" means crude oil, crude oil frac-
16 tions, and refined petroleum fractions including gasoline, kero-
17 sene, heating oils, and diesel fuels.

18 (2) "Petroleum underground storage tank system" means an
19 underground storage tank system used for the storage of
20 petroleum.

21 (3) "Refined petroleum" means aviation gasoline, middle dis-
22 tillates, jet fuel, kerosene, gasoline, and residual oils.

23 (4) "Regulatory fee" means the environmental protection
24 regulatory fee imposed under section 5107.

25 (5) "Release" means any spilling, leaking, emitting, dis-
26 charging, escaping, leaching, or disposing from a petroleum

1 underground storage tank system into groundwater, surface water,
2 or subsurface soils.

3 (6) "Underground storage tank system" means a tank or combi-
4 nation of tanks, including underground pipes connected to the
5 tank or tanks, which is or was used to contain an accumulation of
6 regulated substances, and is not currently being used for any
7 other purpose, and the volume of which, including the volume of
8 the underground pipes connected to the tank or tanks, is 10% or
9 more beneath the surface of the ground. An underground storage
10 tank system does not include any of the following:

11 (a) A farm or residential tank of 1,100 gallons or less
12 capacity used for storing motor fuel for noncommercial purposes.

13 (b) A tank used for storing heating oil for consumptive use
14 on the premises where the tank is located.

15 (c) A septic tank.

16 (d) A pipeline facility, including gathering lines regulated
17 under either of the following:

18 (i) The natural gas pipeline safety act of 1968, Public Law
19 90-481, 49 U.S.C. APP 1671 to 1677, 1679a to 1682, and 1683 to
20 1687.

21 (ii) Sections 201 to 215, 217, and 219 of the hazardous
22 liquid pipeline safety act of 1979, title II of Public Law
23 96-129, 49 U.S.C. APP 2001 to 2015.

24 (e) A surface impoundment, pit, pond, or lagoon.

25 (f) A storm water or wastewater collection system.

26 (g) A flow-through process tank.

1 (h) A liquid trap or associated gathering lines directly
2 related to oil or gas production and gathering operations.

3 (i) A storage tank situated in an underground area, such as
4 a basement, cellar, mineworking, drift, shaft, or tunnel if the
5 storage tank is situated upon or above the surface of the floor.

6 (j) Any pipes connected to a tank that is described in sub-
7 divisions (a) to (i).

8 (k) An underground storage tank system holding hazardous
9 wastes listed or identified under subtitle C of the solid waste
10 disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to
11 6931 and 6933 to 6939b, or a mixture of such hazardous waste and
12 other regulated substances.

13 (l) A wastewater treatment tank system that is part of a
14 wastewater treatment facility regulated under section 307(b) of
15 title III of the federal water pollution control act,
16 chapter 758, 86 Stat. 856, 33 U.S.C. 1317, or section 402 of
17 title IV of the federal water pollution control act, chapter 758,
18 86 Stat. 880, 33 U.S.C. 1342.

19 (m) Equipment or machinery that contains regulated sub-
20 stances for operational purposes such as hydraulic lift tanks and
21 electrical equipment tanks.

22 (n) An underground storage tank system with a capacity of
23 110 gallons or less.

24 (o) An underground storage tank system that contains a de
25 minimis concentration of regulated substances.

26 (p) An emergency spill or overflow containment underground
27 storage tank system that is expeditiously emptied after use.

1 (q) A wastewater treatment tank system.

2 (r) An underground storage tank system containing radioac-
3 tive material that is regulated under the atomic energy act of
4 1954, chapter 1073, 68 Stat. 919.

5 (s) An underground storage tank system that is part of an
6 emergency generator system at nuclear power generation facilities
7 regulated by the nuclear regulatory commission under appendix A
8 to 10 C.F.R. part 50.

9 (t) Airport hydrant fuel distribution systems.

10 (u) Underground storage tank systems with field-constructed
11 tanks.

12 (7) "Work invoice" means a receipt signed by a contractor
13 listed on the approved contractor list provided for in
14 section 5121 stating the name and address of the contractor, a
15 specific itemized list of the work performed by the contractor,
16 and an itemized list of the cost of each of these items.

17 Sec. 5105. (1) The Michigan underground storage tank finan-
18 cial assurance fund is created.

19 (2) The state treasurer shall direct the investment of the
20 fund. Interest and earnings from fund investments shall be cred-
21 ited to the fund.

22 (3) Money in the fund at the close of the fiscal year shall
23 remain in the fund and shall not revert to the general fund.

24 (4) Money in the fund shall be expended only as follows and
25 in the following order of priority:

26 (a) For the reasonable administrative cost of implementing
27 this part by the department, the department of natural resources,

1 the department of state police, the department of treasury, and
2 the department of attorney general as annually appropriated by
3 the legislature. Administrative costs shall include the actual
4 and necessary expenses incurred by the board and its members in
5 carrying out the duties imposed by this part. Total administra-
6 tive costs expended under this subdivision shall not exceed 7% of
7 the fund's projected revenues in any year. By August 15, 1991,
8 the department shall conduct an audit of the actual administra-
9 tive costs of implementing this part and report the results of
10 this audit to the legislature.

11 (b) For the interest subsidy program established in
12 section 5119. The money expended under this subdivision shall
13 not exceed 10% of the fund's projected revenues in any year.
14 However, 10% of the revenue of the fund during the first year of
15 the fund's operation shall be expended on the interest subsidy
16 program. If this money is not expended during the first year,
17 this money shall be carried over for expenditure in the succeed-
18 ing years of the fund's operation. Additional fund revenue shall
19 not be set aside for the interest subsidy program until all of
20 the first year revenue is expended.

21 (c) For corrective action and indemnification including both
22 of the following:

23 (i) Payments for approved work invoices pursuant to this
24 part.

25 (ii) Payments for approved requests for indemnification pur-
26 suant to this part.

1 (5) The board shall make recommendations to the
2 appropriations committees in the senate and house of
3 representatives on the distribution and amount of administrative
4 costs under subsection (4). The board shall provide a copy of
5 these recommendations to each affected department.

6 Sec. 5106. (1) The emergency response fund is created in
7 the state treasury.

8 (2) The state treasurer shall direct the investment of the
9 emergency response fund. Interest and earnings of the emergency
10 response fund shall be credited to the emergency response fund.

11 (3) Money in the emergency response fund at the close of the
12 fiscal year shall remain in the emergency response fund and shall
13 not revert to the general fund.

14 (4) Except as provided in section 5127, money in the emer-
15 gency response fund shall not exceed \$1,000,000.00.

16 (5) Except as provided in section 5126, money in the emer-
17 gency response fund shall be expended by the director of the
18 department of natural resources to undertake corrective actions
19 pursuant to part 49.

20 (6) Not more than \$1,000,000.00 shall be expended from the
21 emergency response fund in any year.

22 (7) If money in the emergency response fund is expended
23 under subsection (5), the person or persons responsible for the
24 corrective action are liable to the state for all such
25 expenditures.

26 Sec. 5107. (1) An environmental protection regulatory fee
27 is imposed on all refined petroleum products sold for resale in

1 this state or consumption in this state. The regulatory fee
2 shall be used pursuant to section 5105(4) for the cleanup and
3 prevention of environmental contamination resulting from releases
4 of refined petroleum products from underground storage tank
5 systems. The regulatory fee shall be charged for capacity utili-
6 zation of underground storage tanks measured on a per gallon
7 basis. The regulatory fee shall be charged against all refined
8 petroleum products sold for resale in this state or consumption
9 in this state so as to not exclude any products that may be
10 stored in an underground tank at any point after the petroleum is
11 refined. The regulatory fee is 7/8 cent per gallon for each
12 gallon of refined petroleum sold for resale in this state or con-
13 sumption in this state, with the per gallon charge being a direct
14 measure of capacity utilization of an underground storage tank
15 system.

16 (2) The department of treasury shall precollect regulatory
17 fees from persons who refine petroleum in this state for resale
18 in this state or consumption in this state and persons who import
19 refined petroleum into this state for resale or consumption in
20 this state. The department of treasury shall collect regulatory
21 fees that can be collected at the same time as the sales tax
22 under section 6a of the general sales tax act, Act No. 167 of the
23 Public Acts of 1933, being section 205.56a of the Michigan
24 Compiled Laws, at that time. The remainder of the regulatory
25 fees shall be collected in the manner determined by the state
26 treasurer.

1 (3) A public utility with more than 500,000 customers in
2 this state is exempt from any fee or assessment imposed under
3 this part if that fee or assessment is imposed on petroleum used
4 by that public utility for the generation of steam or
5 electricity.

6 (4) All regulatory fees collected pursuant to this part
7 shall be deposited into the emergency response fund created in
8 section 5106 until the emergency response fund reaches
9 \$1,000,000.00. When the emergency response fund is at
10 \$1,000,000.00, all regulatory fees shall be deposited into the
11 fund.

12 (5) Beginning July 18, 1990 and every quarter thereafter,
13 the administrator shall determine if fund revenues are sufficient
14 to pay expected expenditures from the fund. If expected expendi-
15 tures are anticipated to exceed fund revenues, the state trea-
16 surer shall notify the advisory board and, with the advice of the
17 board, shall advise the legislature of the estimated increase in
18 the regulatory fee that is necessary to pay expected expenditures
19 or make other recommendations to revise this part that would
20 improve the security of the fund. If anticipated expenditures
21 are significantly below anticipated revenues, the state treasurer
22 shall notify the advisory board and, with the advice of the
23 board, shall recommend to the legislature a reduction of the
24 regulatory fee.

25 (6) If the state treasurer determines that fund revenues
26 will not be sufficient to pay expected expenditures from the
27 fund, the state treasurer shall notify the administrator, and 90

1 days after this notification has been given, the administrator
2 shall not accept any new bids, work invoices, or requests for
3 indemnification. Upon receiving this notification from the state
4 treasurer, the administrator shall notify, by certified mail, the
5 owners and operators of underground storage tank systems regis-
6 tered under part 47 that funding under this part will no longer
7 be available for new claims after the 90-day period has expired.
8 However, work invoices and requests for indemnification that were
9 submitted prior to or during this 90-day period may be paid to
10 the extent money is available in the fund as provided in this
11 part.

12 (7) The department of treasury may audit, enforce, collect,
13 and assess the fee imposed by this part in the same manner and
14 subject to the same requirements as revenues collected pursuant
15 to Act No. 122 of the Public Acts of 1941, being sections 205.1
16 to 205.31 of the Michigan Compiled Laws.

17 Sec. 5108. (1) Notwithstanding any other provision in this
18 part, regulatory fees shall be calculated and paid upon gross or
19 metered gallons with respect to all "light" petroleum products.
20 With respect only to "heavy" petroleum products (no. 4, no. 5,
21 no. 6 residual oils), regulatory fees shall be calculated and
22 paid upon net or temperature-corrected gallons.

23 (2) Notwithstanding any other provision in this part, if a
24 person receives refined petroleum products in this state for
25 resale in this state or consumption in this state pursuant to a
26 product exchange agreement, the department of treasury shall
27 collect the regulatory fees from that person.

1 (3) As used in this section, "product exchange agreement"
2 means an agreement between buyers and sellers of refined petro-
3 leum products in which refined petroleum products in bulk quan-
4 tity are made available to a person solely in consideration of
5 that person making available a like volume of refined petroleum
6 products to the other party at some other location.

7 Sec. 5109. (1) An owner or operator may receive money from
8 the fund for corrective action or indemnification only if all of
9 the following requirements are satisfied:

10 (a) The release from which the corrective action or indemni-
11 fication arose was discovered and reported on or after July 18,
12 1989. However, money in the fund shall not be expended until the
13 fund begins operating pursuant to section 5112.

14 (b) The petroleum underground storage tank from which the
15 release occurred was, at the time of discovery of the release, in
16 compliance with the registration requirements of part 47.

17 (c) The owner or operator was at the time of discovery of
18 the release in compliance with all record-keeping and reporting
19 requirements of parts 47 and 49, the fire prevention code, Act
20 No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33
21 of the Michigan Compiled Laws, rules promulgated under each of
22 these parts or acts, or subtitle I of the solid waste disposal
23 act, title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i, or
24 rules promulgated under that act. Records kept under these parts
25 and acts shall be valid and verifiable.

26 (d) The owner or operator has provided the administrator
27 with proof of financial responsibility for the deductible amount

1 that will satisfy the requirements for financial responsibility
2 instruments under subtitle I of the solid waste disposal act.

3 (e) The owner or operator has not defaulted on a loan subsi-
4 dized through the interest subsidy program established in
5 section 5119.

6 (f) The owner or operator is not the United States
7 government.

8 (2) Either the owner or the operator may receive money from
9 the fund under this part for an occurrence, but not both.

10 (3) An owner or operator who is a public utility with more
11 than 500,000 customers in this state is ineligible to receive
12 money from the fund for corrective action or indemnification
13 associated with a release from a petroleum underground storage
14 tank system used to supply petroleum for the generation of steam
15 electricity.

16 (4) If an owner or operator receives money from the fund
17 under this part for an occurrence, the owner and operator are not
18 eligible to receive money from the fund for a subsequent occur-
19 rence unless the owner or operator has upgraded or replaced all
20 underground storage tank systems after the first occurrence at
21 the location of the occurrence so as to meet the requirements of
22 subtitle I of the solid waste disposal act, for a new underground
23 storage tank system installed after January 1, 1989 and the rules
24 promulgated under part 47.

25 Sec. 5110. The administrator shall approve expenditures for
26 corrective action and indemnification, on behalf of an owner or
27 operator, of not more than a total of \$1,000,000.00 of approved

1 work invoices, and approved requests for indemnification per
2 petroleum underground storage tank system per occurrence provided
3 that the owner or operator has met the requirements of this
4 part.

5 Sec. 5111. Notwithstanding any other provision of this
6 part, effective 3 years after the date the fund begins operating
7 as provided in section 5112, an owner or operator of a petroleum
8 underground storage tank system that has not met the standards
9 provided in subtitle I of the solid waste disposal act, title II
10 of Public Law 89-272, 42 U.S.C. 6991 to 6991i, and the rules
11 promulgated under part 47 for a new underground storage tank
12 system installed after January 1, 1989, and who has not submitted
13 a complete application and satisfied all other requirements of
14 the department for an interest subsidy under section 5119 on a
15 loan that would bring the petroleum underground storage tank
16 system into compliance with the standards provided in subtitle I
17 of the solid waste disposal act, and the rules promulgated under
18 part 47 for a new underground storage tank system installed after
19 January 1, 1989, is ineligible to receive money from the fund for
20 indemnification associated with a release from that petroleum
21 underground storage tank system.

22 Sec. 5112. The department shall employ a person to serve as
23 the fund administrator. The administrator shall be responsible
24 for processing requests for payments from the fund and approving
25 those requests as provided in this part. Beginning February 15,
26 1990, the fund shall begin operating and the administrator shall
27 begin to accept work invoices, bids, and requests for

1 indemnification. However, if the state treasurer determines that
2 there is sufficient money in the fund, the state treasurer may
3 establish an earlier date in which the fund may begin operating.

4 Sec. 5113. Prior to being eligible to receive money from
5 the fund in the event of an occurrence, the owner or operator is
6 responsible for the payment of the first \$10,000.00 of corrective
7 action or indemnification costs associated with the occurrence
8 per underground storage tank system per occurrence. This amount
9 may be referred to as the deductible amount.

10 Sec. 5114. If the department of natural resources approves
11 a corrective action plan under part 49, the department of natural
12 resources shall forward a copy of the corrective action plan to
13 the administrator.

14 Sec. 5115. (1) To access the fund for corrective action,
15 the owner or operator shall follow the procedures outlined in
16 this section. The owner or operator shall prepare a corrective
17 action plan pursuant to part 49. After preparing a corrective
18 action plan, the owner or operator may submit a bid to the
19 administrator.

20 (2) Upon receipt of a bid under subsection (1), the adminis-
21 trator shall make all of the following determinations:

22 (a) Whether the department of natural resources has deter-
23 mined that work performed or proposed to be performed is consis-
24 tent with the corrective action plan.

25 (b) Whether the cost of performing the work is reasonable.

26 (c) Whether the owner or operator is eligible to receive
27 funding under this part.

1 (3) If the administrator determines under subsection (2)
2 that the bid is both reasonable in terms of cost and consistent
3 with the corrective action plan and the owner or operator is eli-
4 gible for funding under this part, the administrator shall
5 approve the bid and notify the owner or operator who submitted
6 the bid of the approval. If the administrator determines that
7 the cost of the bid is not reasonable, that the work is not con-
8 sistent with the corrective action plan, or that the owner or
9 operator is not eligible for funding under this part, the admin-
10 istrator shall deny the bid and give notice of the denial to the
11 owner or operator who submitted the bid.

12 (4) The owner or operator may submit work invoices to the
13 administrator after approval of a bid under subsection (3). Upon
14 receipt of a work invoice, the administrator shall make the fol-
15 lowing determinations:

16 (a) Whether the work invoice is reasonable in terms of cost
17 and consistent with the approved bid.

18 (b) Whether the department of natural resources has deter-
19 mined that the work performed is consistent with the corrective
20 action plan.

21 (5) If the administrator determines that the work invoice
22 does not meet the requirements of subsection (4), he or she shall
23 deny the work invoice and give notice of the denial to the owner
24 or operator who submitted the work invoice.

25 (6) The administrator shall keep records of approved bids
26 and approved work invoices. If the owner or operator has
27 submitted approved work invoices totaling the deductible amount,

1 then the administrator shall forward approved work invoices to
2 the state treasurer, if the owner or operator has not exceeded
3 the allowable amount of expenditure provided in section 5110.

4 (7) The administrator may approve a reimbursement for a work
5 invoice that was paid by an owner or operator for corrective
6 action taken pursuant to part 49, if the corrective action meets
7 the requirements of part 49. Additionally, the receipt for the
8 payment shall meet the requirements of this part for an approved
9 bid and an approved work invoice.

10 (8) The department of natural resources shall determine
11 whether the work performed is consistent with the approved cor-
12 rective action plan.

13 (9) Except as provided in subsection (10), upon receipt of
14 an approved work invoice, the state treasurer shall make a pay-
15 ment to the contractor listed on the approved work invoice and
16 bid within 30 days if sufficient money exists in the fund.

17 (10) Upon direction of the administrator, the state trea-
18 surer may withhold partial payment of money on approved work
19 invoices to assure acceptable completion of the proposed work.

20 (11) Upon receipt of an approved work invoice, the state
21 treasurer shall make a payment to the owner or operator within
22 30 days if sufficient money exists in the fund.

23 Sec. 5116. (1) To access the fund for indemnification, the
24 owner or operator shall submit to the administrator a request for
25 indemnification containing the information required by the
26 administrator. If the owner or operator is eligible for funding
27 under this part, the administrator shall forward a copy of the

1 request for indemnification to the attorney general. The
2 attorney general shall approve the request for indemnification if
3 there is a legally enforceable judgment against the owner or
4 operator caused by a release or if a settlement with a third
5 party due to a release is reasonable. If a request for indemni-
6 fication is approved by the attorney general, the administrator
7 shall review whether the owner or operator has met the deductible
8 requirements as provided in this part, has not exceeded the
9 allowable amount of expenditure provided in section 5110, and is
10 eligible under section 5111. If, upon review, the owner or oper-
11 ator is eligible to receive funding for the indemnification under
12 this part for the amount requested, the administrator shall for-
13 ward the approved request for indemnification to the department
14 of treasury.

15 (2) The administrator shall keep records of all approved
16 requests for indemnifications.

17 (3) The state treasurer shall make a payment to an owner or
18 operator for an approved indemnification request within 30 days
19 if sufficient money exists in the fund.

20 Sec. 5117. (1) The state treasurer shall pay approved work
21 invoices and approved requests for indemnification in the order
22 in which they are received. If there is insufficient money in
23 the fund to make a payment, then a payment shall not be made.
24 However, approved work invoices and approved requests for indem-
25 nification that are not funded may be paid if revenues of the
26 fund become available.

1 (2) Neither the fund nor the state are liable for approved
2 bids, approved work invoices, or approved requests for
3 indemnification if money in the fund is insufficient to meet
4 these claims.

5 Sec. 5118. (1) If the administrator denies a bid or work
6 invoice, or request for indemnification, the owner or operator
7 who submitted the claim may, within 14 days following the denial,
8 request review by the board. Upon review, if the board deter-
9 mines that the bid, work invoice, or request for indemnification
10 should be approved, the administrator shall approve it.

11 (2) A person who is denied approval by the board after
12 review under subsection (1) may request a contested case hearing
13 pursuant to the administrative procedures act of 1969, Act
14 No. 306 of the Public Acts of 1969, being sections 24.201 to
15 24.328 of the Michigan Compiled Laws.

16 Sec. 5119. (1) The department of treasury in cooperation
17 with the board shall establish an interest subsidy program
18 through rules. This program shall provide for interest subsi-
19 dies, upon application, to the owner or operator of a petroleum
20 underground storage tank system who meets the applicable require-
21 ments of section 5109(1). Money in the fund shall not be used
22 for loans but shall be used to provide interest subsidies to len-
23 ders on loans for the replacement of a petroleum underground
24 storage tank system.

25 (2) Interest subsidies shall be made under this section,
26 upon application, for the replacement of existing petroleum
27 underground storage tank systems with petroleum underground

1 storage tank systems that meet the requirements of subtitle I of
2 the solid waste disposal act, title II of Public Law 89-272, 42
3 U.S.C. 6991 to 6991i, for new underground storage tank systems
4 installed after January 1, 1989 and the rules promulgated under
5 part 47.

6 (3) The interest subsidy provided in this section shall be
7 valid for the entire loan period.

8 (4) Applications for the interest subsidy program under this
9 section shall be submitted by July 18, 1991.

10 Sec. 5120. (1) The Michigan underground storage tank finan-
11 cial assurance policy board is created in the department.

12 (2) The board shall consist of the following:

13 (a) The director of the department, or his or her designee.

14 (b) The director of the department of natural resources, or
15 his or her designee.

16 (c) The director of the department of state police, or his
17 or her designee.

18 (d) The state treasurer, or his or her designee.

19 (e) Seven individuals appointed by the governor with the
20 advice and consent of the senate as follows:

21 (i) One individual representing an independent petroleum
22 wholesale distributor-marketer trade association.

23 (ii) One individual representing a petroleum
24 refiner-supplier trade association.

25 (iii) One individual representing a service station dealers'
26 trade association.

1 (iv) One individual representing a truck stop operators
2 trade association.

3 (v) One individual representing an environmental public
4 interest organization.

5 (vi) One individual representing the general public.

6 (vii) One individual representing local government.

7 (3) An individual appointed to the board shall serve for a
8 term of 2 years.

9 (4) A vacancy on the board shall be filled in the same
10 manner as the original appointment.

11 (5) The first meeting of the board shall be called by the
12 director of the department of management and budget. At its
13 first meeting, the board shall elect from among its members a
14 chairperson and other officers as it considers necessary. After
15 the first meeting, a meeting of the board shall be called by the
16 chairperson on his or her own initiative or by the chairperson on
17 petition of 3 or more members. Upon receipt of a petition of 3
18 or more members, a meeting shall be called for a date no later
19 than 14 days after the date of receipt of the petition.

20 (6) The business which the board may perform shall be con-
21 ducted at a public meeting of the board held in compliance with
22 the open meetings act, Act No. 267 of the Public Acts of 1976,
23 being sections 15.261 to 15.275 of the Michigan Compiled Laws.

24 (7) A majority of the members of the board constitutes a
25 quorum for the transaction of business at a meeting of the
26 board. Action by the board shall be by a majority of the votes
27 cast.

1 (8) The board shall advise the department and the
2 administrator on all matters related to the implementation of
3 this part.

4 Sec. 5121. The department of natural resources, after con-
5 sultation with the board, shall prepare and annually update a
6 list of approved contractors who, based on department of natural
7 resources guidelines, are qualified to undertake corrective
8 actions. However, in preparing this list of approved contrac-
9 tors, the department of natural resources is not responsible or
10 liable for the performance of the contractors. The department of
11 natural resources shall make this list of approved contractors
12 available to a person upon request. A contractor shall be sus-
13 pended or removed from the list for fraud or other cause as
14 determined by the department.

15 Sec. 5122. The department and the department of treasury
16 may promulgate rules necessary to implement this part.

17 Sec. 5123. (1) This part does not create any liability on
18 behalf of the state. This part does not make the state the guar-
19 antor of the fund.

20 (2) This part does not relieve any person who may be eligi-
21 ble to receive money from the fund or the emergency response fund
22 from any liability that he or she may incur as the owner or oper-
23 ator of an underground storage tank system. The state is not
24 assuming the liability of an owner or operator eligible for fund-
25 ing under this part, it is only providing assistance to such
26 owners or operators in meeting the financial responsibility
27 requirements.

1 (3) If any provision of this part is found to be
2 unconstitutional by a court of competent jurisdiction and the
3 allowable time for filing an appeal has expired or the appellant
4 has exhausted all of his or her avenues of appeal, this whole act
5 is unconstitutional and invalid.

6 Sec. 5124. During the year preceding the repeal of
7 section 5105, the department shall conduct a study to determine
8 the availability and cost of environmental impairment insurance
9 for owners and operators of underground storage tank systems and
10 shall report to the legislature on the results of this study.

11 Sec. 5125. Sections 5105 and 5107 to 5124 are repealed
12 January 18, 1995.

13 Sec. 5126. Notwithstanding any provision of this part,
14 prior to the repeal of section 5105, the state treasurer shall
15 reserve enough money in the fund to pay for interest subsidies
16 pursuant to section 5119, and for bids, work invoices, and
17 requests for indemnification that were denied by the administra-
18 tor, if subsequent to the denial the owner or operator requested
19 review by the board, requested a contested case hearing, or filed
20 a lawsuit related to the denial, and the case is still pending.
21 After this money that is reserved reverts to the emergency
22 response fund, it shall be used to pay for interest subsidies,
23 and for bids, work invoices, and requests for indemnification in
24 cases where an owner or operator is successful in persuading the
25 board, the department, or a court that the administrator's denial
26 was in error.

1 Sec. 5127. Notwithstanding the prescribed limit provided in
2 section 5106(4), upon the repeal of section 5105, all money in
3 the fund shall revert to the emergency response fund created in
4 section 5106.

5 ARTICLE III WASTE MANAGEMENT

6 PART 61 HAZARDOUS WASTE

7 Sec. 6101. For the purposes of this part, the words and
8 phrases defined in sections 6102 to 6104 have the meanings
9 ascribed to them in those sections.

10 Sec. 6102. (1) "Board" means a site review board created as
11 provided in section 6117.

12 (2) "Committee" means the hazardous waste policy committee
13 created in section 6109.

14 (3) "Contaminant" means any of the following:

15 (a) Hazardous waste as defined in R 299.9203 of the Michigan
16 administrative code.

17 (b) Any hazardous waste or hazardous constituent listed in
18 appendix VIII of part 261 or appendix IX of part 264 of title 40
19 of the code of federal regulations.

20 (4) "Corrective action" means an action determined by the
21 director or his or her designee to be necessary to protect the
22 public health, safety, welfare, or the environment, and includes,
23 but is not limited to, investigation, evaluation, cleanup, remov-
24 al, remediation, monitoring, containment, isolation, treatment,
25 storage, management, temporary relocation of people, and provi-
26 sion of alternative water supplies, or any corrective action

1 allowed under title II of the solid waste disposal act, or
2 regulations promulgated pursuant to that act.

3 (5) "Designated facility" means a hazardous waste treatment,
4 storage, or disposal facility that has received a permit or has
5 interim status under the solid waste disposal act or has a permit
6 from a state authorized under section 3006 of subtitle C of the
7 solid waste disposal act, 42 U.S.C. 6926, and which, if located
8 in this state has an operating license issued under this part,
9 has a legally binding agreement with the director that authorizes
10 operation, or is subject to the requirements of section 6123(5).

11 (6) "Disposal" means the discharge, deposit, injection,
12 dumping, spilling, leaking, or placing of a hazardous waste into
13 or on land or water in a manner that the hazardous waste or a
14 constituent of the hazardous waste may enter the environment, or
15 be emitted into the air, or discharged into water, including
16 groundwater.

17 (7) "Disposal facility" means a facility or a part of a
18 facility where managed hazardous waste, as defined by rule, is
19 intentionally placed into or on any land or water and at which
20 hazardous waste will remain after closure.

21 (8) "Failure mode assessment" means an analysis of the
22 potential major methods by which safe handling of hazardous
23 wastes may fail at a treatment, storage, or disposal facility.

24 Sec. 6103. (1) "Generation" means the act or process of
25 producing hazardous waste.

26 (2) "Generator" means any person, by site, whose act or
27 process, produces hazardous waste as identified or listed

1 pursuant to section 6128 or whose act first causes a hazardous
2 waste to become subject to regulation under this part.

3 (3) "Hazardous waste" means waste or a combination of waste
4 and other discarded material including solid, liquid, semisolid,
5 or contained gaseous material that because of its quantity; qual-
6 ity; concentration; or physical, chemical, or infectious charac-
7 teristics may cause or significantly contribute to an increase in
8 mortality or increase in serious irreversible illness or serious
9 incapacitating, but reversible illness, or pose a substantial
10 present or potential hazard to human health or the environment if
11 improperly treated, stored, transported, disposed of, or other-
12 wise managed. Hazardous waste does not include material that is
13 solid or dissolved material in domestic sewage discharge, or
14 solid or dissolved material in an irrigation return flow dis-
15 charge, or industrial discharge that is a point source subject to
16 permits under section 402 of title IV of the federal water pollu-
17 tion control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, or
18 is a source, special nuclear, or by-product material as defined
19 by the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

20 (4) "Hazardous waste management" means the systematic con-
21 trol of the collection, source separation, storage, transporta-
22 tion, processing, treatment, recovery, recycling, and disposal of
23 hazardous waste.

24 (5) "Landfill" means a disposal facility or part of a facil-
25 ity where hazardous waste is placed in or on land and which is
26 not a pile, land treatment facility, a surface impoundment, an

1 injection well, a salt dome formation, a salt bed formation, or
2 an underground mine or cave.

3 (6) "Land treatment facility" means a treatment facility or
4 part of a treatment facility at which hazardous waste is applied
5 onto or incorporated into the soil surface. If waste will remain
6 after closure, a facility described in this subsection is a dis-
7 posal facility.

8 (7) "Limited storage facility" means a storage facility that
9 meets all of the following conditions:

10 (a) Has a maximum storage capacity that does not exceed
11 25,000 gallons of hazardous waste.

12 (b) Storage occurs only in tanks or containers.

13 (c) Has not more than 200 containers on site that have a
14 capacity of 55 gallons or less.

15 (d) Does not store hazardous waste on site for more than
16 90 days.

17 (e) Does not receive hazardous waste from a treatment, stor-
18 age, or disposal facility.

19 (8) "Manifest" means a form approved by the director used
20 for identifying the quantity, composition, origin, routing, and
21 destination of hazardous waste during its transportation from the
22 point of generation to the point of disposal, treatment, or
23 storage.

24 (9) "Manifest system" means the system used for identifying
25 the quantity, composition, origin, routing, and destination of
26 hazardous waste during its transportation from the point of
27 generation to the point of disposal, treatment, or storage.

1 (10) "Mechanism" means a letter of credit; a financial test
2 that demonstrates the financial strength of the company owning a
3 treatment, storage, or disposal facility or a parent company
4 guaranteeing financial assurance for a subsidiary; or an insur-
5 ance policy that will provide funds for closure or postclosure
6 care of a treatment, storage, or disposal facility.

7 (11) "Municipal solid waste incinerator" means an incinera-
8 tor that is owned or operated by any person, and meets all of the
9 following requirements:

10 (a) The incinerator receives solid waste from off site and
11 burns only household waste from single and multiple dwellings,
12 hotels, motels, and other residential sources, or this household
13 waste together with solid waste from commercial, institutional,
14 municipal, county, or industrial sources that, if disposed of,
15 would not be required to be placed in a disposal facility
16 licensed under this part.

17 (b) The incinerator has established contractual requirements
18 or other notification or inspection procedures sufficient to
19 assure that the incinerator receives and burns only waste
20 referred to in subdivision (a).

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

23 (d) The incinerator is not an industrial furnace as defined
24 in 40 C.F.R. 260.10.

25 (12) "Municipal solid waste incinerator ash" means the sub-
26 stances remaining after combustion in a municipal solid waste
27 incinerator.

1 (13) "Municipality" means a city, village, township, or
2 Indian tribe.

3 (14) "On site" means on the same or geographically contigu-
4 ous property that may be divided by a public or private right of
5 way if the entrance and exit between the pieces of property are
6 at a crossroads intersection and access is by crossing rather
7 than going along the right of way. On site property includes
8 noncontiguous pieces of property owned by the same person but
9 connected by a right of way that the owner controls and to which
10 the public does not have access.

11 Sec. 6104. (1) "Operator" means the person responsible for
12 the overall operation of a disposal, treatment, or storage facil-
13 ity with approval of the director either by contract or license.

14 (2) "Solid waste" means that term as it is defined in part
15 63.

16 (3) "Storage" means the holding of hazardous waste for a
17 temporary period, at the end of which the hazardous waste is
18 treated, disposed of, or stored elsewhere.

19 (4) "Storage facility" means a facility or part of a facil-
20 ity where managed hazardous waste, as defined by rule, is subject
21 to storage. A generator who accumulates managed hazardous waste,
22 as defined by rule, on site in containers or tanks for less than
23 91 days or a period of time prescribed by rule is not a storage
24 facility.

25 (5) "Surface impoundment" or "impoundment" means a treat-
26 ment, storage, or disposal facility or part of a treatment,
27 storage, or disposal facility that is a natural topographic

1 depression, man-made excavation, or diked area formed primarily
2 of earthen materials, although it may be lined with man-made
3 materials, that is designed to hold an accumulation of liquid
4 wastes or wastes containing free liquids, and that is not an
5 injection well. Surface impoundments include, but are not
6 limited to, holding, storage, settling, and aeration pits, ponds,
7 and lagoons.

8 (6) "The solid waste disposal act" means title II of Public
9 Law 89-272, 42 U.S.C. 6901, 6902 to 6907, 6911, 6912 to 6914a,
10 6915 to 6916, 6921 to 6931, 6933 to 6939b, 6941, 6942 to 6949a,
11 6951 to 6956, 6961 to 6964, 6971 to 6979a, 6981 to 6987, 6991 to
12 6991i, and 6992 to 6992k.

13 (7) "Transporter" means a person engaged in the off-site
14 transportation of hazardous waste by air, rail, highway, or
15 water.

16 (8) "Treatment" means any method, technique, or process,
17 including neutralization, designed to change the physical, chemi-
18 cal, or biological character or composition of any hazardous
19 waste, to neutralize the waste, to recover energy or material
20 resources from the waste, or to render the waste nonhazardous or
21 less hazardous, safer to transport, store, or dispose of, amena-
22 ble to recovery, amenable to storage, or reduced in volume.
23 Treatment includes any activity or processing designed to change
24 the physical form or chemical composition of hazardous waste so
25 as to render it nonhazardous.

1 (9) "Treatment facility" means a facility or part of a
2 facility where managed hazardous waste, as defined by rule, is
3 subject to treatment.

4 (10) "Updated plan" means the updated state hazardous waste
5 management plan prepared under section 6110.

6 (11) "Vehicle" means a device used to transport hazardous
7 waste. Each cargo carrying body is a separate transport
8 vehicle.

9 Sec. 6105. A person shall not generate, dispose, store,
10 treat, or transport hazardous waste in this state without comply-
11 ing with the requirements of this part.

12 Sec. 6106. The generation, transportation, treatment, stor-
13 age, disposal, reuse, and recycling of municipal solid waste
14 incinerator ash is regulated under part 63, and not under this
15 part.

16 Sec. 6107. The department, the board, and the committee, in
17 the conduct of their duties as prescribed under this part, shall
18 assist in encouraging, developing, and implementing methods of
19 hazardous waste management which are environmentally sound, which
20 maximize the utilization of valuable resources, and which encour-
21 age resource conservation, including source separation, recycl-
22 ing, and waste reduction, and which are consistent with the plan
23 to be provided by the department of public health pursuant to
24 section 12103(d) of the public health code, Act No. 368 of the
25 Public Acts of 1978, being section 333.12103 of the Michigan
26 Compiled Laws. In addition, the director, the department, the
27 board, and the committee, in the conduct of their duties as

1 prescribed by this part, shall assist in implementing the policy
2 of this state to minimize the placement of untreated hazardous
3 waste in disposal facilities.

4 Sec. 6108. (1) Except as otherwise provided in this sec-
5 tion, each owner or operator of a landfill shall pay to the
6 department a fee assessed on hazardous waste disposed of in a
7 landfill. The fee shall be based on the quantity of waste speci-
8 fied on the manifest or monthly operating report and shall be
9 \$10.00 per ton, \$10.00 per cubic yard, or 1/2 cent per pound
10 depending on the unit of measure used by the owner or operator to
11 calculate the fee. The fee for fractional quantities of hazard-
12 ous waste shall be proportional. If the waste is required to be
13 listed on a manifest and the owner or operator of the landfill
14 determines that the waste quantity figure on the manifest is not
15 accurate, the owner or operator shall correct the waste quantity
16 figure on all manifest copies accompanying the shipment, note the
17 reason for the changes in the discrepancy indication space on the
18 manifest, and assess the fee in accordance with the corrected
19 waste quantity figure. Payment shall be made within 30 days
20 after the close of each quarter. The landfill owner or operator
21 shall assess off-site generators the fee. The fee for hazardous
22 waste that is generated and disposed of on the site of a landfill
23 owner or operator shall be paid by that owner or operator.

24 (2) Except as otherwise provided in this section, each owner
25 or operator of a solidification facility licensed pursuant to
26 section 6123 shall pay to the department a fee assessed on
27 hazardous waste received at the solidification facility. The fee

1 shall be based on the quantity of waste specified on the manifest
2 or monthly operating report and shall be \$10.00 per ton, \$10.00
3 per cubic yard, 4 cents per gallon, or 1/2 cent per pound depend-
4 ing on the unit of measure used by the owner or operator to cal-
5 culate the fee. The fee for fractional quantities of hazardous
6 waste shall be proportional. If the waste is required to be
7 listed on a manifest and the owner or operator of the solidifica-
8 tion facility determines that the waste quantity figure on the
9 manifest is not accurate, the owner or operator shall correct the
10 waste quantity figure on all manifest copies accompanying the
11 shipment, note the reason for the change in the discrepancy indi-
12 cation space on the manifest, and assess the fee in accordance
13 with the corrected waste quantity figure. Payment shall be made
14 within 30 days after the close of each quarter. The solidifica-
15 tion facility owner or operator shall assess off-site generators
16 the fee. The fee for hazardous waste that is generated and
17 solidified on the site of a solidification owner or operator
18 shall be paid by that owner or operator.

19 (3) The following hazardous waste is exempt from the fees
20 provided for in this section:

21 (a) Ash that results from the incineration of hazardous
22 waste or the incineration of solid waste as defined in part 63.

23 (b) Hazardous waste exempted by rule because of its charac-
24 ter or the treatment it has received.

25 (c) Hazardous waste that is removed from a site of environ-
26 mental contamination that is included in a list submitted to the
27 legislature pursuant to section 4505, or hazardous waste that is

1 removed as part of a site cleanup activity at the expense of the
2 state or federal government.

3 (d) Solidified hazardous waste produced by a solidification
4 facility licensed pursuant to section 6123 and destined for land
5 disposal.

6 (e) Hazardous waste generated pursuant to a 1-time closure
7 or site cleanup activity in this state if the closure or cleanup
8 activity has been authorized in writing by the director or his or
9 her authorized representative. Hazardous waste resulting from
10 the cleanup of inadvertent releases which occur after March 30,
11 1988 are not exempt from the fee.

12 (f) Primary and secondary wastewater treatment solids from a
13 wastewater treatment plant which includes an aggressive biologi-
14 cal treatment facility as defined in section 3005(j)(12)(B) of
15 subtitle C of the solid waste disposal act, 42 U.S.C. 6925.

16 (g) Emission control dust or sludge from the primary produc-
17 tion of steel in electric furnaces.

18 (4) An owner or operator of a landfill or solidification
19 facility shall assess or pay the fee described in this section
20 unless a written signed certification is provided by the genera-
21 tor indicating that the waste is exempt from the fee. If the
22 waste that is exempt from the fee is required to be listed on a
23 manifest, the certification shall contain the manifest number of
24 the shipment and the specific fee exemption the waste qualifies
25 for. If the waste that is exempt from the fee is not required to
26 be listed on a manifest, the certification shall provide the
27 volume of exempt waste, the waste code or waste codes of the

1 exempt waste, the date of disposal or solidification, and the
2 specific fee exemption the waste qualifies for. The owner or
3 operator of the landfill or solidification facility shall retain
4 this certification for 4 years from the date of receipt.

5 (5) The department or a health department certified pursuant
6 to section 6145 shall evaluate the accuracy of generator fee
7 exemption certifications and shall take enforcement action
8 against a generator who files a false certificate. In addition,
9 the department shall take enforcement action to collect fees that
10 are not paid as required by this section.

11 (6) The landfill owner or operator and the solidification
12 facility owner or operator shall forward fee revenue due to the
13 department with a completed form that is provided or approved by
14 the director. The owner or operator shall certify that all
15 information provided in the form is accurate. The form shall
16 include the following information:

17 (a) The volume of waste subject to a fee.

18 (b) The name of each generator who was assessed a fee, the
19 generator's identification number, manifest numbers, waste vol-
20 umes, and the amount of the fee assessed.

21 (7) A generator who documents to the director or an autho-
22 rized representative of the director, on a form provided by the
23 department, a reduction in the amount of hazardous waste gener-
24 ated as a result of a process change, or documents a reduction in
25 the amount of hazardous waste that is being disposed of in a
26 landfill, either directly or following solidification at a
27 solidification facility, as a result of a process change or the

1 generator's increased use of source separation, input
2 substitution, process reformulation, recycling, treatment, or an
3 exchange of hazardous waste that results in a utilization of that
4 waste is eligible for a refund from the state. The refund shall
5 be in the amount of \$10.00 per ton, \$10.00 per cubic yard, 4
6 cents per gallon, or 1/2 cent per pound of waste reduced or man-
7 aged through an alternative to landfill disposal. A generator is
8 not eligible to receive a refund for that portion of a reduction
9 in the amount of hazardous waste generated that is attributable
10 to a decrease in the generator's level of production of the prod-
11 ucts that resulted in the generation of the hazardous waste.

12 (8) Commencing in 1990 and in each following year, a genera-
13 tor seeking a refund shall calculate the refund due by comparing
14 waste generation, treatment, and disposal activity in the calen-
15 dar year immediately preceding the date of filing with waste gen-
16 eration, treatment, and disposal activity in the calendar year 2
17 years prior to the date of filing.

18 (9) To be eligible for a refund, a generator shall file a
19 request with the director or an authorized representative of the
20 director by June 30 of the year following the year for which the
21 refund is being claimed.

22 (10) A refund shall not exceed the total fees paid by the
23 generator to the landfill operator or owner and the solidifica-
24 tion facility operator or owner.

25 (11) A form submitted by the generator as provided for in
26 subsection (7) shall be certified by the generator or the
27 generator's authorized agent.

1 (12) The department shall maintain information regarding the
2 landfill disposal fees received and refunds provided pursuant to
3 this section.

4 (13) The fees collected pursuant to this section shall be
5 forwarded to the state treasurer and deposited in the general
6 fund to be appropriated to pay refunds to generators under this
7 section and to fund programs created under part 75 and part 77.

8 Sec. 6109. (1) The hazardous waste policy committee is cre-
9 ated in the department. The committee shall consist of the fol-
10 lowing members, appointed by the governor with the advice and
11 consent of the senate. At least 1 of the members shall have
12 on-site hazardous waste reduction experience:

13 (a) One representative each of city, county, and township
14 government.

15 (b) One individual representing hazardous waste
16 transporters.

17 (c) One individual representing hazardous waste generators
18 having knowledge in waste reduction.

19 (d) One individual representing hazardous waste treatment,
20 storage, or disposal facility operators.

21 (e) One individual representing a general business organi-
22 zation having knowledge in waste reduction.

23 (f) One individual representing an environmental
24 organization.

25 (g) One individual representing a conservation
26 organization.

1 (h) One individual representing the general public.

2 (i) Two individuals from colleges or universities with

3 research specialties related to hazardous waste reduction, treat-
4 ment, storage, or disposal.

5 (2) A vacancy occurring on the committee shall be filled in
6 the same manner as the original appointment.

7 (3) A chairperson of the committee shall be selected by the
8 governor.

9 (4) The committee by majority vote of the committee shall
10 establish operating procedures. The operating procedures shall
11 be made available for public review.

12 (5) The members of the committee shall be entitled to per
13 diem compensation. The per diem compensation of the committee
14 and a schedule for reimbursement of expenses shall be established
15 annually by the legislature.

16 (6) In the conduct of its business, the committee shall
17 solicit the advice of, and consult periodically with, persons
18 within this state for the purpose of receiving information or
19 advice that may be helpful in the preparation of the updated
20 plan.

21 (7) The committee shall disband after the final adoption of
22 the updated plan by the commission of natural resources.

23 Sec. 6110. (1) Not later than January 1, 1990, the commit-
24 tee shall prepare an updated state hazardous waste management
25 plan.

26 (2) The updated plan shall:

1 (a) Update the state hazardous waste management plan adopted
2 by the commission on January 15, 1982.

3 (b) Be based upon location of generators, health and safety,
4 economics of transporting, type of waste, and existing treatment,
5 storage, or disposal facilities.

6 (c) Include information generated by the department of com-
7 merce and the department on hazardous waste capacity needs in the
8 state.

9 (d) Include information provided by the office of waste
10 reduction created in part 75.

11 (e) Plan for the availability of hazardous waste treatment
12 or disposal facilities which have adequate capacity for the
13 destruction, treatment, or secure disposition of all hazardous
14 wastes that are reasonably expected to be generated within the
15 state during the 20-year period after October 1, 1988, as is
16 described in section 104(c)(9)(A) of title I of the comprehensive
17 environmental response, compensation, and liability act of 1980,
18 Public Law 96-510, 42 U.S.C. 9604.

19 (f) Plan for a reasonable geographic distribution of treat-
20 ment, storage, and disposal facilities to meet existing and
21 future needs, including proposing criteria for determining
22 acceptable locations for these facilities. The criteria shall
23 include a consideration of a location's geology, geography,
24 demography, waste generation patterns, along with environmental
25 factors, public health factors, and other relevant characteris-
26 tics as determined by the committee.

1 (g) Emphasize a shift away from the practice of landfilling
2 hazardous waste and toward the in-plant reduction of hazardous
3 waste and the recycling and treatment of hazardous waste.

4 (h) Include necessary legislative, administrative, economic
5 mechanisms, and a timetable to carry out the plan.

6 (3) The committee shall instruct the office of waste reduc-
7 tion created in part 75 to complete studies as considered neces-
8 sary for the completion of the updated plan. The studies may
9 include:

10 (a) An inventory and evaluation of the sources of hazardous
11 waste generation within this state or from other states, includ-
12 ing the types, quantities, and chemical and physical characteris-
13 tics of the hazardous waste.

14 (b) An inventory and evaluation of current hazardous waste
15 management, minimization, or reduction practices and costs,
16 including treatment, disposal, on-site recycling, reclamation,
17 and other forms of source reduction within this state.

18 (c) A projection or determination of future hazardous waste
19 management needs based on an evaluation of existing capacities,
20 treatment or disposal capabilities, manufacturing activity, limi-
21 tations, and constraints. Projection of needs shall consider the
22 types and sizes of treatment, storage, or disposal facilities,
23 general locations within the state, management control systems,
24 and an identified need for a state owned treatment, storage, or
25 disposal facility.

26 (d) An investigation and analysis of methods, incentives, or
27 technologies for source reduction, reuse, recycling, or recovery

1 of potentially hazardous waste and a strategy for encouraging the
2 utilization or reduction of hazardous waste.

3 (e) An investigation and analysis of methods and incentives
4 to encourage interstate and international cooperation in the man-
5 agement of hazardous waste.

6 (f) An estimate of the public and private cost of treating,
7 storing, or disposing of hazardous waste.

8 (g) An investigation and analysis of alternate methods for
9 treatment and disposal of hazardous waste.

10 (4) If the committee finds in preparing the updated plan
11 that there is a need for additional treatment or disposal facili-
12 ties in the state, then the committee shall identify incentives
13 the state could offer which would encourage the construction and
14 operation of additional treatment or disposal facilities in the
15 state that are consistent with the updated plan. The committee
16 shall propose criteria which could be used in evaluating appli-
17 cants for the incentives.

18 (5) Upon completion of the updated plan, the committee shall
19 publish a notice in a number of newspapers having major circula-
20 tion within the state as determined by the committee and shall
21 issue a statewide news release announcing the availability of the
22 updated plan for inspection or purchase at cost by interested
23 persons. The announcement shall indicate where and how the
24 updated plan may be obtained or reviewed and shall indicate that
25 not less than 6 public hearings shall be conducted at varying
26 locations in the state before formal adoption. The first public
27 hearing shall not be held until 60 days have elapsed from the

1 date of the notice announcing the availability of the updated
2 plan. The remaining public hearings shall be held within 120
3 days after the first public hearing at approximately equal time
4 intervals.

5 (6) After the public hearings, the committee shall prepare a
6 written summary of the comments received, provide comments on the
7 major concerns raised, make amendments to the updated plan, and
8 shall recommend to the commission whether the updated plan should
9 be adopted.

10 Sec. 6111. (1) The commission, with the advice of the
11 director of public health, shall adopt or reject the updated plan
12 within 60 days or at the second scheduled commission meeting
13 after receipt of the updated plan.

14 (2) If the commission rejects the updated plan, it shall
15 indicate its reason for rejection and return the updated plan to
16 the committee.

17 (3) The committee shall make the necessary changes and
18 submit the updated plan to the commission within 30 days after
19 receipt of the rejection.

20 Sec. 6112. The commission shall make a final decision on
21 the updated plan within 120 days after the commission first
22 receives the updated plan. If the commission fails to formally
23 adopt or reject the updated plan within 120 days, the updated
24 plan is considered adopted.

25 Sec. 6113. A new committee shall be appointed every 5 years
26 following the adoption of the updated plan by the commission.
27 The committee shall be appointed in the same manner as provided

1 in section 6109 for the original appointment. The committee
2 shall review the updated plan and amend the updated plan as con-
3 sidered necessary pursuant to the procedure provided in section
4 6110. The committee also shall review the implementation of this
5 part and submit to the legislature recommendations regarding the
6 implementation of this part.

7 Sec. 6114. Not more than 180 days after the final adoption
8 of the updated plan by the commission, the director shall submit
9 to the legislature proposed rules to implement the updated plan
10 created in section 6110.

11 Sec. 6115. After the updated plan is adopted by the commis-
12 sion, the director shall not issue a permit or license under this
13 part for a treatment, storage, or disposal facility until the
14 director has made a determination that the action is consistent
15 with the updated plan. This section does not apply to a treat-
16 ment, storage, or disposal facility granted a construction permit
17 or a license under this part before the final adoption of the
18 updated plan. However, such a facility shall be consistent with
19 the state hazardous waste management plan adopted by the commis-
20 sion on January 15, 1982.

21 Sec. 6115a. (1) Beginning on June 4, 1992, the owner or
22 operator, or both, of a facility specified in this subsection is
23 subject to the corrective action requirements specified in this
24 part and the rules promulgated under this part for all releases
25 of a contaminant from any waste management unit at the facility,
26 regardless of when the contaminant may have been placed in or
27 released from the waste management unit. This requirement

1 applies to a facility for which the owner or operator, or both,
2 is applying for or has been issued a license under this part.

3 (2) Beginning on June 4, 1992, if the director, on the basis
4 of any information, determines that there is or has been a
5 release of a contaminant from any waste management unit at the
6 facility, the director may order, or may enter a consent order
7 with an owner or operator, or both, of a facility specified in
8 subsection (1), requiring corrective action at the facility. A
9 license, permit, or order issued or entered pursuant to this sub-
10 section shall contain all of the following:

11 (a) Schedules of compliance for corrective action if correc-
12 tive action cannot be completed before the issuance of the
13 license, permit, or order.

14 (b) Assurances of financial responsibility for completing
15 the corrective action.

16 (c) Requirements that corrective action be taken beyond the
17 facility boundary if the release of a contaminant has or may have
18 migrated or otherwise has or may have been emitted beyond the
19 facility boundary, unless the owner or operator of the facility
20 demonstrates to the satisfaction of the director that, despite
21 the owner's or operator's best efforts, the owner or operator was
22 unable to obtain the necessary permission to undertake this cor-
23 rective action.

24 (3) Beginning on June 4, 1992, the owner or operator, or
25 both, of a facility specified in this subsection and not in
26 subsection (1) is subject to the corrective action requirements
27 specified in this part and the rules promulgated under this part

1 for all releases of a hazardous waste from the facility,
2 regardless of when the hazardous waste may have been placed in or
3 released from the facility. This requirement applies to a facil-
4 ity for which the owner or operator, or both, is or was subject
5 to the interim status requirements defined in of the solid waste
6 disposal act, except for those facilities that have received
7 formal written approval of the withdrawal of their United States
8 environmental protection agency part A hazardous waste permit
9 application from the director or the United States environmental
10 protection agency.

11 (4) Beginning on June 4, 1992, if the director, on the basis
12 of any information, determines that there is or has been a
13 release of a hazardous waste, the director may order, or may
14 enter a consent order with an owner or operator, or both, of a
15 facility specified in subsection (3), requiring corrective action
16 at the facility. An order issued or entered pursuant to this
17 subsection shall contain both of the following:

18 (a) Schedules of compliance for corrective action.

19 (b) Assurances of financial responsibility for completing
20 the corrective action.

21 Sec. 6116. (1) A treatment, storage, or disposal facility
22 in existence on January 1, 1980, or a treatment, storage, or dis-
23 posal facility in existence on November 19, 1980, for which
24 approval of construction has been received from the air pollution
25 control commission, is not subject to a review of the board or
26 require a construction permit under this part except for an
27 expansion, enlargement, or alteration of the treatment, storage,

1 or disposal facility beyond its original authorized design
2 capacity or beyond the area specified in the operating license,
3 original construction permit, or other authorization. This sub-
4 section does not abridge or alter the effect of a local ordi-
5 nance, permit requirement, or other requirement on the construc-
6 tion of a treatment, storage, or disposal facility described in
7 this subsection.

8 (2) The expansion, enlargement, or alteration of a treat-
9 ment, storage, or disposal facility in existence on January 1,
10 1980, constitutes a new proposal for which a construction permit
11 is required.

12 Sec. 6117. (1) A site review board shall be established to
13 review and grant or deny final approval for each site construc-
14 tion permit application that is referred to the board by the
15 director. If more than 1 construction permit application for
16 interrelated facilities on a single site within the same munici-
17 pality are submitted by the same applicant, reviewed concurrently
18 by the department, and referred to the board by the director, a
19 single board shall be established to review the site applications
20 concurrently but shall grant or deny final approval for each
21 application individually. A board shall consist of 9 voting mem-
22 bers and a nonvoting chairperson to be appointed as provided in
23 subsection (2).

24 (2) The following 9 members and 1 nonvoting chairperson
25 shall serve on every board established to review a site construc-
26 tion permit application:

1 (a) Seven members shall be members appointed by the
2 governor, with the advice and consent of the senate. The 7
3 members on each board shall include a geologist, a chemical engi-
4 neer, and a toxicologist, each of whom are on the faculty of an
5 institution of higher education within the state, a representa-
6 tive from a manufacturing industry, 2 representatives of the
7 public, and a representative of a municipality. Subject to the
8 other requirements of this subdivision, the governor may appoint
9 more than 1 geologist, chemical engineer, toxicologist, represen-
10 tative from a manufacturing industry, and representative of a
11 municipality and more than 2 representatives of the public.
12 However, only 1 geologist, chemical engineer, toxicologist, rep-
13 resentative from a manufacturing industry, and representative of
14 a municipality and only 2 representatives of the public, as ran-
15 domly designated by the director, shall serve on a particular
16 board. The member who represents municipalities shall be associ-
17 ated with a municipality or municipal association that is or rep-
18 resents the same type of municipality in which a facility is pro-
19 posed to be located. A member representing a municipality or the
20 public shall not serve on a site review board that is evaluating
21 an application for a facility located within a county or munici-
22 pality which directly employs the member or in which the member
23 resides. A vacancy shall be filled for the unexpired portion of
24 the period in the same manner as the original appointments. All
25 members appointed by the governor, including a chairperson
26 appointed pursuant to subdivision (c), shall be appointed to
27 serve on site review boards for a period of 3 years, and may be

1 appointed for additional 3-year periods. In addition, a member
2 may serve beyond the expiration of the member's 3-year period of
3 service for so long a period of time as is necessary to complete
4 action on construction permit applications pending at the expira-
5 tion of the member's 3-year period of service.

6 (b) One member shall be appointed by the governing body of
7 the municipality in which the treatment, storage, or disposal
8 facility is primarily proposed to be located to serve on the
9 board which is established to consider a particular construction
10 permit application. One member shall be appointed by the county
11 board of commissioners in which the treatment, storage, or dis-
12 posal facility is proposed to be located and shall be a resident
13 of the county where the facility is proposed to be located. The
14 members serving pursuant to this subdivision shall serve until
15 the particular construction permit application subject to their
16 review is approved, or until the application is rejected and is
17 no longer subject to review.

18 (c) An attorney shall be appointed by the governor, with the
19 advice and consent of the senate, to serve as a nonvoting chair-
20 person on each board established to review a site construction
21 permit. The chairperson shall have experience in conducting
22 formal meetings where sworn testimony is received. Subject to
23 the other requirements of this subdivision, the governor may
24 appoint more than 1 chairperson. However, only 1 chairperson,
25 designated by the director, shall serve on a particular board.

26 (3) The director or an authorized representative of the
27 director shall notify the local governing body of the

1 municipality and county government of a construction permit
2 application filed with the department.

3 (4) Five of the 9 voting members of the board constitute a
4 quorum for the transaction of business of the board and the con-
5 currence of 5 voting members of the board constitutes a legal
6 action of the board. All meetings of the board shall be con-
7 ducted pursuant to the open meetings act, Act No. 267 of the
8 Public Acts of 1976, as amended, being sections 15.261 to 15.275
9 of the Michigan Compiled Laws.

10 (5) The director shall make staff available to assist a
11 board in carrying out its responsibilities.

12 (6) A site review board that is established before
13 December 28, 1987 shall proceed and fulfill its duties pursuant
14 to the applicable law in effect when the site review board was
15 established.

16 Sec. 6118. (1) Except as otherwise provided in
17 section 6122, a person shall not establish a treatment, storage,
18 or disposal facility without a construction permit from the
19 director. A person proposing the establishment of a treatment,
20 storage, or disposal facility subject to the construction permit
21 requirement of this part, but not including a limited storage
22 facility, shall make application for a construction permit to the
23 director on a form provided by the director or an authorized rep-
24 resentative of the director.

25 (2) If an amendment to this part or to the rules promulgated
26 under this part subjects activities lawfully being conducted at a
27 treatment, storage, or disposal facility at the time the

1 amendment takes effect to the operating license requirements of
2 this part solely because of the amendment, the activities carried
3 out at the facility prior to the effective date of the amendment
4 is not subject to the construction permit requirements of this
5 part, except for an expansion of the facility with respect to
6 such activities beyond its original authorized design capacity or
7 beyond the area specified in an original permit, license, or
8 other authorization or an alteration of the method of hazardous
9 waste treatment or disposal.

10 (3) The application for a construction permit shall contain
11 the name and residence of the applicant, the location of the pro-
12 posed treatment, storage, or disposal facility, and other infor-
13 mation specified in this section, by rule, or by federal regula-
14 tion issued under title II of the solid waste disposal act. The
15 application shall be accompanied by a construction permit appli-
16 cation fee. The fee shall be calculated as provided in
17 subsection (10) or may be based on the actual cost of construc-
18 tion permit review according to procedures established by rule.
19 Construction permit application fees shall be deposited in the
20 general fund of the state. The application shall include a copy
21 of the actual published notice as described in subsection (9) and
22 a determination of existing hydrogeological characteristics spec-
23 ified in a hydrogeological report and monitoring program consis-
24 tent with rules promulgated pursuant to this part, an environmen-
25 tal assessment, an engineering plan, and the procedures for clo-
26 sure and postclosure monitoring. The environmental assessment
27 shall include, at a minimum, an evaluation of the proposed

1 facility's impact on the air, water, and other natural resources
2 of the state; and also shall contain an environmental failure
3 mode assessment.

4 (4) Except as otherwise provided in this subsection, the
5 construction permit application shall include a disclosure state-
6 ment that includes all of the following:

7 (a) The full name and business address of all of the
8 following:

9 (i) The applicant.

10 (ii) The 5 persons holding the largest shares of the equity
11 in or debt liability of the proposed facility. The director may
12 waive all or any portion of this requirement for an applicant
13 that is a corporation with publicly traded stock.

14 (iii) The operator, if known.

15 (iv) If known, the 3 employees of the operator who will have
16 the most responsibility for the day-to-day operation of the
17 facility.

18 (v) Any other business entity included within the definition
19 of person in which any person required to be listed in subpara-
20 graphs (i) to (iv) has at any time had 25% or more of the equity
21 in or debt liability of that business entity. The director may
22 waive all or any portion of this requirement for an applicant
23 that is a corporation with publicly traded stock.

24 (b) All convictions for criminal violations of any environ-
25 mental statute enacted by a federal, state, Canadian, or provin-
26 cial agency for each person required to be listed under this
27 subsection. If debt liability is held by a chartered lending

1 institution, information required in this subsection and
2 subsection (4)(c) and (d) is not required from that institution.

3 (c) A listing of all environmental permits or licenses
4 issued by a federal, state, Canadian, or provincial agency held
5 by each person required to be listed under this subsection that
6 were permanently revoked because of noncompliance.

7 (d) A listing of all activities at property owned or oper-
8 ated by each person required to be listed under this subsection,
9 if the incident resulted in a threat or potential threat to the
10 environment, and public funds were used to finance an activity to
11 mitigate the threat or potential threat to the environment,
12 except if the public funds expended to facilitate the mitigation
13 of environmental contamination were voluntarily and expeditiously
14 recovered from the applicant or other listed person without
15 litigation.

16 (5) If any information required to be included in the dis-
17 closure statement changes, or is supplemented after the filing of
18 the statement, the applicant, permittee, or licensee shall pro-
19 vide that information to the department in writing, within 30
20 days of the change or addition.

21 (6) Notwithstanding any other provision of law, the director
22 may deny an application for a construction permit if there are
23 any listings pursuant to subsection (4)(b), (c), or (d) as origi-
24 nally disclosed or as supplemented.

25 (7) A person may indicate an interest in being placed on a
26 department organized mailing list to be kept informed of any
27 rules, plans, construction permit applications, contested case

1 hearings, public hearings, or other information or procedures
2 relating to the administration of this part. A charge may be
3 required by the director to cover the cost of the materials.

4 (8) There is created within the state treasury a revolving
5 fund. When a site construction permit application is referred to
6 a site review board by the director, the applicant shall pay a
7 \$25,000.00 fee to be placed in this fund. The \$25,000.00 fee
8 shall be in addition to the application fee required under sub-
9 section (3). This fund shall cover the expenses of the site
10 review board members, the chairperson, a mediator, and any other
11 expenses necessary to the deliberations of the board. The direc-
12 tor or an authorized representative of the director shall admin-
13 ister the fund and authorize expenditures. The director or an
14 authorized representative of the director shall maintain records
15 to support any expenses charged to the fund. If expenses payable
16 from the fund exceed the \$25,000.00 fee paid by the applicant,
17 the additional expenses shall be paid from money appropriated by
18 the legislature to the revolving fund created in this
19 subsection. Any unexpended portion of an applicant's \$25,000.00
20 fee that is not expended to pay the expenses listed in this sub-
21 section shall be reimbursed to the applicant after the site
22 review board process is concluded.

23 (9) An application for a site construction permit shall not
24 be complete unless it includes a copy of a newspaper notice which
25 the applicant published at least 30 days prior to submittal of
26 the application in a newspaper having major circulation in the
27 municipality and the immediate vicinity of the proposed

1 treatment, storage, or disposal facility. The required published
 2 notice shall contain a map indicating the location of the pro-
 3 posed treatment, storage, or disposal facility and information on
 4 the nature and size of the proposed facility. In addition, the
 5 notice shall contain all of the following information provided by
 6 the director or an authorized representative of the director:

7 (a) A description of the application review process.

8 (b) The location where the complete application package may
 9 be reviewed.

10 (c) How copies of the complete application package may be
 11 obtained.

12 (10) An applicant for a construction permit for a treatment,
 13 storage, or disposal facility shall calculate the applicable con-
 14 struction permit application fee required under subsection (3) by
 15 totaling the following for each construction permit application:

16 (a) For a landfill, surface impoundment, land
 17 treatment, or waste pile facility.....\$9,000.00

18 (b) For an incinerator or treatment facility other
 19 than a treatment facility in subdivision (a).....\$7,200.00

20 (c) For a storage facility, other than storage that
 21 is associated with treatment or disposal activities that
 22 may be regulated under a single permit.....\$ 500.00

23 (d) For the permitted site size of a landfill, surface
 24 impoundment, land treatment, or waste pile facility, except waste
 25 piles meeting the requirements of 40 C.F.R. 264.250(c), the
 26 following:

- 1 (i) Less than 5 acres..... \$100.00
 2 (ii) 5 to 19 acres..... \$170.00
 3 (iii) 20 to 79 acres..... \$240.00
 4 (iv) 80 acres or more..... \$320.00
 5 (e) For the permitted site size of a treatment or storage
 6 facility, other than a facility listed in subdivision (d), the
 7 following:
- 8 (i) Less than 5 acres..... \$ 50.00
 9 (ii) 5 to 19 acres..... \$100.00
 10 (iii) 20 to 79 acres..... \$100.00
 11 (iv) 80 acres or more..... \$100.00
 12 (f) For the projected waste volume per day for a landfill,
 13 surface impoundment, land treatment, or waste pile facility,
 14 except waste piles meeting the requirements of 40
 15 C.F.R. 264.250(c), the following:
- 16 (i) Less than 50 cubic yards or 10,000 gallons..... \$ 60.00
 17 (ii) 50 to 100 cubic yards or 10,000 to 20,000
 18 gallons..... \$ 80.00
 19 (iii) 101 to 700 cubic yards or 20,000 to 140,000
 20 gallons..... \$100.00
 21 (iv) More than 700 cubic yards or more than 140,000
 22 gallons..... \$130.00
 23 (g) For the projected waste volume per day for a treatment
 24 or storage facility, other than a facility listed in
 25 subdivision (f), the following:
- 26 (i) Less than 50 cubic yards or 10,000 gallons..... \$ 50.00

1 (ii) 50 to 100 cubic yards or 10,000 to 20,000
 2 gallons..... \$100.00

3 (iii) 101 to 700 cubic yards or 20,000 to 140,000
 4 gallons..... \$100.00

5 (iv) More than 700 cubic yards or more than 140,000
 6 gallons..... \$150.00

7 (h) For the hydrogeological characteristics of a landfill,
 8 surface impoundment, land treatment, or waste pile facility,
 9 except waste piles meeting the requirements of 40
 10 C.F.R. 264.250(c), the following:

11 (i) Natural clay..... \$ 40.00

12 (ii) Natural sand..... \$ 60.00

13 (iii) Compacted clay..... \$ 70.00

14 (iv) Artificially lined (other materials)..... \$100.00

15 (v) Any combination of the above..... \$100.00

16 (i) For the hydrogeological characteristics of sur-
 17 face water in a treatment or storage facility, other than
 18 a facility listed in subdivision (h)..... \$ 75.00

19 Sec. 6119. (1) Upon receipt of a construction permit appli-
 20 cation, which complies with the requirements of section 6118, the
 21 director or an authorized representative of the director shall:

22 (a) Immediately notify the permanent board members, the
 23 municipality, and county in which the treatment, storage, or dis-
 24 posal facility is located or proposed to be located; a local soil
 25 erosion and sedimentation control agency appointed pursuant to
 26 the soil erosion and sedimentation control act of 1972, Act
 27 No. 347 of the Public Acts of 1972, being sections 282.101 to

1 282.125 of the Michigan Compiled Laws, each division within the
2 department that has responsibility in land, air, or water manage-
3 ment; a regional planning agency established by executive direc-
4 tive of the governor; and other appropriate agencies. The notice
5 shall describe the procedure by which the permit may be approved
6 or denied.

7 (b) Review the plans of the proposed treatment, storage, or
8 disposal facility to determine if the proposed operation complies
9 with this part and the rules promulgated under this part. The
10 review shall be made within the department. The review shall
11 include, but not be limited to, a review of air quality, water
12 quality, waste management, hydrogeology, and the applicant's dis-
13 closure statement. A written and signed review by each person
14 within the department reviewing the permit and plans shall be
15 received and recorded before a construction permit is referred to
16 the site review board or is denied by the director. If the site
17 review, plan review, and the application meet the requirements of
18 this part and the rules promulgated under this part, the director
19 shall refer the application to the site review board for review.
20 An expansion of a treatment, storage, or disposal facility beyond
21 the original authorized design capacity or beyond the area speci-
22 fied in the original permit, license, or other authorization or
23 an alteration of the method of hazardous waste treatment or dis-
24 posal constitutes a new proposal for which a new construction
25 permit is required.

1 (c) Coordinate and review all permits that the applicant is
2 required to obtain from the department in order to construct the
3 proposed treatment, storage, or disposal facility.

4 (d) Hold a public hearing within 60 days after receipt of a
5 complete construction permit application.

6 (2) The director shall refer an application to the site
7 review board or shall notify the applicant of the intent to deny
8 the construction permit application within 120 days after the
9 director receives an application meeting the requirements of sec-
10 tion 6118.

11 (3) If the director refers an application to the site review
12 board, prior to the first board meeting the director shall pro-
13 vide each board member with a copy of the application, a staff
14 report including a summary of public comments, a responsiveness
15 summary, and a draft construction permit.

16 (4) If the director does not refer an application to the
17 site review board or does not notify the applicant of the intent
18 to deny the construction permit application within 120 days, the
19 construction permit application shall be submitted to the board
20 for action.

21 (5) If the director intends to deny the application, the
22 director shall commence a public participation process that is
23 equivalent to that required by the applicable provisions of title
24 II of the solid waste disposal act, or regulations promulgated
25 under that title. Upon completion of the public participation
26 process, the director shall review all the comments made during
27 that process and shall refer the application to the site review

1 board or deny the application. If the director refers the
2 construction permit application to the board, the director shall
3 proceed as described in section 6120.

4 Sec. 6120. (1) The director or an authorized representative
5 of the director shall notify those members appointed by the gov-
6 ernor who will serve on the board within 75 days after receipt of
7 a construction permit application, if the director has not noti-
8 fied the applicant of the intent to deny the application, or at
9 the time the director refers an application to the board, or at
10 the time an application is automatically referred to the board
11 pursuant to section 6119(4), whichever is earlier. At that time
12 the department also shall notify the county and the municipality
13 in which the proposed treatment, storage, or disposal facility is
14 to be located and request the appointment of the members of the
15 board as provided in section 6117(2)(b). The notification shall
16 include a notice of intent to issue all departmental permits
17 required for the construction pending approval by the board.
18 Within 45 days after the notification, the county and the munici-
19 pality shall select the members to serve on the board. The board
20 shall be created at that time and notification of the creation of
21 the board shall be made to the chairperson.

22 (2) Within 30 days after creation of a board, the board
23 shall meet to review and establish a timetable for the considera-
24 tion of an application for a proposed treatment, storage, or dis-
25 posal facility.

26 (3) The board shall:

1 (a) Set a date and arrange for publication of notice of a
2 public hearing in a newspaper having major circulation in the
3 vicinity of the proposed site, at its first meeting. The public
4 notice shall:

5 (i) Contain a map indicating the location of the proposed
6 treatment, storage, or disposal facility, a description of the
7 proposed action, and the location where the application for a
8 construction permit may be reviewed and where copies may be
9 obtained.

10 (ii) Identify the time, place, and location for the public
11 hearing held to receive public comment and input on the applica-
12 tion for a construction permit.

13 (b) Hold a public hearing within 45 days of the first board
14 meeting.

15 (c) Publish the notice not less than 30 days before the date
16 of the public hearing.

17 (4) Comment and input on the proposed treatment, storage, or
18 disposal facility may be presented orally or in writing at the
19 public hearing, and shall continue to be accepted in writing by
20 the board for 15 days after the public hearing date.

21 (5) After the public hearing comment period has been closed,
22 the board shall list the issues that are to be addressed through
23 a negotiation process and list the issues to be evaluated by the
24 board through its deliberations.

25 (6) A negotiation process shall take place between the
26 applicant and the affected parties who shall be identified by the
27 board. A representative of the municipality and a representative

1 of the county in which the facility is proposed to be located
2 shall each be considered an affected party. If requested by any
3 affected party or the applicant, the board shall appoint a medi-
4 ator to assist during negotiations. The negotiation process
5 shall:

6 (a) Proceed concurrently with the board's hearings process.

7 (b) Address the list of issues referred by the board and any
8 other issues unanimously agreed to be considered by the applicant
9 and all affected parties.

10 (c) Be completed within 150 days after the first meeting of
11 the board unless the applicant and 1 or more affected parties
12 involved in the negotiation process jointly request an extension
13 of not more than 60 days and the extension is approved by the
14 board. The board shall not grant extensions in excess of 60
15 days. An extension granted under this subdivision may extend the
16 time period in which the board either approves or rejects the
17 construction permit application as specified in subsection (15).

18 (7) On each negotiation issue which has not reached a nego-
19 tiated settlement, the board shall select between final best
20 offers presented by affected parties. The final best offer or
21 the negotiated settlement shall not be less stringent than the
22 requirements of the law or pertinent decisions of the board,
23 whichever is the most stringent.

24 (8) The board shall conduct formal or informal hearings to
25 receive evidence on the disputed issues not subject to the nego-
26 tiation process described in subsections (6) and (7).

1 (9) The formal hearings process shall be conducted by the
2 board to receive information from technical experts on disputed
3 issues. Any affected party may request permission by the board
4 to participate in the board's formal hearings within 15 days
5 after the board's public hearing. The board shall determine
6 which affected parties shall participate in the board's formal
7 hearing. If the board denies the request of an affected party to
8 participate in the board's formal hearing, the board shall give
9 the affected party notice of the board's decision and the reasons
10 for the decision. A representative of the municipality and a
11 representative of the county in which the facility is proposed to
12 be located shall each be automatically entitled to participate.
13 During the board's formal hearings process, the board shall:

14 (a) Receive sworn testimony.

15 (b) Cross-examine witnesses.

16 (c) Allow representatives of affected parties to
17 cross-examine witnesses.

18 (d) Request participation as needed.

19 (10) Comments made at informal hearings shall not be made
20 under oath and no cross-examination shall occur.

21 (11) The board shall deliberate on the impact of the pro-
22 posed treatment, storage, or disposal facility on the municipal-
23 ity in which it is to be located and make a final determination
24 on the construction permit application.

25 (12) The board shall consider, at a minimum all of the
26 following:

1 (a) The risk and impact of accident during the
2 transportation of hazardous waste.

3 (b) The risk and impact of contamination of ground and sur-
4 face water by leaching and runoff from the proposed treatment,
5 storage, or disposal facility.

6 (c) The risk of fires or explosions from improper treatment,
7 storage, and disposal methods.

8 (d) The impact on the municipality where the proposed treat-
9 ment, storage, or disposal facility is to be located in terms of
10 the health, safety, cost, and consistency with local planning and
11 existing development. The board also shall consider local ordi-
12 nances, permits, or other requirements and their potential rela-
13 tionship to the proposed treatment, storage, or disposal
14 facility.

15 (e) The nature of the probable environmental impact, includ-
16 ing the specification of the predictable adverse effects on the
17 following:

18 (i) The natural environment and ecology.

19 (ii) Public health and safety.

20 (iii) Scenic, historic, cultural, and recreational value.

21 (iv) Water and air quality, and wildlife.

22 (f) An evaluation of measures to mitigate adverse effects.

23 (g) The board shall consider the information contained in
24 the construction permit application disclosure statement.

25 (13) The board also shall consider the concerns and objec-
26 tions submitted by the public. The board shall facilitate
27 efforts to provide that the concerns and objections are mitigated

1 by establishing additional stipulations specifically applicable
2 to the treatment, storage, or disposal facility and operation at
3 that site. Through deliberations, the board may modify the con-
4 struction permit application in response to its findings. To the
5 fullest extent practicable, the board also shall integrate by
6 stipulation the provisions of the local ordinances, permits, or
7 requirements.

8 (14) The board may seek the advice of any person in order to
9 render a decision to approve or deny the construction permit
10 application.

11 (15) Within 180 days after the first meeting of the board,
12 the board shall make a decision on the negotiated agreement, and
13 the final best offer from each party on each issue and shall
14 either approve or reject the construction permit application.
15 The 180-day time period may be extended as provided in subdivi-
16 sion (6)(c). However, an extension shall not exceed 60 days.

17 (16) If the board approves the construction permit applica-
18 tion, the board shall direct the director or an authorized repre-
19 sentative of the director to prepare a draft construction permit
20 and initiate a public participation process equivalent to that
21 required by the applicable provisions of the solid waste disposal
22 act or regulations promulgated under that act. The director or
23 an authorized representative of the director shall act in accord
24 with the direction of the board. Upon completion of the public
25 participation process, the director shall review all comments
26 made during that process and shall issue or revise and issue the
27 construction permit or reconvene the board to consider issues

1 specified by the director that were raised during the public
2 participation process. Within 30 days after having been recon-
3 vened under this subsection, the board shall reject the applica-
4 tion and direct the director to act accordingly, direct the
5 director to issue or to revise and issue the construction permit,
6 or direct the director to revise the draft construction permit
7 and initiate a public participation process equivalent to that
8 required by the applicable provisions of title II of the solid
9 waste disposal act or regulations promulgated under that title.

10 (17) If the board rejects the construction permit applica-
11 tion, the board shall do all of the following:

12 (a) State its reasons in writing and indicate the necessary
13 changes to make the application acceptable if a new application
14 is made.

15 (b) Direct the director to deny the construction permit and
16 initiate a public participation process equivalent to that
17 required by the applicable provisions of the solid waste disposal
18 act, or regulations promulgated under that act. The director
19 shall act in accord with the direction of the board.

20 Sec. 6121. A local ordinance, permit requirement, or other
21 requirement does not prohibit the construction of a treatment,
22 storage, or disposal facility, except as otherwise provided in
23 section 6122.

24 Sec. 6122. (1) A person may establish a limited storage
25 facility without a construction permit from the director.
26 However, a person shall not establish a limited storage facility
27 or conduct, manage, maintain, or operate a limited storage

1 facility within this state without an operating license from the
2 director issued under this section, notwithstanding
3 section 6123. A limited storage facility is subject to the rules
4 pertaining to storage facilities.

5 (2) An applicant for a limited storage facility operating
6 license shall apply for that license on a form provided by the
7 director that shall include the name and residence of the appli-
8 cant, the location of the proposed or existing facility, other
9 information specified by rule or by federal regulation issued
10 under the solid waste disposal act, and proof of financial
11 responsibility. The application shall include a determination of
12 existing hydrogeological characteristics specified in a hydrogeo-
13 logical report and monitoring program consistent with rules
14 promulgated by the director, an environmental assessment, an
15 engineering plan, procedures for closure, and a resolution or
16 other formal determination of the governing body of the munici-
17 pality in which the proposed limited storage facility would be
18 located indicating that the limited storage facility is compati-
19 ble with local zoning ordinances. However, in the absence of a
20 resolution or other formal determination, the application shall
21 include a copy of a registered letter sent to the municipality
22 dated 60 days prior to the application submittal indicating the
23 intent to construct a limited storage facility, requesting a
24 formal determination on whether the proposed facility is compati-
25 ble with local zoning ordinances in effect on the date the letter
26 is received and indicating that failure to pass a resolution or
27 make a formal determination within 60 days of receipt of the

1 letter means that the proposed facility is to be considered
2 compatible with applicable zoning ordinances. The environmental
3 assessment shall include, at a minimum, an evaluation of the pro-
4 posed facility's impact on the air, water, and other natural
5 resources of the state and also shall contain an environmental
6 failure mode assessment. The application shall be accompanied by
7 a fee of \$500.00, which shall be deposited in the general fund of
8 the state.

9 (3) If a municipality does not make a formal determination
10 concerning whether a proposed limited storage facility is compat-
11 ible with local zoning ordinances within 60 days of receiving a
12 registered letter as described in subsection (2), it shall mean
13 that the limited storage facility is to be considered compatible
14 with local zoning ordinances and incompatibility with local
15 zoning shall not be a basis for denial of the license by the
16 director. In determining whether the proposed limited storage
17 facility is compatible with local zoning ordinances, the munici-
18 pality shall assess the proposed facility's compatibility with
19 ordinances in effect at the date of receipt of the registered
20 letter.

21 (4) Prior to issuing an operating license for a limited
22 storage facility, the director shall deliberate on the impact
23 that the proposed limited storage facility would have on the
24 municipality in which it is to be located and shall consider, at
25 a minimum, all of the following:

26 (a) The risk and impact of accident during the
27 transportation of hazardous waste.

1 (b) The risk and impact of contamination of ground and
2 surface water by leaching and runoff from the proposed limited
3 storage facility.

4 (c) The risk of fires or explosions from improper storage
5 methods.

6 (d) The impact on the municipality where the proposed
7 limited storage facility is to be located in terms of the health,
8 safety, cost, and consistency with local planning and existing
9 development. The director also shall consider local ordinances,
10 permits, or other requirements and their potential relationship
11 to the proposed limited storage facility.

12 (e) The nature of the probable environmental impact, includ-
13 ing the specific predictable adverse effects on the following:

14 (i) The natural environment and ecology.

15 (ii) Public health and safety.

16 (iii) Scenic, historic, cultural, and recreational value.

17 (iv) Water and air quality and wildlife.

18 (f) An evaluation of measures to mitigate adverse effects.

19 (5) The director shall consider the concerns and objections
20 submitted by the public. The director shall facilitate efforts
21 to provide that the concerns and objections are mitigated by
22 establishing additional stipulations specifically applicable to
23 the limited storage facility and operation at that site. The
24 director shall not issue an operating license under this section
25 unless the proposed limited storage facility is compatible with
26 the zoning ordinances of the municipality in which the limited
27 storage facility would be located.

1 (6) The applicant also shall submit to the director a
2 certification under the seal of a licensed professional engineer
3 verifying that the construction of the limited storage facility
4 has proceeded according to the plans approved by the director.
5 The director shall require additional certification periodically
6 during the operation or to verify proper closure of the site.

7 (7) The director shall either approve or deny the applica-
8 tion for an operating license. If the director denies the oper-
9 ating license, the director shall state the reasons for the
10 denial in writing.

11 Sec. 6123. (1) Unless a person is complying with
12 subsection (5) or a rule promulgated under section 6127(4), a
13 person shall not conduct, manage, maintain, or operate a treat-
14 ment, storage, or disposal facility within this state without an
15 operating license from the director.

16 (2) The application for an operating license shall contain
17 the name and residence of the applicant, the location of the pro-
18 posed or existing treatment, storage, or disposal facility, and
19 other information considered necessary by the director including
20 proof of financial responsibility. In addition, the application
21 for the initial operating license after issuance of a construc-
22 tion permit shall contain all of the disclosure information
23 called for in section 6118(4) that was not provided as part of
24 the construction permit application and any changes in or addi-
25 tions to the previously submitted disclosure information. In
26 addition, the owner and operator shall certify that the
27 disclosure listings previously submitted continue to be correct.

1 An applicant for an operating license for a treatment, storage,
2 or disposal facility that is a surface impoundment, landfill, or
3 land treatment facility shall demonstrate financial responsibil-
4 ity for claims arising from nonsudden and accidental occurrences
5 relating to the operation of the facility that cause injury to
6 persons or property. The application shall be accompanied by a
7 fee of \$500.00. The license fees shall be deposited in the gen-
8 eral fund of the state.

9 (3) The applicant also shall submit to the director a certi-
10 fication under the seal of a registered professional engineer
11 verifying that the construction of the treatment, storage, or
12 disposal facility has proceeded according to the plans approved
13 by the director and, if applicable, the approved construction
14 permit. The director shall require additional certification
15 periodically during the operation or to verify proper closure of
16 the site. The director shall require from those treatment, stor-
17 age, or disposal facilities that are permitted to operate pursu-
18 ant to section 6116, certification of the treatment, storage, or
19 disposal facilities' capability of treating, storing, or dispos-
20 ing of hazardous waste in compliance with this part.

21 (4) The director shall establish a schedule for requiring
22 each person subject to subsection (5) to submit an operating
23 license application. The director may adjust this schedule as
24 necessary. Each person subject to subsection (5) shall submit a
25 complete operating license application within 180 days of the
26 date requested to do so by the director.

1 (5) A person who owns or operates a treatment, storage, or
2 disposal facility that is in existence on the effective date of
3 an amendment of this part or of a rule promulgated under this
4 part that renders all or portions of the facility subject to the
5 operating license requirements of this section may continue to
6 operate the facility or portions of the facility that are subject
7 to the operating license until an operating license application
8 is approved or denied if all of the following conditions have
9 been met:

10 (a) A complete operating license application is submitted
11 within 180 days of the date requested by the director under
12 subsection (4).

13 (b) The person is in compliance with all rules promulgated
14 under this part and with all other state laws.

15 (c) The person qualifies for interim status as defined in
16 the solid waste disposal act, is in compliance with interim
17 status standards established by federal regulation under subtitle
18 C of the solid waste disposal act, title II of Public Law 89-272,
19 42 U.S.C. 6921 to 6931 and 6933 to 6939b and has not had interim
20 status terminated.

21 Sec. 6124. Upon receipt of an operating license application
22 meeting the requirements of section 6123, the director or an
23 authorized representative of the director shall inspect the site
24 and determine if the proposed treatment, storage, or disposal
25 facility complies with this part, the rules promulgated under
26 this part, and the stipulations included in the approved
27 treatment, storage, or disposal facility construction permit. An

1 inspection report shall be filed in writing by the director or
2 the authorized representative of the director before issuing an
3 operating license and shall be made available for public review.

4 Sec. 6125. (1) The director shall provide notice and an
5 opportunity for a public hearing before making a final decision
6 on an operating license application. The director shall make a
7 final decision on an operating license application within 140
8 days after the director receives a complete application.

9 However, if the state's hazardous waste management program is
10 authorized by the United States environmental protection agency
11 under sections 3006 to 3009 of subtitle C of the solid waste dis-
12 posal act, Public Law 89-272, 42 U.S.C. 6926 to 6929, the direc-
13 tor may extend the deadline beyond the limitation provided in
14 this section in order to fulfill the public participation
15 requirements of the solid waste disposal act. The operating
16 license may contain stipulations specifically applicable to site
17 and operation. A local ordinance, permit, or other requirement
18 shall not prohibit the operation of a licensed treatment, stor-
19 age, or disposal facility.

20 (2) If any information required to be included in the dis-
21 closure statement required under section 6118 changes, or is sup-
22 plemented after the filing of the statement, the applicant, per-
23 mittee, or licensee shall provide that information to the depart-
24 ment in writing, within 30 days of the change or addition.

25 (3) The director may deny an operating license application
26 submitted pursuant to section 6123 if there are any listings
27 pursuant to section 6118(4)(b) to (d) which were not identified

1 during the site review board process or were not disclosed as
2 required in section 6123(2) or this section.

3 Sec. 6126. The director shall coordinate and integrate the
4 provisions of this part for purposes of administration and
5 enforcement with appropriate state and federal law including the
6 clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431,
7 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to
8 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574,
9 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to
10 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to
11 7671q; the federal water pollution control act, chapter 758, 86
12 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257,
13 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299,
14 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to
15 1377, and 1381 to 1387; title XIV of the public health service
16 act, chapter 373, 88 Stat. 1660; the toxic substances control
17 act, Public Law 94-469, 15 U.S.C. 2601 to 2629, 2641 to 2656, and
18 2661 to 2671; the resource conservation and recovery act of 1976,
19 42 U.S.C. 6901 to 6987; parts 11, 13, 39, 63, and 71; and the
20 fire protection code, Act No. 207 of the Public Acts of 1941,
21 being sections 29.1 to 29.33 of the Michigan Compiled Laws. The
22 coordination and integration shall be effected only to the extent
23 that it can be done in a manner consistent with the goals and
24 policies of this act.

25 Sec. 6127. (1) The director shall submit to the legisla-
26 ture, after consultation with the department of public health,
27 rules necessary to implement and administer this part. The rules

1 required to be submitted by this subsection shall include, but
2 not be limited to, requirements for generators, transporters, and
3 treatment, storage, and disposal facilities.

4 (2) The director may promulgate rules that exempt certain
5 hazardous wastes and certain treatment, storage, or disposal
6 facilities from all or portions of the requirements of this part,
7 as necessary to obtain or maintain authorization from the United
8 States environmental protection agency under the solid waste dis-
9 posal act, or upon a determination by the director that a hazard-
10 ous waste, or a treatment, storage, or disposal facility, is ade-
11 quately regulated under other state or federal law, and that sci-
12 entific data supports a conclusion that an exemption will not
13 result in an impairment of the department's ability to protect
14 the public health and the environment. However, an exemption
15 granted pursuant to this subsection shall not result in a level
16 of regulation less stringent than that required under the solid
17 waste disposal act.

18 (3) If an amendment to this part or the rules promulgated
19 under this part subjects a person to a new or different licensing
20 requirement of this part, the director shall promulgate rules to
21 facilitate orderly and reasonable compliance by that person.

22 (4) Changes in the definition of hazardous waste contained
23 in section 6103 and the definition of treatment contained in sec-
24 tion 6104 effected by the 1982 amendatory act that amended former
25 Act No. 64 of the Public Acts of 1979 do not eliminate any exemp-
26 tion provided to any hazardous waste or to any treatment,
27 storage, or disposal facility under administrative rules

1 promulgated under former Act No. 64 of the Public Acts of 1979
2 before March 30, 1983. However, these exemptions may be modified
3 or eliminated by administrative rules promulgated under this part
4 in order that the state may obtain authorization from the United
5 States environmental protection agency under the solid waste dis-
6 posal act, or to provide adequate protection to the public health
7 or the environment.

8 Sec. 6128. (1) The director shall submit to the legislature
9 proposed rules listing hazardous waste and other criteria as
10 required by this part. The rules shall state the criteria for
11 identifying the characteristics of hazardous waste and for list-
12 ing the types of hazardous waste, taking into account toxicity,
13 persistence, and degradability in nature, potential for accumula-
14 tion in tissue, and other related factors including flammability,
15 corrosiveness, and other hazardous characteristics. The director
16 shall revise by rule the criteria and listing as necessary. A
17 rule promulgated for the purpose of removing from the list those
18 materials removed from the federal list of regulated materials or
19 removing from management as a hazardous waste those wastes which
20 have been exempted from management under the solid waste disposal
21 act are not required to meet the requirements of sections 41, 42,
22 and 45(2) of the administrative procedures act of 1969, Act
23 No. 306 of the Public Acts of 1969, being sections 24.241,
24 24.242, and 24.245 of the Michigan Compiled Laws.

25 (2) Before the director establishes the list, the department
26 shall hold not less than 3 public hearings in different
27 municipalities in the state. To ensure consistency between

1 federal and state requirements, this part, the rules promulgated
2 by the department, and the list shall be construed to conform as
3 closely as possible to requirements established under the solid
4 waste disposal act.

5 Sec. 6129. (1) Except as provided in subsections (2) and
6 (3), information obtained by the department under this part is a
7 public record as provided in the freedom of information act, Act
8 No. 442 of the Public Acts of 1976, as amended, being sections
9 15.231 to 15.246 of the Michigan Compiled Laws.

10 (2) A person regulated under this part may designate a
11 record, permit application, other information, or a portion of a
12 record, permit application, or other information furnished to or
13 obtained by the department or its agents, as being only for the
14 confidential use of the department and the board. The department
15 shall notify the regulated person of a request for public records
16 under section 5 of Act No. 442 of the Public Acts of 1976, being
17 section 15.235 of the Michigan Compiled Laws, whose scope
18 includes information designated as confidential. The person reg-
19 ulated under this part has 30 days after the receipt of the
20 notice to demonstrate to the director that the information desig-
21 nated as confidential should not be disclosed because the infor-
22 mation is a trade secret or secret process, or is production,
23 commercial, or financial information the disclosure of which
24 would jeopardize the competitive position of the person from whom
25 the information was obtained, and make available information not
26 otherwise publicly available. The director shall grant the
27 request for the information unless the person regulated under

1 this part makes a satisfactory demonstration to the director that
2 the information should not be disclosed. If there is a dispute
3 between the owner or operator of a treatment, storage, or dis-
4 posal facility and the person requesting information under Act
5 No. 442 of the Public Acts of 1976, the commission shall make the
6 decision to grant or deny the request. When the commission makes
7 a decision to grant a request, the information requested shall
8 not be released until 3 days have elapsed after the decision is
9 made.

10 (3) Data on the quantity or composition of hazardous waste
11 generated, transported, treated, stored, or disposed of; air and
12 water emission factors, rates and characterizations; emissions
13 during malfunctions of equipment required under this part on
14 treatment, storage, or disposal facilities; or the efficiency of
15 air and water pollution control devices is not rendered as confi-
16 dential information by this section.

17 (4) The director may release any information obtained under
18 this part, including a record, permit application, or other
19 information considered confidential pursuant to subsection (2),
20 to the United States environmental protection agency, the United
21 States agency for toxic substance disease registry, or other
22 agency authorized to receive information, including confidential
23 information, under the solid waste disposal act.

24 Sec. 6130. (1) A person shall not engage in the business of
25 transporting hazardous waste within this state without a hazard-
26 ous waste transporter business license from the director. Any
27 vehicle used to transport hazardous wastes off site shall be

1 licensed under this part. An application for a hazardous waste
2 transporter business license or a vehicle license shall be made
3 on a form provided by the director.

4 (2) An application for a hazardous waste transporter busi-
5 ness license shall be accompanied by:

6 (a) A business license application fee of \$500.00 of which
7 \$100.00 shall be retained as a processing of the application
8 fee. The remaining business license application fee and the
9 vehicle license application fee as required in subdivision (b)
10 shall be refunded if the application is denied by the director.

11 (b) A vehicle license application fee of \$200.00 for each
12 vehicle used by the hazardous waste transporter to transport or
13 carry hazardous waste.

14 (c) Evidence of an inspection certification as may be
15 required by the state fire marshal pursuant to the fire preven-
16 tion code, Act No. 207 of the Public Acts of 1941, being sections
17 29.1 to 29.33 of the Michigan Compiled Laws.

18 (d) Proof of financial responsibility as defined by rule of
19 the director.

20 (3) The license fees collected pursuant to this section
21 shall be deposited in the general fund of the state.

22 Sec. 6131. A hazardous waste transporter business license
23 issued pursuant to section 6130 may include authorization to
24 transport liquid industrial waste for which a license under sec-
25 tion 7106 would otherwise be required. A person having a hazard-
26 ous waste transporter business license which includes
27 authorization to transport liquid industrial waste shall be

1 exempt from the business license and surety bond requirements of
2 section 7106, but is subject to all other provisions of part 71,
3 and the rules promulgated under that part, including those per-
4 taining to vehicle licensure. In addition to the requirement of
5 section 6130 pertaining to a hazardous waste transporter business
6 license, an application filed pursuant to this section shall
7 identify all vehicles to be used for transporting liquid indus-
8 trial waste.

9 Sec. 6132. Upon submission of the hazardous waste trans-
10 porter business license application, the director shall examine
11 the application to insure that it is complete and accompanied by
12 those items required by section 6130, and shall conduct an
13 inspection to verify that the equipment, location, and methods of
14 the applicant are adequate to effectuate service under this part
15 and the rules promulgated under this part. The director shall
16 establish, by rule, the inspection standards and requirements.
17 Upon approval of the application, the director shall issue a
18 business license and a vehicle license for each vehicle associ-
19 ated with the service. A business or vehicle license is not
20 transferable from a business or vehicle to another business or
21 vehicle. A vehicle used to transport or carry hazardous waste
22 shall carry a license from the director which may be inspected by
23 the director, an authorized representative of the director, or a
24 peace officer.

25 Sec. 6133. (1) A license issued pursuant to section 6132
26 expires 1 year after the date of issuance. Application for
27 renewal of a license shall be made at least 60 days before

1 expiration. The fee for renewal is the same as for an original
2 license.

3 (2) A hazardous waste transporter business license issued
4 under this part shall be revoked if the holder of the license
5 uses a treatment, storage, or disposal facility or vehicle to
6 store, transport, or dispose of hazardous waste contrary to this
7 part or the rules promulgated under this part, and certification
8 is not obtained pursuant to the fire prevention code, Act No. 207
9 of the Public Acts of 1941, being sections 29.1 to 29.33 of the
10 Michigan Compiled Laws.

11 Sec. 6134. A municipality or county shall not prohibit the
12 transportation of hazardous waste through the municipality or
13 county or prevent the ingress and egress into a licensed treat-
14 ment, storage, or disposal facility.

15 Sec. 6135. (1) A hazardous waste generator shall provide a
16 separate manifest to the transporter for each load of hazardous
17 waste transported to property that is not on the site where it
18 was generated. The generator shall include on the manifest
19 details as specified by the director and shall at least include
20 sufficient qualitative and quantitative analysis and physical
21 description to evaluate toxicity and methods of transportation,
22 storage, and disposal. The manifest also shall include safety
23 precautions as necessary for each load of waste. The generator
24 shall submit to the director a copy of the manifest within a
25 period of 10 days after the end of the month for each load of
26 waste transported within that month.

1 (2) The generator shall certify that the information
2 contained on the manifest is factual.

3 (3) The specified destination of each load of hazardous
4 waste shall be a designated facility.

5 (4) A generator who does not receive a copy of the manifest
6 with the handwritten signature of the owner or operator of the
7 designated facility within 35 days of the date the waste was
8 accepted by the initial transporter shall contact the transporter
9 to determine the status of the hazardous waste. If the generator
10 is unable to determine the status of the hazardous waste upon
11 contacting the transporter, the generator shall contact the owner
12 or operator of the designated facility to which the waste was to
13 be transported to determine the status of the waste.

14 (5) A generator shall submit an exception report to the
15 director if the generator has not received a copy of the manifest
16 with the handwritten signature of the owner or operator of the
17 designated facility within 45 days of the date the waste was
18 accepted by the initial transporter. The exception report shall
19 include the following:

20 (a) A legible copy of the manifest for which the generator
21 does not have confirmation of delivery.

22 (b) A cover letter signed by the generator or the
23 generator's authorized representative explaining the efforts
24 taken to locate the hazardous waste and the results of those
25 efforts.

26 (6) A generator shall keep a copy of each manifest signed
27 and dated by the initial transporter for 3 years or until the

1 generator receives a signed and dated copy from the owner or
2 operator of the designated facility which received the waste.
3 The generator shall keep the copy of the manifest signed and
4 dated by the owner or operator of the designated facility for 3
5 years. The retention periods required by this subsection shall
6 be automatically extended during the course of any unresolved
7 enforcement action regarding the regulated activity or as
8 required by the director.

9 Sec. 6136. (1) The hazardous waste transporter shall cer-
10 tify acceptance of waste for transportation and shall deliver the
11 hazardous waste and accompanying manifest only to the destination
12 specified by the generator on the manifest.

13 (2) The hazardous waste transporter shall keep a copy of the
14 manifest for a period of 3 years, and shall make it readily
15 available for review and inspection by the director, an autho-
16 rized representative of the director, the director of public
17 health, an authorized representative of the director of public
18 health, a peace officer, or a representative of the United States
19 environmental protection agency. The retention period required
20 by this subsection shall be automatically extended during the
21 course of any unresolved enforcement action regarding the regu-
22 lated activity or as required by the director.

23 Sec. 6137. The treatment, storage, or disposal facility
24 owner or operator shall accept delivery of hazardous waste only
25 if delivery is accompanied by a manifest properly certified by
26 both the generator and the transporter and the treatment,
27 storage, or disposal facility is the destination indicated on the

1 manifest. The treatment, storage, or disposal facility owner or
2 operator also shall do all of the following:

3 (a) Certify on the manifest receipt of the hazardous waste
4 and return a signed copy of the manifest to the department within
5 a period of 10 days after the end of the month for all hazardous
6 waste received within that month.

7 (b) Return a signed copy of the manifest to the generator.

8 (c) Keep permanent records pursuant to the rules promulgated
9 by the department.

10 (d) Compile a periodic report of hazardous waste treated,
11 stored, or disposed of as required by the department under rules
12 promulgated by the department.

13 (e) Retain a copy of each manifest and report described in
14 this section for a period of 3 years and make each copy readily
15 available for review and inspection by the director or a desig-
16 nated representative of the director, the director of public
17 health or a designated representative of the director of public
18 health, a peace officer, or a representative of the United States
19 environmental protection agency. The retention period required
20 by this subdivision is automatically extended during the course
21 of any unresolved enforcement action regarding the regulated
22 activity or as required by the director.

23 Sec. 6138. (1) A generator of hazardous waste shall do the
24 following:

25 (a) Compile and maintain information and records regarding
26 the quantities of hazardous waste generated, characteristics and

1 composition of the hazardous waste, and the disposition of
2 hazardous waste generated.

3 (b) Utilize proper labeling and containerization of hazard-
4 ous waste as required by the department.

5 (c) Provide for the transport of hazardous waste only by a
6 transporter licensed under this part.

7 (d) Utilize and retain a manifest for each shipment of haz-
8 ardous waste transported to property that is not on site as
9 required by section 6135 and assure that the treatment, storage,
10 or disposal facility to which the waste is transported is a des-
11 ignated facility.

12 (e) Provide the information on the manifest as required
13 under section 6135(1), to each person transporting, treating,
14 storing, or disposing of hazardous waste.

15 (f) Keep all records readily available for review and
16 inspection by the authorized representative of the department or
17 the authorized representative of the department of public health,
18 a peace officer, or a representative of the United States envi-
19 ronmental protection agency.

20 (g) Retain all records for a period of 3 years. The reten-
21 tion period required by this subdivision is automatically
22 extended during the course of any unresolved enforcement action
23 regarding the regulated activity or as required by the director.

24 (h) Compile and submit a periodic report of hazardous waste
25 generated, stored, transferred, treated, disposed of, or trans-
26 ported for treatment, storage, or disposal as required by the
27 department.

1 (2) A generator who also operates a treatment, storage, or
2 disposal facility shall keep records of all hazardous waste
3 produced and treated, stored, or disposed. The generator shall
4 submit a report to the department within a period of 10 days
5 after the end of each month for all waste produced and treated,
6 stored, or disposed.

7 Sec. 6139. (1) As a condition of obtaining an operating
8 license for a disposal facility pursuant to section 6123, the
9 applicant shall demonstrate to the director that the owner of the
10 property has recorded on the deed to the property or some other
11 document that is normally examined during a title search a notice
12 that will notify in perpetuity any potential purchaser of the
13 following:

14 (a) That the property has been used to manage hazardous
15 wastes.

16 (b) That the use of the land should not disturb the final
17 cover, liners, components of any containment system, or the func-
18 tion of the monitoring systems on or in the property.

19 (c) That the survey plat and records of type, location, and
20 quantity of hazardous waste on or in the property have been filed
21 with the local zoning or land use authority as required by the
22 rules promulgated under this part.

23 (2) As a condition of obtaining an operating license for a
24 landfill pursuant to section 6123, the applicant shall demon-
25 strate to the director that an instrument imposing a restrictive
26 covenant upon the land involved has been executed by all of the
27 owners of the tract of land upon which the landfill is to be

1 located. The instrument imposing the restrictive covenant shall
2 be filed for record by the department in the office of the regis-
3 ter of deeds in the county in which the disposal facility is
4 located. The covenant shall state that the land has been or may
5 be used as a landfill for disposal of hazardous waste and that
6 neither the property owners, agents, or employees, nor any of
7 their heirs, successors, lessees, or assignees shall engage in
8 filling, grading, excavating, building, drilling, or mining on
9 the property following completion of the landfill without autho-
10 rization of the director. In giving authorization, the director
11 shall consider, at a minimum, the original design, type of opera-
12 tion, hazardous waste deposited, and the state of decomposition
13 of the fill. Before authorizing any activity that would disturb
14 the integrity of the final cover of a landfill, the director must
15 find either that the disturbance of the final cover is necessary
16 to the proposed use of the property and will not increase the
17 potential hazard to human health or the environment or that dis-
18 turbance of the final cover is necessary to reduce a threat to
19 human health or the environment.

20 Sec. 6140. (1) The owner or operator of a treatment, stor-
21 age, or disposal facility shall submit a closure plan to the
22 director as part of the application for a construction permit
23 under section 6118. In addition, the owner or operator of a dis-
24 posal facility shall submit a postclosure monitoring and mainte-
25 nance plan to the director as part of the application. At a min-
26 imum, the closure plan shall include a description of how the
27 facility shall be closed, possible uses of the land after

1 closure, anticipated time until closure, estimated time for
2 closure, and each anticipated partial closure. Those facilities
3 described in section 6116 shall submit a closure and, where
4 required by rule, a postclosure plan with their operating license
5 application.

6 (2) The director shall promulgate rules regarding notifica-
7 tion before closure, length of time permitted for closure of the
8 treatment, storage, or disposal facility, removal and decontami-
9 nation of equipment, security, groundwater and leachate monitor-
10 ing system, sampling analysis and reporting requirements, and any
11 other pertinent requirements.

12 Sec. 6141. An owner or operator of a treatment, storage, or
13 disposal facility shall file as a part of the application for a
14 license to operate, a surety bond or other suitable instrument or
15 mechanism, or establish a secured trust fund, as approved by the
16 director, to cover the cost of closing the treatment, storage, or
17 disposal facility after its capacity is reached or operations
18 have otherwise terminated. In addition, the owner or operator of
19 a disposal facility shall also file a surety bond or other suit-
20 able instrument or mechanism, or establish a secured trust fund,
21 approved by the director, to cover the cost of postclosure moni-
22 toring and maintenance of the facility. An owner or operator may
23 use a combination of bonds, instruments, mechanisms, or funds, as
24 approved by the director, to satisfy the requirements of this
25 section. The bond, instrument, mechanism, or fund, or combina-
26 tion of these methods of assurance, shall be in an amount equal
27 to a reasonable estimate of the cost required to adequately close

1 the facility, based on the level of operations proposed in the
2 operating license application, and, with respect to a disposal
3 facility, to monitor and maintain the site for a period of at
4 least 30 years. The bond, instrument, mechanism, or fund, or the
5 combination of these methods of assurance, shall be adjusted
6 periodically as determined by rule to account for inflation or
7 changes in the permitted level of operations. Failure to main-
8 tain the bond, instrument, mechanism, or fund, or combination of
9 these methods of assurance, constitutes a violation of this
10 part.

11 Sec. 6143. (1) There is created within the state treasury a
12 hazardous waste service fund of not less than \$1,000,000.00 to be
13 financed by appropriations for the following uses:

14 (a) For hazardous waste emergencies as defined by rule.

15 (b) For use in insuring the closure and post closure moni-
16 toring and maintenance of treatment, storage, or disposal
17 facilities.

18 (2) The director or an authorized representative of the
19 director shall administer the fund and authorize expenditures
20 upon a finding of actual or potential environmental damage caused
21 by hazardous waste or when the owner or operator of the treat-
22 ment, storage, or disposal facility is not fulfilling his or her
23 obligation in regard to closure or post closure monitoring and
24 maintenance of the site and the surety bond, instrument, mecha-
25 nism, or secured trust fund maintained by the owner or operator
26 of a treatment, storage, or disposal facility as required by
27 section 6141 is inadequate or is no longer in effect.

1 (3) After an expenditure from the fund, the director
2 immediately shall request the attorney general to begin proceed-
3 ings to recover any expenditure from the fund from the person
4 responsible for the hazardous waste emergency or the owner or
5 operator of a treatment, storage, or disposal facility who is not
6 fulfilling his or her obligation in regard to closure or post
7 closure monitoring and maintenance of a facility. If the owner
8 of the property refuses to pay expenses incurred, the expenses
9 shall be assessed against the property and shall be collected and
10 treated in the same manner as taxes assessed under the laws of
11 the state.

12 (4) The director shall promulgate rules to define a hazard-
13 ous waste emergency and to establish the method of payment from
14 the fund.

15 Sec. 6144. (1) The director or an authorized representative
16 shall inspect and file a written report not less than 4 times per
17 year for each licensed treatment, storage, and disposal
18 facility.

19 (2) A person may register with the director a complaint or
20 allegation of improper action or violation of this part, a rule,
21 or a condition of the license to operate a treatment, storage, or
22 disposal facility or transporting vehicle.

23 (3) Upon receipt of a complaint or allegation from a munici-
24 pality the director shall make a record of the complaint and
25 shall order an inspection of the treatment, storage, or disposal
26 facility, transporting vehicle, or other location of alleged
27 violation to investigate the complaint or allegation within not

1 more than 5 business days after receipt of the complaint or
2 allegation. If a complaint or allegation is of a highly serious
3 nature, as determined by the director, the facility or transport-
4 ing vehicle shall be inspected as quickly as possible.

5 (4) Following an investigation of a complaint or allegation
6 under subsection (3), the director shall make a written report to
7 the municipality within 15 days.

8 (5) A person who has knowledge that hazardous waste is being
9 treated, disposed of, or stored in violation of this part shall
10 notify the director. A person who has knowledge that an emer-
11 gency situation exists shall notify the director and the depart-
12 ment of public health.

13 Sec. 6145. (1) The department may certify a city, county,
14 or district health department to administer and enforce portions
15 of this part but only to an extent consistent with obtaining and
16 maintaining authorization of the state's hazardous waste manage-
17 ment program pursuant to sections 3006 to 3009 of subtitle C of
18 the solid waste disposal act, title II of Public Law 89-272, 42
19 U.S.C. 6926 to 6929. Certification procedures shall be estab-
20 lished by the department by rule. The director may rescind cer-
21 tification upon the request of the certified city, county, or
22 district health department, or after reasonable notice and hear-
23 ing, if the director finds that a certified health department is
24 not administering and enforcing this part as required.

25 (2) In order for a certified health department to carry out
26 the responsibilities authorized under this part, an annual grant
27 shall be appropriated by the legislature from the general fund of

1 the state to provide financial assistance to each certified
2 health department. A certified health department shall be eligi-
3 ble to receive 100% of its reasonable costs as determined by the
4 department based on criteria established by rule. The director
5 shall promulgate rules for distribution of the appropriated
6 funds.

7 Sec. 6146. (1) Any person who generates, stores, treats,
8 transports, disposes of, or otherwise handles or has handled haz-
9 ardous waste shall furnish information relating to the hazardous
10 wastes, or permit access to and copying of all records relating
11 to the hazardous wastes, or both, if the information and records
12 are required to be kept under this part or the rules promulgated
13 under this part, upon a request of the director or an authorized
14 representative of the director, made for the purpose of develop-
15 ing a rule or enforcing or administering this part or a rule
16 promulgated under this part. This subsection does not limit the
17 director's authority to pursue appropriate court authorization in
18 order to obtain information pertaining to enforcement actions
19 under this part.

20 (2) The director or an authorized representative of the
21 director may enter at reasonable times any treatment, storage, or
22 disposal facility or other place where hazardous wastes are or
23 have been generated, stored, treated, disposed of, or transported
24 from and may inspect the facility or other place and obtain from
25 any person samples of the hazardous wastes and samples of the
26 containers or labeling of the wastes for the purpose of

1 developing a rule or enforcing or administering this part or a
2 rule promulgated under this part.

3 (3) If the director, an authorized representative of the
4 director, or a law enforcement official has probable cause to
5 believe that a person is violating this part or a rule promul-
6 gated under this part, the director or law enforcement official
7 may search without a warrant a vehicle or equipment that is pos-
8 sessed, used, or operated by that person. The director, an
9 authorized representative of the director, or a law enforcement
10 official may seize a vehicle, equipment, or other property used
11 or operated in a manner or for a purpose contrary to this part or
12 a rule promulgated under this part. The director shall request
13 that the attorney general petition the circuit court for the
14 county of Ingham or the county where the violation occurred for
15 permission to preserve the property as evidence to prosecute the
16 violation or alternatively shall file an appropriate action to
17 condemn the property.

18 Sec. 6147. A person who violates this part by failing to
19 carry a hazardous waste transporter vehicle license in a vehicle,
20 who transfers a business or vehicle license in violation of sec-
21 tion 6132, or who violates rules promulgated pursuant to section
22 6132 is guilty of a misdemeanor, punishable by imprisonment for
23 not more than 90 days, or a fine of not more than \$500.00, or
24 both, for each violation. A law enforcement officer or a conser-
25 vation officer may issue an appearance ticket to a person who is
26 in violation of this section, section 6132, or the rules
27 promulgated pursuant to section 6132.

1 Sec. 6148. (1) Subject to subsection (2), upon receipt of
2 information that the storage, transportation, treatment, or dis-
3 posal of hazardous waste may present an imminent and substantial
4 hazard to the health of persons or to the natural resources, or
5 is endangering or causing damage to public health or the environ-
6 ment, the director, after consultation with the director of
7 public health or a designated representative of the director of
8 public health, shall take 1 or more of the following actions:

9 (a) Issue an order directing the owner or operator of the
10 treatment, storage, or disposal facility, the generator, the
11 transporter, or the custodian of the hazardous waste which con-
12 stitutes the hazard, to take the steps necessary to prevent the
13 act or eliminate the practice which constitutes the hazard. The
14 order may include permanent or temporary cessation of the opera-
15 tion of a treatment, storage, or disposal facility, generator, or
16 transporter. An order issued under this subdivision may be
17 issued without prior notice or hearing and shall be complied with
18 immediately. An order issued under this subdivision shall not
19 remain in effect more than 7 days without affording the owner or
20 operator or custodian an opportunity for a hearing. In issuing
21 an order calling for corrective action, the department shall
22 specify the precise nature of the corrective action necessary and
23 the specific time limits for performing the corrective action.
24 If corrective action is not completed within the time limit spec-
25 ified and pursuant to the department's requirements, the director
26 shall issue a cease and desist order against the owner or
27 operator of the treatment, storage, or disposal facility,

1 generator, or transporter and initiate action to revoke the
2 operating or transporter's license and take appropriate action.

3 (b) Request that the attorney general commence an action to
4 enjoin the act or practice and obtain injunctive relief upon a
5 showing by the department that a person has engaged in the pro-
6 hibited act or practice.

7 (c) Revoke a permit, license, or construction permit after
8 reasonable notice and hearing pursuant to the administrative pro-
9 cedures act of 1969, Act No. 306 of the Public Acts of 1969,
10 being sections 24.201 to 24.328 of the Michigan Compiled Laws, if
11 the director finds that a treatment, storage, or disposal facil-
12 ity or transporting vehicle is not, or has not been, constructed
13 or operated pursuant to the approved plans or this part and the
14 rules promulgated under this part, or the conditions of a license
15 or construction permit.

16 (2) A determination of an instance of imminent and substan-
17 tial hazard to the health of persons shall be made by the direc-
18 tor of public health.

19 Sec. 6149. A person who willfully tears down, removes, or
20 destroys any sign or notice warning of the presence of hazardous
21 waste or marking the boundaries of a hazardous waste treatment,
22 storage, or disposal facility is guilty of a misdemeanor, punish-
23 able by imprisonment for not more than 90 days, or a fine of not
24 more than \$500.00, or both.

25 Sec. 6150. (1) Upon receipt and verification of information
26 that a licensed storage, treatment, or disposal facility does not
27 have or has not maintained a suitable instrument or mechanism

1 required under section 6141, or that the hazardous waste at the
2 licensed facility exceeds the maximum quantities allowed under
3 the storage, treatment, or disposal facility's license issued
4 under this part, the director may issue an order of noncompliance
5 directing the owner or operator of the storage, treatment, or
6 disposal facility to take steps to eliminate the act or practice
7 that results in a violation listed in this section. An order
8 issued pursuant to this section shall specify the corrective
9 action necessary and may order a licensed facility that has
10 exceeded the maximum quantities of hazardous waste allowed under
11 the terms of the facility's license to cease receiving hazardous
12 waste. The order shall specify the time limit in which correc-
13 tive action must be completed. If a licensed storage, treatment,
14 or disposal facility comes into compliance with this part follow-
15 ing the issuance of an order of noncompliance, the director shall
16 send written verification of compliance to the owner or operator
17 of the facility.

18 (2) An order of noncompliance issued pursuant to subsection
19 (1) that requires a licensed facility to reduce the quantity of
20 hazardous waste on site and to cease receiving hazardous waste
21 shall not remain in effect for more than 7 days without affording
22 the owner or operator an opportunity for a hearing. If the order
23 remains in effect following the hearing, or if the owner or oper-
24 ator of the facility waives his or her right to a hearing, the
25 owner or operator shall cooperate with the department in develop-
26 ing and implementing a compliance plan to reduce the amount of
27 hazardous waste at the facility. If the director or an

1 authorized representative of the director determines that the
2 owner or operator has failed to make reasonable and continuous
3 efforts to comply with the order of noncompliance and the result-
4 ing compliance plan, the director may issue an order suspending
5 or restricting the facility's license pursuant to the administra-
6 tive procedures act of 1969, Act No. 306 of the Public Acts of
7 1969, being sections 24.201 to 24.328 of the Michigan Compiled
8 Laws. An order provided for in this subsection that suspends or
9 restricts a license following the licensed facility's failure to
10 comply with an order of noncompliance provided for in this sec-
11 tion shall not remain in effect for more than 7 days without
12 affording the owner or operator of the facility an opportunity
13 for a hearing to contest the suspension or restriction.

14 (3) If the owner or operator of a storage, treatment, or
15 disposal facility receives an order of noncompliance issued pur-
16 suant to subsection (1) for failing to maintain a suitable
17 instrument or mechanism required under section 6141 and does not
18 make reasonable efforts to comply with the order of noncompli-
19 ance, the director may issue an order suspending or restricting
20 the facility's license pursuant to Act No. 306 of the Public Acts
21 of 1969. An order provided for in this subsection that suspends
22 or restricts a license following the licensed facility's failure
23 to comply with an order of noncompliance provided for in this
24 section, shall not remain in effect for more than 7 days without
25 affording the owner or operator of the facility an opportunity
26 for a hearing to contest the suspension or restriction.

1 (4) Upon receipt and verification that a storage, treatment,
2 or disposal facility has not maintained a suitable instrument or
3 mechanism required under section 6141, or that hazardous waste at
4 a licensed facility exceeds the maximum quantities allowed under
5 the facility's license and the owner or operator of the facility
6 has previously been issued an order of noncompliance under this
7 section, the director or an authorized representative of the
8 director may do either of the following:

9 (a) Issue a second or subsequent order of noncompliance and
10 proceed in the manner provided for in subsection (2) or (3).

11 (b) Initiate an action to suspend or restrict the facility's
12 license or permit pursuant to Act No. 306 of the Public Acts of
13 1969, without first issuing an order of noncompliance.

14 Sec. 6151. (1) If the director finds that a person is in
15 violation of a permit, license, rule promulgated under this part,
16 or requirement of this part including a corrective action
17 requirement of this part, the director may issue an order requir-
18 ing the person to comply with the permit, license, rule, or
19 requirement of this part including a corrective action require-
20 ment of this part. The attorney general or a person may commence
21 a civil action against a person, the department, or a health
22 department certified under section 6145 for appropriate relief,
23 including injunctive relief for a violation of this part includ-
24 ing a corrective action requirement of this part, or a rule
25 promulgated under this part. An action under this subsection may
26 be brought in the circuit court for the county of Ingham or for
27 the county in which the defendant is located, resides, or is

1 doing business. The court has jurisdiction to restrain the
2 violation and to require compliance. In addition to any other
3 relief granted under this subsection, the court may impose a
4 civil fine of not more than \$25,000.00 for each instance of vio-
5 lation and, if the violation is continuous, for each day of con-
6 tinued noncompliance. A fine collected under this subsection
7 shall be deposited in the general fund of the state.

8 (2) A person who transports, treats, stores, disposes, or
9 generates hazardous waste in violation of this part, or contrary
10 to a permit, license, order, or rule issued or promulgated under
11 this part, or who makes a false statement, representation, or
12 certification in an application for, or form pertaining to a
13 permit, license, or order or in a notice or report required by
14 the terms and conditions of an issued permit, license, or order,
15 or a person who violates section 6144(5), is guilty of a misde-
16 meanor, punishable by a fine of not more than \$25,000.00 for each
17 instance of violation and, if the violation is continuous, for
18 each day of violation, or imprisonment for not more than 1 year,
19 or both. If the conviction is for a violation committed after a
20 first conviction of the person under this subsection, the person
21 is guilty of a misdemeanor, punishable by a fine of not more than
22 \$50,000.00 for each instance of violation and, if the violation
23 is continuous, for each day of violation, or by imprisonment for
24 not more than 2 years, or both.

25 (3) Any person who knowingly stores, treats, transports, or
26 disposes of any hazardous waste in violation of subsection (2)
27 and who knows at that time that he or she thereby places another

1 person in imminent danger of death or serious bodily injury, and
2 if his or her conduct in the circumstances manifests an unjusti-
3 fied and inexcusable disregard for human life, or if his or her
4 conduct in the circumstances manifests an extreme indifference
5 for human life, upon conviction, is subject to a fine of not more
6 than \$250,000.00 or imprisonment for not more than 2 years, or
7 both, except that any person whose actions constitute an extreme
8 indifference for human life, upon conviction, is subject to a
9 fine of not more than \$250,000.00 or imprisonment for not more
10 than 5 years, or both. A defendant that is not an individual and
11 not a governmental entity upon conviction, is subject to a fine
12 of not more than \$1,000,000.00.

13 (4) For the purposes of subsection (3), a person's state of
14 mind is knowing with respect to:

15 (a) His or her conduct, if he or she is aware of the nature
16 of his or her conduct.

17 (b) An existing circumstance, if he or she is aware or
18 believes that the circumstance exists.

19 (c) A result of his or her conduct, if he or she is aware or
20 believes that his or her conduct is substantially certain to
21 cause danger of death or serious bodily injury.

22 (5) For purposes of subsection (3), in determining whether a
23 defendant who is an individual knew that his or her conduct
24 placed another person in imminent danger of death or serious
25 bodily injury, both of the following apply:

26 (a) The person is responsible only for actual awareness or
27 actual belief that he or she possessed.

1 (b) Knowledge possessed by a person other than the defendant
2 but not by the defendant himself or herself may not be attributed
3 to the defendant. However, in proving the defendant's possession
4 of actual knowledge, circumstantial evidence may be used, includ-
5 ing evidence that the defendant took affirmative steps to shield
6 himself or herself from relevant information.

7 (6) It is an affirmative defense to a prosecution under this
8 part that the conduct charged was consented to by the person
9 endangered and that the danger and conduct charged were reason-
10 ably foreseeable hazards of either of the following:

11 (a) An occupation, a business, or a profession.

12 (b) Medical treatment or professionally approved methods and
13 the other person had been made aware of the risks involved prior
14 to giving consent.

15 (7) The defendant may establish an affirmative defense under
16 subsection (6) by a preponderance of the evidence.

17 (8) For purposes of subsection (3), "serious bodily injury"
18 means each of the following:

19 (a) Bodily injury that involves a substantial risk of
20 death.

21 (b) Unconsciousness.

22 (c) Extreme physical pain.

23 (d) Protracted and obvious disfigurement.

24 (e) Protracted loss or impairment of the function of a
25 bodily member, organ, or mental faculty.

26 (9) In addition to a fine, the attorney general may bring an
27 action in a court of competent jurisdiction to recover the full

1 value of the damage done to the natural resources of this state
2 and the costs of surveillance and enforcement by the state
3 resulting from the violation. The damages and cost collected
4 under this subsection shall be deposited in the general fund if
5 the damages or costs result from impairment or destruction of the
6 fish, wildlife, or other natural resources of the state and shall
7 be used to restore, rehabilitate, or mitigate the damage to,
8 those resources in the affected area, and for the specific
9 resource to which the damages occurred.

10 (10) The court, in issuing a final order in an action
11 brought under this part, may award costs of litigation, including
12 reasonable attorney and expert witness fees to a party, if the
13 court determines that the award is appropriate.

14 (11) A person who has an interest that is or may be affected
15 by a civil or administrative action commenced under this part has
16 a right to intervene in that action.

17 Sec. 6152. The department shall encourage interstate and
18 international cooperation for the improved management of hazard-
19 ous waste; for improved, and so far as is practicable, uniform
20 state laws relating to the management of hazardous waste; and
21 compacts between this and other states for the improved manage-
22 ment of hazardous waste.

23 PART 62 LANDFILL MAINTENANCE TRUST FUND

24 Sec. 6201. As used in this part:

25 (a) "Fund" means the landfill maintenance trust fund created
26 in section 6202.

1 (b) "Response activity" means response activity as defined
2 in part 45.

3 Sec. 6202. (1) There is hereby created the landfill mainte-
4 nance trust fund. The fund shall be established as a separate
5 fund in the department of treasury.

6 (2) The fund shall receive as revenue money from any source
7 not to exceed \$500,000.00, as appropriated by the legislature.

8 Sec. 6203. (1) The interest and earnings of the fund shall
9 be expended by the department to monitor the effectiveness of
10 response activity and to provide necessary long-term maintenance
11 only at those landfills that are sites of polybrominated biphen-
12 yls contamination where the department has undertaken response
13 activity through the use of funds appropriated by the state from
14 a judicially approved settlement.

15 (2) The corpus of the fund shall be maintained by the state
16 treasurer in a manner that will provide for future disbursements
17 to the department to insure that the sites described in subsec-
18 tion (1) are properly monitored and maintained for as long as
19 considered necessary by the department to assure the protection
20 of the public health, safety, welfare, and the environment.

21 Sec. 6204. The state treasurer shall direct the investment
22 of the fund in the same manner as surplus funds are invested.

23 PART 63 SOLID WASTE MANAGEMENT

24 Sec. 6301. For purposes of this part, the words and phrases
25 defined in sections 6302 to 6306 shall have the meanings ascribed
26 to them in those sections.

1 Sec. 6302. (1) "Applicant" includes any person.

2 (2) "Ashes" means the residue from the burning of wood,
3 coal, coke, refuse, wastewater sludge, or other combustible
4 materials.

5 (3) "Bond" means a surety bond from a surety company autho-
6 rized to transact business in this state, a certificate of depos-
7 it, a cash bond, or an irrevocable letter of credit, in favor of
8 the director.

9 (4) "Certified health department" means a city, county, or
10 district department of health that is specifically delegated
11 authority by the director to perform designated activities as
12 prescribed by this part.

13 (5) "Coal or wood ash" means either or both of the
14 following:

15 (a) The residue remaining after the ignition of coal or
16 wood, or both, and may include noncombustible materials, other-
17 wise referred to as bottom ash.

18 (b) The airborne residues from burning coal or wood, or
19 both, that are finely divided particles entrained in flue gases
20 arising from a combustion chamber, otherwise referred to as fly
21 ash.

22 (6) "Collection center" means a tract of land, building,
23 unit, or appurtenance or combination thereof that is used to col-
24 lect junk motor vehicles and farm implements under section 6330.

25 Sec. 6303. (1) "Discharge" includes, but is not limited to,
26 any spilling, leaking, pumping, pouring, emitting, emptying,
27 discharging, injecting, escaping, leaching, dumping, or disposing

1 of a substance into the environment which is or may become
2 injurious to the public health, safety, or welfare, or to the
3 environment.

4 (2) "Disposal area" means a solid waste transfer facility,
5 incinerator, sanitary landfill, processing plant, or other solid
6 waste handling or disposal facility utilized in the disposal of
7 solid waste.

8 (3) "Enforceable mechanism" means a legal method whereby the
9 state, a county, a municipality, or a person is authorized to
10 take action to guarantee compliance with an approved county solid
11 waste management plan. Enforceable mechanisms include contracts,
12 intergovernmental agreements, laws, ordinances, rules, and
13 regulations.

14 (4) "Garbage" means rejected food wastes including waste
15 accumulation of animal, fruit, or vegetable matter used or
16 intended for food or that attends the preparation, use, cooking,
17 dealing in, or storing of meat, fish, fowl, fruit, or vegetable.

18 Sec. 6304. (1) "Health officer" means a full-time adminis-
19 trative officer of a certified city, county, or district depart-
20 ment of health.

21 (2) "Inert material" means a substance that will not decom-
22 pose, dissolve, or in any other way form a contaminated leachate
23 upon contact with water, or other liquids determined by the
24 director as likely to be found at the disposal area, percolating
25 through the substance.

26 (3) "Landfill" means a disposal area that is a sanitary
27 landfill.

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

5 (5) "Municipal solid waste incinerator" means an incinerator
6 that is owned or operated by any person, and meets all of the
7 following requirements:

8 (a) The incinerator receives solid waste from off site and
9 burns only household waste from single and multiple dwellings,
10 hotels, motels, and other residential sources, or this household
11 waste together with solid waste from commercial, institutional,
12 municipal, county, or industrial sources that, if disposed of,
13 would not be required to be placed in a disposal facility
14 licensed under part 61.

15 (b) The incinerator has established contractual requirements
16 or other notification or inspection procedures sufficient to
17 assure that the incinerator receives and burns only waste
18 referred to in subdivision (a).

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

21 (d) The incinerator is not an industrial furnace as defined
22 in 40 C.F.R. 260.10.

23 (e) The incinerator is not an incinerator that receives and
24 burns only medical waste, or only waste produced at 1 or more
25 hospitals.

1 (6) "Municipal solid waste incinerator ash" means the
2 substances remaining after combustion in a municipal solid waste
3 incinerator.

4 (7) "Municipality" means a city, township, or village.

5 (8) "Perpetual care fund" means a perpetual care fund pro-
6 vided for in section 6325.

7 Sec. 6305. (1) "Recyclable materials" means source sepa-
8 rated materials, site separated materials, high grade paper,
9 glass, metal, plastic, aluminum, newspaper, corrugated paper,
10 yard clippings, and other materials that may be recycled or
11 composted.

12 (2) "Regional solid waste management planning agency" means
13 the regional solid waste planning agency designated by the gover-
14 nor pursuant to section 4006 of subtitle D of the solid waste
15 disposal act, title II of Public Law 89-272, 42 U.S.C. 6946.

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

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

26 (5) "Rubbish" means nonputrescible solid waste, excluding
27 ashes, consisting of both combustible and noncombustible waste,

1 including paper, cardboard, metal containers, yard clippings,
2 wood, glass, bedding, crockery, demolished building materials, or
3 litter of any kind that may be a detriment to the public health
4 and safety.

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

7 (7) "Site separated material" means glass, metal, wood,
8 paper products, plastics, rubber, textiles, garbage, yard clip-
9 pings, or any other material approved by the director that is
10 separated from solid waste for the purpose of conversion into raw
11 materials or new products. Site separated material does not
12 include the residue remaining after glass, metal, wood, paper
13 products, plastics, rubber, textiles, or any other material
14 approved by the director is separated from solid waste.

15 (8) "Slag" means the nonmetallic product resulting from
16 melting or smelting operations for iron or steel.

17 Sec. 6306. (1) "Solid waste" means garbage, rubbish, ashes,
18 incinerator ash, incinerator residue, street cleanings, municipal
19 and industrial sludges, solid commercial and solid industrial
20 waste, and animal waste other than organic waste generated in the
21 production of livestock and poultry. Solid waste does not
22 include the following:

23 (a) Human body waste.

24 (b) Medical waste as it is defined in part 138 of the public
25 health code, Act No. 368 of the Public Acts of 1978, being sec-
26 tions 333.13801 to 333.13831 of the Michigan Compiled Laws, and
27 regulated under part 138 of Act No. 368 of the Public Acts of

1 1978 and section 5a of the air pollution act, Act No. 348 of the
2 Public Acts of 1965, being section 336.15a of the Michigan
3 Compiled Laws.

4 (c) Organic waste generated in the production of livestock
5 and poultry.

6 (d) Liquid waste.

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

9 (f) Slag or slag products directed to a slag processor or to
10 a reuser of slag or slag products.

11 (g) Sludges and ashes managed as recycled or nondetrimental
12 materials appropriate for agricultural or silvicultural use pur-
13 suant to a plan approved by the director.

14 (h) Materials approved for emergency disposal by the
15 director.

16 (i) Source separated materials.

17 (j) Site separated material.

18 (k) Fly ash or any other ash produced from the combustion of
19 coal, when used in the following instances:

20 (i) With a maximum of 6% of unburned carbon as a component
21 of concrete, grout, mortar, or casting molds.

22 (ii) With a maximum of 12% unburned carbon passing
23 M.D.O.T. test method MTM 101 when used as a raw material in
24 asphalt for road construction.

25 (iii) As aggregate, road, or building material which in
26 ultimate use will be stabilized or bonded by cement, limes, or
27 asphalt.

1 (iv) As a road base or construction fill which is covered
2 with asphalt, concrete, or other material approved by the direc-
3 tor and which is placed at least 4 feet above the seasonal
4 groundwater table.

5 (v) As the sole material in a depository designed to
6 reclaim, develop, or otherwise enhance land, subject to the
7 approval of the director. In evaluating the site, the director
8 shall consider the physical and chemical properties of the ash
9 including leachability, and the engineering of the depository,
10 including, but not limited to, the compaction, control of surface
11 water and groundwater that may threaten to infiltrate the site,
12 and evidence that the depository is designed to prevent water
13 percolation through the material.

14 (1) Other wastes regulated by statute.

15 (2) "Solid waste hauler" means a person who owns or operates
16 a solid waste transporting unit.

17 (3) "Solid waste processing plant" means a tract of land,
18 building, unit, or appurtenance of a building or unit or a combi-
19 nation of land, buildings, and units that is used or intended for
20 use for the processing of solid waste or the separation of mate-
21 rial for salvage or disposal, or both, but does not include a
22 plant engaged primarily in the acquisition, processing, and ship-
23 ment of ferrous or nonferrous metal scrap, or a plant engaged
24 primarily in the acquisition, processing, and shipment of slag or
25 slag products.

1 (4) "Solid waste transporting unit" means a container that
2 may be an integral part of a truck or other piece of equipment
3 used for the transportation of solid waste.

4 (5) "Solid waste transfer facility" means a tract of land, a
5 building and any appurtenances, or a container, or any combina-
6 tion of land, buildings, or containers that is used or intended
7 for use in the rehandling or storage of solid waste incidental to
8 the transportation of the solid waste, but is not located at the
9 site of generation or the site of disposal of the solid waste.

10 (6) "Source separated material" means glass, metal, wood,
11 paper products, plastics, rubber, textiles, garbage, yard clip-
12 pings, or any other material approved by the director that is
13 separated at the source of generation for the purpose of conver-
14 sion into raw materials or new products.

15 (7) "Yard clippings" means leaves, grass clippings, vegeta-
16 ble or other garden debris, shrubbery, or brush or tree trimmings
17 less than 4 feet in length and 2 inches in diameter, that can be
18 converted to compost humus. This term does not include stumps,
19 agricultural wastes, animal waste, roots, sewage sludge, or
20 garbage.

21 Sec. 6307. (1) The department and a health officer shall
22 assist in developing and encouraging methods for the disposal of
23 solid waste that are environmentally sound, that maximize the
24 utilization of valuable resources, and that encourage resource
25 conservation including source reduction and source separation.

26 (2) This part shall be construed and administered to
27 encourage and facilitate the effort of all persons to engage in

1 source separation and site separation of material from solid
2 waste, and other environmentally sound measures to prevent mate-
3 rials from entering the waste stream or which encourage the
4 removal of materials from the waste stream.

5 (3) The director may exempt from regulation under this part
6 solid waste that is determined by the director to be inert mate-
7 rial for uses and in a manner approved by the director.

8 Sec. 6308. A city, county, or district health department
9 may be certified by the director to perform a solid waste manage-
10 ment program. Certification procedures shall be established by
11 the director by rule. The director may rescind certification
12 upon request of the certified health department or after reason-
13 able notice and hearing if the director finds that a certified
14 health department is not performing the program as required.

15 Sec. 6309. (1) Except as otherwise provided in section
16 6329, a person otherwise allowed under this part to own or oper-
17 ate a solid waste disposal area shall not establish a disposal
18 area without a construction permit from the director, contrary to
19 an approved solid waste management plan, or contrary to a permit,
20 license, or final order issued pursuant to this part. A person
21 proposing the establishment of a disposal area shall make appli-
22 cation for a construction permit to the director through the
23 health officer on a form provided by the director. If the dis-
24 posal area is located in a county or city that does not have a
25 certified health department, the application shall be made
26 directly to the director.

1 (2) The application for a construction permit shall contain
2 the name and residence of the applicant, the location of the
3 proposed disposal area, and other information considered neces-
4 sary by the director. The application shall be accompanied by an
5 engineering plan and a construction permit application fee. A
6 construction application permit fee for a landfill shall be
7 accompanied by a fee in an amount that is the sum of all of the
8 applicable fees in this subsection:

9 (a) For a permitted site size of the following:

10 (i) Less than 5 acres:

11 (A) \$100.00 for a new permit application.

12 (B) \$25.00 for a renewal permit application.

13 (ii) 5 to 19 acres:

14 (A) \$170.00 for a new permit application.

15 (B) \$100.00 for a renewal permit application.

16 (iii) 20 to 79 acres:

17 (A) \$240.00 for a new permit application.

18 (B) \$150.00 for a renewal permit application.

19 (iv) 80 acres or more:

20 (A) \$320.00 for a new permit application.

21 (B) \$230.00 for a renewal permit application.

22 (b) For the estimated solid waste volume per day:

23 (i) Less than 50 cubic yards:

24 (A) \$60.00 for a new permit application.

25 (B) \$15.00 for a renewal permit application.

26 (ii) 50 to 100 cubic yards:

- 1 (A) \$80.00 for a new permit application.
- 2 (B) \$30.00 for a renewal permit application.
- 3 (iii) 101 to 700 cubic yards:
- 4 (A) \$100.00 for a new permit application.
- 5 (B) \$50.00 for a renewal permit application.
- 6 (iv) More than 700 cubic yards:
- 7 (A) \$130.00 for a new permit application.
- 8 (B) \$100.00 for a renewal permit application.
- 9 (c) For the nature of the solid waste:
- 10 (i) Residential:
- 11 (A) \$100.00 for a new permit application.
- 12 (B) \$50.00 for a renewal permit application.
- 13 (ii) Industrial or combination residential and industrial:
- 14 (A) \$125.00 for a new permit application.
- 15 (B) \$75.00 for a renewal permit application.
- 16 (d) For hydrogeological characteristics:
- 17 (i) Natural soil:
- 18 (A) \$40.00 for a new permit application.
- 19 (B) \$10.00 for a renewal permit application.
- 20 (ii) Compacted clay:
- 21 (A) \$70.00 for a new permit application.
- 22 (B) \$30.00 for a renewal permit application.
- 23 (iii) Synthetic liner:
- 24 (A) \$100.00 for a new permit application.
- 25 (B) \$70.00 for a renewal permit application.
- 26 (3) The application for a construction permit for a solid
- 27 waste transfer facility or a solid waste processing plant shall

1 be accompanied by a fee in an amount that is the sum of all of
2 the applicable fees in this subsection:

3 (a) For a permitted site size of the following:

4 (i) Less than 5 acres:

5 (A) \$50.00 for a new permit application.

6 (B) \$15.00 for a renewal permit application.

7 (ii) 5 acres or more:

8 (A) \$100.00 for a new permit application.

9 (B) \$75.00 for a renewal permit application.

10 (b) For a building size of the following:

11 (i) Less than 500 square feet:

12 (A) \$50.00 for a new permit application.

13 (B) \$20.00 for a renewal permit application.

14 (ii) 500 to 1,000 square feet:

15 (A) \$100.00 for a new permit application.

16 (B) \$60.00 for a renewal permit application.

17 (iii) More than 1,000 square feet:

18 (A) \$150.00 for a new permit application.

19 (B) \$100.00 for a renewal permit application.

20 (c) For the nature of the solid waste:

21 (i) Residential:

22 (A) \$100.00 for a new permit application.

23 (B) \$30.00 for a renewal permit application.

24 (ii) Industrial or combination residential and industrial:

25 (A) \$150.00 for a new permit application.

26 (B) \$90.00 for a renewal permit application.

1 (d) For site characteristics:

2 (i) High site that is dry which has no groundwater or
3 surface water problems:

4 (A) \$50.00 for a new permit application.

5 (B) \$10.00 for a renewal permit application.

6 (ii) Surface water on site:

7 (A) \$75.00 for a new permit application.

8 (B) \$30.00 for a renewal permit application.

9 (e) For the estimated solid waste volume per day:

10 (i) Less than 50 cubic yards:

11 (A) \$50.00 for a new permit application.

12 (B) \$25.00 for a renewal permit application.

13 (ii) 50 to 500 cubic yards:

14 (A) \$100.00 for a new permit application.

15 (B) \$75.00 for a renewal permit application.

16 (iii) More than 500 cubic yards:

17 (A) \$150.00 for a new permit application.

18 (B) \$125.00 for a renewal permit application.

19 (4) An applicant for a construction permit, within 6 months
20 after a permit denial, may resubmit the application, together
21 with the additional information as needed to address the reasons
22 for denial, without being required to pay an additional applica-
23 tion fee.

24 Sec. 6310. (1) Before the submission of a construction
25 permit application for a new disposal area, the applicant shall
26 request a health officer or the director to provide an advisory
27 analysis of the proposed disposal area. However, the applicant,

1 not less than 15 days after the request, and notwithstanding an
2 analysis result, may file an application for a construction
3 permit.

4 (2) Upon receipt of a construction permit application, the
5 director or an authorized representative of the director shall do
6 all of the following:

7 (a) Immediately notify the clerk of the municipality in
8 which the disposal area is located or proposed to be located, the
9 local soil erosion and sedimentation control agency, each divi-
10 sion within the department that has responsibilities in land,
11 air, or water management, and the designated regional solid waste
12 management planning agency.

13 (b) Publish a notice in a newspaper having major circulation
14 in the vicinity of the proposed disposal area. The required pub-
15 lished notice shall contain a map indicating the location of the
16 proposed disposal area and shall contain a description of the
17 proposed disposal area and the location where the complete appli-
18 cation package may be reviewed and where copies may be obtained.

19 (c) Indicate in the public, departmental, and municipality
20 notice that the department shall hold a public hearing in the
21 area of the proposed disposal area if a written request is sub-
22 mitted by the applicant or a municipality within 30 days after
23 the date of publication of the notice, or by a petition submitted
24 to the department containing a number of signatures equal to not
25 less than 10% of the number of registered voters of the munici-
26 pality where the proposed disposal area is to be located who
27 voted in the last gubernatorial election. The petition shall be

1 validated by the clerk of the municipality. The public hearing
2 shall be held after the director makes a preliminary review of
3 the application and all pertinent data and before a construction
4 permit is issued or denied.

5 (d) Review the plans of the proposed disposal area to deter-
6 mine if it complies with this part and the rules promulgated
7 under this part. The review shall be made by persons qualified
8 in hydrogeology and sanitary landfill engineering. A written
9 approval by the persons qualified in hydrogeology and sanitary
10 landfill engineering shall be received before a construction
11 permit is issued. If the site review, plan review, and the
12 application meet the requirements of this part and the rules
13 promulgated under this part, the director shall issue a construc-
14 tion permit that may contain a stipulation specifically applica-
15 ble to the site and operation. Except as otherwise provided in
16 section 6342, an expansion of the area of a disposal area, an
17 enlargement in capacity of a disposal area, or an alteration of a
18 disposal area to a different type of disposal area than had been
19 specified in the previous construction permit application consti-
20 tutes a new proposal for which a new construction permit is
21 required. The upgrading of a disposal area type required by the
22 director to comply with this part or the rules promulgated under
23 this part or to comply with a consent order does not require a
24 new construction permit.

25 (e) Notify the Michigan aeronautics commission if the dis-
26 posal area is a sanitary landfill proposed to be located within
27 10,000 feet of a runway or a proposed runway extension contained

1 in a plan approved by the Michigan aeronautics commission of an
2 airport licensed and regulated by the Michigan aeronautics
3 commission. The director shall make a copy of the application
4 available to the Michigan aeronautics commission. If, after a
5 period of time for review and comment not to exceed 60 days, the
6 Michigan aeronautics commission informs the director that it
7 finds that operation of the proposed disposal area would present
8 a potential hazard to air navigation and presents the basis for
9 its findings, the director may either recommend appropriate
10 changes in the location, construction, or operation of the pro-
11 posed disposal area or deny the application for a construction
12 permit. The director shall give an applicant an opportunity to
13 rebut a finding of the Michigan aeronautics commission that the
14 operation of a proposed disposal area would present a potential
15 hazard to air navigation.

16 Sec. 6311. (1) The director shall make a final decision as
17 to whether to issue a construction permit within 120 days after
18 the director receives an administratively complete application.
19 The decision of the director and the reasons for the decision
20 shall be in writing and shall be sent by first class mail to the
21 clerk of the municipality in which the disposal area is proposed
22 to be located and to the applicant within 10 days after the final
23 decision is made. If the director fails to make a final decision
24 within 120 days, the permit shall be considered issued.

25 (2) A construction permit shall expire 1 year after the date
26 of issuance, unless development under the construction permit is
27 initiated within that year. A construction permit that has

1 expired may be renewed upon payment of a permit renewal fee and
2 submission of any additional information the director may
3 require.

4 (3) Beginning March 30, 1988 and except as otherwise pro-
5 vided in this subsection, the director shall not issue a con-
6 struction permit for a disposal area within a planning area
7 unless a solid waste management plan for that planning area has
8 been approved pursuant to sections 6336 and 6337 and unless the
9 disposal area complies with and is consistent with the approved
10 solid waste management plan. The director may issue a construc-
11 tion permit for a disposal area designed to receive ashes
12 produced in connection with the combustion of fossil fuels for
13 electrical power generation in the absence of an approved county
14 solid waste management plan, upon receipt of a letter of approval
15 from whichever county or counties, group of municipalities, or
16 regional planning agency has prepared or is preparing the county
17 solid waste management plan for that planning area under
18 section 6333 and from the municipality in which the disposal area
19 is to be located.

20 Sec. 6312. (1) A person shall dispose of solid waste at a
21 disposal area licensed under this part unless a person is permit-
22 ted by state law or rules promulgated by the department to dis-
23 pose of the solid waste at the site of generation.

24 (2) Except as otherwise provided in this section or in sec-
25 tion 6329, a person otherwise allowed under this part to own or
26 operate a solid waste disposal area shall not conduct, manage,
27 maintain, or operate a disposal area within this state without a

1 license from the director, contrary to an approved solid waste
2 management plan, or contrary to a permit, license, or final order
3 issued under this part. A person who intends to conduct, manage,
4 maintain, or operate a disposal area shall make a prior license
5 application to the director through a certified health department
6 on a form provided by the director. If the disposal area is
7 located in a county or city that does not have a certified health
8 department, the application shall be made directly to the
9 director.

10 (3) The application for a license shall contain the name and
11 residence of the applicant, the location of the proposed or
12 existing disposal area, and other information the director con-
13 siders necessary. The application shall be accompanied by a fee
14 of \$100.00.

15 (4) At the time of application for a license for a disposal
16 area, the applicant shall submit to a health officer or the
17 director a certification under the seal of a licensed profes-
18 sional engineer verifying that the construction of the disposal
19 area has proceeded according to the approved plans. The director
20 shall require additional certification during intermediate pro-
21 gression of the operation, or to verify proper closure of the
22 site.

23 (5) An applicant for an operating license, within 3 months
24 after a license denial, may resubmit the application, together
25 with additional information or corrections as are necessary to
26 address the reason for denial, without being required to pay an
27 additional application fee.

1 (6) In order to conduct tests and assess operational
2 capabilities, the owner or operator of a municipal solid waste
3 incinerator that is designed to burn at a temperature in excess
4 of 2500 degrees Fahrenheit may operate the incinerator without an
5 operating license, upon notice to the director, for a period not
6 to exceed 60 days.

7 Sec. 6313. A person shall not accept for disposal solid
8 waste or municipal solid waste incinerator ash that is not gener-
9 ated in the county in which the disposal area is located unless
10 the acceptance of solid waste or municipal solid waste incinera-
11 tor ash that is not generated in the county is explicitly autho-
12 rized in the approved county solid waste management plan. The
13 department shall take action to enforce this section within 30
14 days of obtaining knowledge of a violation of this section.

15 Sec. 6314. A person shall not knowingly dispose of, and an
16 owner or operator of a landfill shall not knowingly permit the
17 disposal of medical waste in a landfill unless that medical waste
18 has been decontaminated or is not required to be decontaminated
19 but is packaged in the manner required under part 138 of the
20 public health code, Act No. 368 of the Public Acts of 1978, being
21 sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

22 Sec. 6315. (1) Upon receipt of a license application, the
23 director or health officer or an authorized representative of the
24 director or health officer shall inspect the site and determine
25 if the proposed operation complies with this part and the rules
26 promulgated under this part.

1 (2) The department shall not license a landfill facility
2 operating without an approved hydrogeologic monitoring program
3 until the department receives a hydrogeologic monitoring program
4 and the results of the program. The director shall use this
5 information in conjunction with other information required by
6 this part or the rules promulgated pursuant to this part to
7 determine a course of action regarding licensing of the facility
8 consistent with section 4005 of subtitle D of the solid waste
9 disposal act, title II of Public Law 89-272, 42 U.S.C. 6945, and
10 with this part and the rules promulgated pursuant to this part.
11 In deciding a course of action, the director shall consider, at a
12 minimum, the health hazards, environmental degradation, and other
13 public or private alternatives. The director may revoke a
14 license or issue a timetable or schedule to provide for compli-
15 ance for the facility or operation which specifies a schedule of
16 remedial measures, including a sequence of actions or operations,
17 that leads to compliance with this part within a reasonable time
18 period but not later than December 2, 1987.

19 Sec. 6316. (1) Subject to subsection (4), the director
20 shall make a final decision on a license application within
21 90 days after the director receives the application. The deci-
22 sion of the director and the reasons for the decision shall be in
23 writing and shall be sent by first class mail to the clerk of the
24 municipality in which the disposal area is located and to the
25 applicant within 10 days after the final decision is made. If
26 the director fails to make a final decision within 90 days, the
27 license is considered issued.

1 (2) An operating license shall expire 2 years after the date
2 of issuance. An operating license may be renewed before expira-
3 tion upon payment of a renewal application fee of \$100.00 if the
4 licensee is in compliance with this part and the rules promul-
5 gated under this part.

6 (3) The issuance of a license shall empower the director or
7 a health officer or an authorized representative of the director
8 or health officer to enter at any reasonable time, pursuant to
9 law, in or upon private or public property licensed under this
10 part for the purpose of inspecting or investigating conditions
11 relating to the storage, processing, or disposal of any
12 material.

13 (4) Beginning March 30, 1988 and except as otherwise pro-
14 vided in this subsection, the director shall not issue an operat-
15 ing license for a new disposal area within a planning area unless
16 a solid waste management plan for that planning area has been
17 approved pursuant to sections 6336 and 6337 and unless the dis-
18 posal area complies with and is consistent with the approved
19 solid waste management plan. The director may issue an operating
20 license for a disposal area designed to receive ashes produced in
21 connection with the combustion of fossil fuels for electrical
22 power generation in the absence of an approved county solid waste
23 management plan, upon receipt of a letter of approval from which-
24 ever county or counties, group of municipalities, or regional
25 planning agency has prepared or is preparing the county solid
26 waste management plan for that planning area under section 6333

1 and from the municipality in which the disposal area is to be
2 located.

3 Sec. 6317. (1) By March 12, 1990, or within 9 months after
4 the completion of construction of a municipal solid waste incin-
5 erator, whichever is later, the owner or operator of a municipal
6 solid waste incinerator shall submit a plan to the director for a
7 program that, to the extent practicable, reduces the incineration
8 of noncombustible materials and dangerous combustible materials
9 and their hazardous by-products at the incinerator. The director
10 shall approve or disapprove the plan submitted under this subsec-
11 tion within 30 days of receiving it. In reviewing the plan, the
12 director shall consider the current county solid waste management
13 plan, available markets for separated materials, disposal alter-
14 natives for the separated materials, and collection practices for
15 handling such separated materials. If the director disapproves a
16 plan, he or she shall notify the owner or operator submitting the
17 plan of this fact, and shall provide modifications that, if
18 included, would result in the plan's approval. If the director
19 disapproves a plan, the owner or operator of a municipal solid
20 waste incinerator shall within 30 days after receipt of the
21 director's disapproval submit a revised plan that addresses all
22 of the modifications provided by the director. The director
23 shall approve or disapprove the revised plan within 30 days of
24 receiving it, and approval of the revised plan shall not be
25 unreasonably withheld.

26 (2) Not later than 6 months after the approval of the plan
27 by the director under subsection (1), the owner or operator shall

1 implement the plan in accordance with the implementation schedule
2 set forth in the plan. The operation of a municipal solid waste
3 incinerator without an approved plan under this section shall
4 subject the owner or operator, or both, to all of the sanctions
5 provided by this part.

6 Sec. 6318. (1) At the time of licensing of a disposal area
7 which is a sanitary landfill, an instrument which imposes a
8 restrictive covenant upon the land involved shall be executed by
9 all of the owners of the tract of land upon which the landfill is
10 to be located and the director. If the land involved is state
11 owned, the state administrative board shall execute the covenant
12 on behalf of the state. The instrument imposing the restrictive
13 covenant shall be filed for record by the director or a health
14 officer in the office of the register of deeds of the county, or
15 counties, in which the facility is located. The covenant shall
16 state that the land described in the covenant has been or will be
17 used as a landfill and that neither the property owners, their
18 servants, agents, or employees, nor any of their heirs, succes-
19 sors, lessees, or assigns shall engage in filling, grading, exca-
20 vating, drilling, or mining on the property during the first 50
21 years following completion of the landfill without authorization
22 of the director. In giving authorization, the director shall
23 consider the original design, type of operation, material depos-
24 ited, and the stage of decomposition of the fill. Special exemp-
25 tion from this section may be granted by the director if the
26 lands involved are federal lands or if contracts existing between

1 the landowner and the licensee on January 11, 1979 are not
2 renegotiable.

3 (2) This part does not prohibit the commission from convey-
4 ing, leasing, or permitting the use of state land for a solid
5 waste disposal area or a resource recovery facility as provided
6 by applicable state law.

7 Sec. 6319. (1) The director shall specify, in writing, the
8 reasons for denial of a construction permit or an operating
9 license, specifying those particular sections of this part or
10 rules promulgated under this part that may be violated by grant-
11 ing the application, and in what manner the violation may occur.

12 (2) The health officer or director may issue a cease and
13 desist order specifying a schedule of closure or remedial action
14 in accordance with this part and rules promulgated pursuant to
15 this part or may establish a consent agreement specifying a
16 schedule of closure or remedial action in accordance with this
17 part and rules promulgated pursuant to this part to a person who
18 establishes, constructs, conducts, manages, maintains, or oper-
19 ates a disposal area without a permit or license, or to a person
20 who holds a permit or license but establishes, constructs, con-
21 ducts, manages, maintains, or operates a disposal area contrary
22 to an approved solid waste management plan or contrary to the
23 permit or license issued under this part.

24 (3) The director may issue a final order revoking, suspend-
25 ing, or restricting a permit or license after a contested case
26 hearing as provided in the administrative procedures act of 1969,
27 Act No. 306 of the Public Acts of 1969, being sections 24.201 to

1 24.328 of the Michigan Compiled Laws, if the director finds that
2 the disposal area is not being constructed or operated in accord-
3 ance with the approved plans, the conditions of a permit or
4 license, this part, or the rules promulgated under this part. A
5 final order issued pursuant to this section is subject to judi-
6 cial review as provided in Act No. 306 of the Public Acts of
7 1969. The director or a health officer shall inspect and file a
8 written report not less than 4 times per year for each licensed
9 disposal area. The director or the health officer shall provide
10 the municipality in which the licensed disposal area is located
11 with a copy of each written inspection report if the municipality
12 arranges with the director or the health officer to bear the
13 expense of duplicating and mailing the reports.

14 (4) The director, after consultation with the director of
15 public health or a designated representative of the director of
16 public health, may issue an order summarily suspending a permit
17 or license if the director determines that a violation of this
18 part or rules promulgated under this part has occurred which, in
19 the director's opinion, constitutes an emergency or poses an
20 imminent risk of injury to the public health or the environment.
21 A determination that a violation poses an imminent risk of injury
22 to the public health shall be made by the director of public
23 health. Summary suspension may be ordered effective on the date
24 specified in the order or upon service of a certified copy of the
25 order on the licensee, whichever is later, and shall remain
26 effective during the proceedings. The proceedings shall be

1 commenced within 7 days of the issuance of the order and shall be
2 promptly determined.

3 Sec. 6320. (1) Fees collected by a health officer under
4 this part shall be deposited with the city or county treasurer,
5 who shall keep the deposits in a special fund designated for use
6 in carrying out the purposes of this part. If there is an ordi-
7 nance or charter provision that prohibits a health officer from
8 maintaining a special fund, the fees shall be deposited and used
9 in accordance with the ordinance or charter provision. Fees col-
10 lected by the director under this part shall be credited to the
11 general fund of the state.

12 (2) This part does not prohibit an individual from disposing
13 of solid waste from the individual's own household upon the
14 individual's own land as long as the disposal does not create a
15 nuisance or hazard to health. Solid waste accumulated as a part
16 of an improvement or the planting of privately owned farmland may
17 be disposed of on the property if the method used is not injuri-
18 ous to human life or property and does not unreasonably interfere
19 with the enjoyment of life or property.

20 Sec. 6321. (1) Beginning on March 28, 1993, if the owner or
21 operator of a landfill or a municipal solid waste incinerator
22 knows or should know that solid waste to be disposed of includes
23 yard clippings that are generated or collected, or both, on land
24 that is owned by a county, municipality, or a state facility, the
25 owner or operator of the landfill or municipal solid waste incin-
26 erator shall not accept the solid waste for disposal.

1 (2) Beginning on March 28, 1995, if the owner or operator of
2 a landfill or a municipal solid waste incinerator knows or should
3 know that solid waste to be disposed of includes yard clippings
4 from any source, the owner or operator of the landfill or municipi-
5 pal solid waste incinerator shall not accept the solid waste for
6 disposal.

7 (3) This section does not apply to yard clippings that are
8 diseased or infested.

9 Sec. 6322. (1) Beginning on March 28, 1995, the open burn-
10 ing of grass clippings or leaves, or both, is prohibited in any
11 municipality having a population of 7,500 or more, unless specif-
12 ically authorized by local ordinance which shall be reported to
13 the department of natural resources within 30 days of enactment.

14 (2) This section shall not be construed to allow a county or
15 municipality to permit open burning of grass clippings or leaves,
16 or both, by ordinance that would otherwise be prohibited under
17 part 39 or rules promulgated under that part.

18 Sec. 6323. (1) The director shall not issue a license to
19 operate a disposal area unless the applicant has filed, as a part
20 of the application for a license, a bond to cover the cost of
21 closure and of postclosure monitoring and maintenance of the dis-
22 posal area after capacity has been reached or operations have
23 otherwise terminated, in accordance with the following:

24 (a) Except as provided in subdivision (b), a bond estab-
25 lished for a landfill shall be in an amount equal to \$20,000.00
26 per acre of licensed landfill. However, the amount of the bond
27 shall be not less than \$20,000.00, or more than \$1,000,000.00.

1 Each bond shall provide assurance for the maintenance of the
2 finished landfill site for a period of 30 years after the land-
3 fill or any approved portion is completed.

4 (b) A bond established for a landfill or portion of a land-
5 fill that receives municipal solid waste incinerator ash under
6 section 6342 shall be in an amount equal to \$50,000.00 per acre
7 of licensed landfill or portion of the landfill. Each bond shall
8 provide assurance for the maintenance of the finished landfill
9 site or portion of landfill site for a period of 30 years after
10 the landfill or any approved portion is completed.

11 (c) A bond established for a solid waste transfer facility,
12 incinerator, processing plant, or other solid waste handling or
13 disposal facility utilized in the disposal of solid waste shall
14 be in an amount equal to 1/4 of 1% of the construction cost of
15 the facility, but shall not be less than \$4,000.00, and shall be
16 continued in effect for a period of 2 years after the disposal
17 area is closed.

18 (d) An applicant for a license to operate a landfill may
19 post a cash bond with the department as provided for in subsec-
20 tion (2) instead of a surety bond or certificate of deposit. A
21 minimum of \$20,000.00 shall be paid to the director prior to
22 licensure. Subsequent payments to the director shall be made
23 every 6 months in an amount per acre of licensed landfill or any
24 approved portion of landfill as determined by the director, until
25 the required amount per acre is attained.

26 (2) An applicant who elects to use a certificate of deposit
27 as bond shall receive any accrued interest on that certificate of

1 deposit upon release of the bond by the director. An applicant
2 who elects to post cash as bond shall accrue interest on that
3 bond at the annual rate of 6%, to be accrued quarterly, except
4 that the interest rate payable to an applicant shall not exceed
5 the rate of interest accrued on the state common cash fund for
6 the quarter in which an accrual is determined. Interest shall be
7 paid to the applicant upon release of the bond by the director.
8 Any interest greater than 6% shall be deposited in the state
9 treasury to the credit of the general fund and shall be appropri-
10 ated to the department to be used by the director for administra-
11 tion of this part.

12 (3) An applicant for a disposal area that is not a landfill
13 who has accomplished closure or postclosure monitoring and main-
14 tenance, approved by the director and in accordance with this
15 part and the rules promulgated under this part, may request a 50%
16 reduction in the bond.

17 (4) The director may utilize a bond required under this sec-
18 tion for the closure and postclosure monitoring and maintenance
19 of a disposal area if the applicant fails to comply with the clo-
20 sure and postclosure monitoring and maintenance requirements of
21 this part and the rules promulgated under this part.

22 (5) In addition to the bond required in subsection (1), a
23 landfill that receives municipal solid waste incinerator ash
24 under section 6342 shall provide a bond or a letter of credit in
25 an amount equal to \$2,000,000.00. The bond or letter of credit
26 described in this subsection shall provide assurance for remedial

1 action at the landfill for a period of time extending 30 years
2 after the landfill or any portion of the landfill is closed.

3 (6) The director shall not issue a construction permit or a
4 new license to operate a disposal area to an applicant who or
5 which is the subject of a bankruptcy action commenced under title
6 11 of the United States Code, 11 U.S.C. 101 to 1330, or any other
7 predecessor statute.

8 Sec. 6324. A person required under section 6323 to provide
9 financial assurance in the form of a bond or a letter of credit
10 for a landfill may request a reduction in the total amount of
11 financial assurance required upon reapplication for an operating
12 license pursuant to section 6316(2). The director shall grant
13 this request unless there are sufficient grounds for denial and
14 those reasons are provided in writing. The director shall grant
15 or deny a request for a reduction of the financial assurance
16 within 60 days after the request is made. If the director grants
17 a request for reduced financial assurance, the director shall
18 require financial assurance in an amount such that the amount of
19 money in the perpetual care fund plus the amount of the reduced
20 financial assurance equals the amount of the financial assurance
21 required in section 6323 plus an additional 20% of that amount.
22 The director shall release the financial assurance required by
23 section 6323 if the amount in the perpetual care fund exceeds the
24 amount of the financial assurance required under section 6323.
25 Prior to closure of a landfill, if money is disbursed from the
26 perpetual care fund, then the director may require a

1 corresponding increase in the amount of financial assurance
2 required to be provided.

3 Sec. 6325. (1) The owner or operator of a landfill shall
4 establish and maintain a perpetual care fund to be used exclu-
5 sively for closure, monitoring, and maintenance of the landfill,
6 and for response activity necessitated by a discharge from the
7 landfill of a substance which is or may become injurious to the
8 public health, safety, or welfare, or to the environment. A per-
9 petual care fund may be established as a trust or an escrow
10 account.

11 (2) Except as otherwise provided in this section, the owner
12 or operator of a landfill shall deposit into the perpetual care
13 fund 75 cents for each ton or portion of a ton of solid waste
14 that is disposed of in the landfill after June 17, 1990. If the
15 landfill is not equipped with a scale, the owner or operator
16 shall deposit into the perpetual care fund 25 cents for each
17 cubic yard or portion of a cubic yard of solid waste that is dis-
18 posed of in the landfill after June 17, 1990.

19 (3) The owner or operator of a landfill that is used for the
20 disposal of the following materials shall deposit into the per-
21 petual care fund 7.5 cents for each ton or cubic yard or portion
22 of a ton or cubic yard of these materials that are disposed of in
23 the landfill after June 17, 1990:

24 (a) Coal or wood ash that is disposed of in a landfill that
25 is used only for the disposal of coal or wood ash, or that is
26 permanently segregated in a landfill.

1 (b) Wastewater treatment sludge or sediments from wood pulp
2 or paper producing industries that is disposed of in a landfill
3 that is used only for the disposal of wastewater treatment sludge
4 and sediments from wood pulp or paper producing industries, or
5 that is permanently segregated in a landfill.

6 (c) Foundry sand that is approved by the director for use as
7 daily cover at an operating landfill, or that is disposed of in a
8 landfill that is used only for the disposal of foundry sand, or
9 that is permanently segregated in a landfill.

10 (d) Until June 17, 1993, organic fruit and vegetable pro-
11 cessing waste.

12 (4) The owner or operator of a landfill that is used only
13 for the disposal of a mixture of 2 or more of the materials
14 described in subsection (3)(a) to (c) or where a mixture of 2 or
15 more of these materials are permanently segregated in the land-
16 fill shall deposit into the perpetual care fund 19 cents for each
17 ton or cubic yard or portion of a ton or cubic yard of these
18 materials that are disposed of in the landfill after June 17,
19 1990.

20 (5) Money is not required to be deposited into a perpetual
21 care fund for materials that are regulated under Act No. 92 of
22 the Public Acts of 1970, being sections 425.181 to 425.188 of the
23 Michigan Compiled Laws.

24 (6) The owner or operator of a landfill may contribute addi-
25 tional amounts into the perpetual care fund at his or her
26 discretion.

1 (7) The custodian of a perpetual care fund shall be a bank
2 or other financial institution that has the authority to act as a
3 custodian and whose account operations are regulated and examined
4 by a federal or state agency. The custodian shall invest money
5 in a perpetual care fund in time or demand deposits of the custo-
6 dian or any other financial institution, to the extent insured by
7 an agency of the federal government, in direct obligations of the
8 federal government, or this state, or in obligations where the
9 principal and interest are guaranteed by the federal government
10 or this state or in a common trust fund or registered mutual fund
11 comprised solely of these investments. Earnings shall be cred-
12 ited to the perpetual care fund. The agreement governing the
13 operation of the perpetual care fund shall be executed on a form
14 provided by the director. The custodian may be compensated for
15 reasonable fees and costs incurred for his or her responsibili-
16 ties as custodian. The accounts of a perpetual care fund shall
17 be kept on a calendar year basis. The custodian of a perpetual
18 care fund shall annually make an accounting to the director
19 within 30 days following the close of the calendar year.

20 (8) The custodian of a perpetual care fund shall not dis-
21 burse any funds to the owner or operator of a landfill for the
22 purposes of the perpetual care fund except upon the prior written
23 approval of the director. However, the custodian shall file all
24 required tax returns for which the perpetual care fund is liable
25 and shall disburse funds from earnings of the fund to pay law-
26 fully due taxes owed by the perpetual care fund without
27 permission of the director. Upon the request of the owner or

1 operator of a landfill for a disbursement of funds from a
2 perpetual care fund, the director shall, within 60 days, grant
3 written approval or issue a written denial stating the reasons
4 for denial. The owner or operator of the landfill shall provide
5 notice of requests for disbursement, and denials and approvals to
6 the custodian of the perpetual care fund. Requests for disburse-
7 ment from a perpetual care fund shall be submitted not more fre-
8 quently than quarterly. If the amount of money in a perpetual
9 care fund falls below an amount equal to that required in
10 section 6323, the director is not required to approve a disburse-
11 ment from the fund, and the cost of necessary closure, monitor-
12 ing, maintenance, and response activities shall be borne by the
13 owner and operator of the landfill.

14 (9) If the owner or operator of a landfill refuses or fails
15 to conduct closure, monitoring, maintenance, or response activi-
16 ties as are necessary to protect the public health, safety, wel-
17 fare, or the environment or fails to request the disbursement of
18 money from a perpetual care fund when necessary to protect the
19 public health, safety, welfare, or the environment, then the
20 director may require the disbursement of money from the perpetual
21 care fund and may expend the money for closure, monitoring, main-
22 tenance, and response activities. The department may assess a
23 perpetual care fund for administrative costs associated with
24 actions taken under this subsection.

25 (10) Except as provided in subsection (12), upon the expira-
26 tion of 30 years after the closure of a landfill, any money in

1 the perpetual care fund for that landfill shall be disbursed by
2 the custodian upon approval of the director as follows:

3 (a) Fifty percent shall be deposited in the environmental
4 response fund created in part 45.

5 (b) Fifty percent shall be returned to the owner of the dis-
6 posal area unless a contract between the owner and the operator
7 of the disposal area provides otherwise.

8 (11) The owner of a landfill shall provide notice to the
9 custodian of the perpetual care fund for that landfill if there
10 is a change of ownership of the landfill. The custodian shall
11 maintain records of ownership of a landfill during the time in
12 which a perpetual care fund is established.

13 (12) Following the expiration of 30 years after the closure
14 of a landfill, the owner of the landfill may petition the direc-
15 tor for approval of disbursement of money in a perpetual care
16 fund. The director shall approve disbursement pursuant to
17 subsection (10) unless the director determines that the owner or
18 operator of the landfill has refused or failed to conduct clo-
19 sure, monitoring, maintenance, or response activities at the
20 landfill necessary to protect the public health, safety, welfare,
21 or the environment. If the director makes this determination,
22 the director shall deny the owner's request for approval of dis-
23 bursement and shall notify the owner of the landfill and the cus-
24 todian in writing of that determination and the reasons for that
25 determination. Ninety days after receiving notice of the
26 director's determination under this subsection, the custodian
27 shall disburse all of the money in the perpetual care fund to the

1 environmental response fund created in part 45 unless during this
2 90-day period the owner or operator of the landfill appeals the
3 director's determination in circuit court. If the owner of a
4 landfill does not petition for the director's approval of a dis-
5 bursement, the director on his or her own may approve disburse-
6 ment of money in a perpetual care fund pursuant to
7 subsection (10) or this subsection.

8 (13) This section does not relieve an owner or operator of a
9 disposal area that is a landfill of any liability that he or she
10 may have under this part or as otherwise provided by law.

11 (14) This section does not create a cause of action at law
12 or in equity against a custodian of a perpetual care fund other
13 than for errors or omissions related to investments, accountings,
14 disbursements, filings of required tax returns, and maintenance
15 of records required by this section or the applicable perpetual
16 care fund.

17 (15) As used in this section, "custodian" means the trustee
18 or escrow agent of a perpetual care fund.

19 Sec. 6326. The director, a health officer, or a law
20 enforcement officer of competent jurisdiction may inspect a solid
21 waste transporting unit that is being used to transport solid
22 waste along a public road to determine if the solid waste trans-
23 porting unit is designed, maintained, and operated in a manner to
24 prevent littering or to determine if the owner or operator of the
25 solid waste transporting unit is performing in compliance with
26 this part and the rules promulgated pursuant to this part.

1 Sec. 6327. (1) A solid waste hauler transporting solid
2 waste over a public road in this state shall deliver all waste to
3 a disposal area or solid waste transfer facility licensed under
4 this part and shall use only a vehicle or container that does not
5 contribute to littering and that conforms to the rules promul-
6 gated by the director.

7 (2) A solid waste hauler who violates this part or a rule
8 promulgated pursuant to this part, or is responsible for a vehi-
9 cle that has in part contributed to a violation of this part or a
10 rule promulgated pursuant to this part, is subject to a penalty
11 as provided in section 6349.

12 Sec. 6328. (1) A solid waste transporting unit used for
13 garbage, industrial or domestic sludges, or other moisture laden
14 materials not specifically covered by part 71 shall be watertight
15 and constructed, maintained, and operated to prevent littering.
16 Solid waste transporting units used for hauling other solid waste
17 shall be designed and operated to prevent littering or any other
18 nuisance.

19 (2) A solid waste hauler who violates this part or the rules
20 promulgated under this part is subject to the penalties provided
21 in this part.

22 (3) The director, a health officer, or a law enforcement
23 officer may order a solid waste transporting unit out of service
24 if the unit does not satisfy the requirements of this part or the
25 rules promulgated under this part. Continued use of a solid
26 waste transporting unit ordered out of service is a violation of
27 this part.

1 Sec. 6329. (1) A disposal area that is a solid waste
2 transfer facility is not subject to the construction permit and
3 operating license requirements of this part if either of the fol-
4 lowing circumstances exists:

5 (a) The solid waste transfer facility is not designed to
6 accept wastes from vehicles with mechanical compaction devices.

7 (b) The solid waste transfer facility accepts less than 200
8 uncompacted cubic yards per day.

9 (2) The solid waste transfer facilities exempted from the
10 construction permit and operating license requirements of this
11 part by subsection (1) shall comply with the operating require-
12 ments of this part and the rules promulgated under this part.

13 (3) Except as provided in subsection (5), a disposal area
14 that is an incinerator may, but is not required to, comply with
15 the construction permit and operating license requirements of
16 this part if both of the following conditions are met:

17 (a) The operation of the incinerator does not result in the
18 exposure of any solid waste to the atmosphere and the elements.

19 (b) The incinerator has a permit issued under part 39.

20 (4) A disposal area that is an incinerator that does not
21 comply with the construction permit and operating license
22 requirements of this part as permitted in subsection (3) is
23 subject to the planning provisions of this part and must be
24 included in the county solid waste management plan for the county
25 in which the incinerator is located.

26 (5) A disposal area that is a municipal solid waste
27 incinerator that is designed to burn at a temperature in excess

1 of 2500 degrees Fahrenheit is not subject to the construction
2 permit requirements of this part.

3 Sec. 6330. (1) A municipality or county may establish and
4 operate a collection center for junk motor vehicles and farm
5 implements.

6 (2) A municipality or county may collect junk motor vehicles
7 and farm implements and dispose of them through its collection
8 center, through the process of competitive bidding.

9 (3) A municipality or county may issue bonds as necessary
10 pursuant to Act No. 342 of the Public Acts of 1969, being sec-
11 tions 141.151 to 141.153 of the Michigan Compiled Laws, to
12 finance the cost of constructing or operating facilities to col-
13 lect junk motor vehicles or farm implements. The bonds shall be
14 general obligation bonds and shall be backed by the full faith
15 and credit of the municipality or county.

16 (4) As used in this section, "collect" means to obtain a
17 vehicle pursuant to section 252 of the Michigan vehicle code, Act
18 No. 300 of the Public Acts of 1949, being section 257.252 of the
19 Michigan Compiled Laws, or to obtain the vehicle or farm imple-
20 ment and its title pursuant to a transfer from the owner.

21 Sec. 6331. (1) A municipality or county shall assure that
22 all solid waste is removed from the site of generation frequently
23 enough to protect the public health, and is delivered to licensed
24 disposal areas, except waste which is permitted by state law or
25 rules promulgated by the department, to be disposed of at the
26 site of generation.

1 (2) An ordinance enacted before February 8, 1988 by a county
2 or municipality incidental to the financing of a publicly owned
3 disposal area or areas under construction that directs that all
4 or part of the solid waste generated in that county or municipal-
5 ity be directed to the disposal area or areas is an acceptable
6 means of compliance with subsection (1), notwithstanding that the
7 ordinance, in the case of a county, has not been approved by the
8 governor. This subsection applies only to ordinances adopted by
9 the governing body of a county or municipality before February 8,
10 1988, and does not validate or invalidate an ordinance adopted
11 after February 8, 1988 as an acceptable means of compliance with
12 subsection (1).

13 Sec. 6332. (1) Except as provided in subsection (3), a
14 municipality may impose an impact fee of not more than 10 cents
15 per cubic yard on solid waste that is disposed of in a landfill
16 located within the municipality that is utilized by the public
17 and utilized to dispose of solid waste collected from 2 or more
18 persons. However, if the landfill is located within a village,
19 the impact fee provided for in this subsection shall be imposed
20 by the township in agreement with the village. The impact fee
21 shall be assessed uniformly on all wastes accepted for disposal.

22 (2) Except as provided in subsection (3), a municipality may
23 impose an impact fee of not more than 10 cents per cubic yard on
24 municipal solid waste incinerator ash that is disposed of in a
25 landfill located within the municipality that is utilized to dis-
26 pose of municipal solid waste incinerator ash. However, if the
27 landfill is located within a village, the impact fee provided for

1 in this subsection shall be imposed by the township in agreement
2 with the village.

3 (3) A municipality may enter into an agreement with the
4 owner or operator of a landfill to establish a higher impact fee
5 than that provided for in subsections (1) and (2).

6 (4) The impact fees imposed under this section shall be col-
7 lected by the owner or operator of a landfill and shall be paid
8 to the municipality quarterly by the thirtieth day after the end
9 of each calendar quarter. However, the impact fees allowed to be
10 assessed to each landfill under this section shall be reduced by
11 any amount of revenue paid to or available to the municipality
12 from the landfill under the terms of any preexisting agreements,
13 including, but not limited to, contracts, special use permit con-
14 ditions, court settlement agreement conditions, and trusts.

15 (5) Unless a trust fund is established by a municipality
16 pursuant to subsection (6), the revenue collected by a municipal-
17 ity under subsections (1) and (2) shall be deposited in its gen-
18 eral fund to be used for any purpose that promotes the public
19 health, safety, or welfare of the citizens of the municipality.
20 However, revenue collected pursuant to this section shall not be
21 used to bring or support a lawsuit or other legal action against
22 the owner or operator of the landfill who is collecting an impact
23 fee pursuant to subsection (4) unless the owner or operator of
24 the landfill has instituted a lawsuit or other legal action
25 against the municipality.

26 (6) The municipality may establish a trust fund to receive
27 revenue collected pursuant to this section. The trust fund shall

1 be administered by a board of trustees. The board of trustees
2 shall consist of the following members:

3 (a) The chief elected official of the municipality creating
4 the trust fund.

5 (b) An individual from the municipality appointed by the
6 governing board of the municipality.

7 (c) An individual approved by the owners or operators of the
8 landfills within the municipality and appointed by the governing
9 board of the municipality.

10 (7) Individuals appointed to serve on the board of trustees
11 under subsection (6) (b) and (c) shall serve for terms of
12 2 years.

13 (8) Money in the trust fund may be expended, pursuant to a
14 majority vote of the board of trustees, for any purpose that pro-
15 motes the public health, safety, or welfare of the citizens of
16 the municipality. However, revenue collected pursuant to this
17 section shall not be used to bring or support a lawsuit or other
18 legal action against the owner or operator of a landfill who is
19 collecting an impact fee pursuant to subsection (4) unless the
20 owner or operator of the landfill has instituted a lawsuit or
21 other legal action against the municipality.

22 Sec. 6333. (1) Each solid waste management plan shall
23 include an enforceable program and process to assure that the
24 nonhazardous solid waste generated or to be generated in the
25 planning area for a 20-year period is collected and recovered,
26 processed, or disposed of at disposal areas that comply with

1 state law and rules promulgated by the department governing
2 location, design, and operation of the disposal areas.

3 (2) An initial solid waste management plan shall be prepared
4 and approved under this section and shall be submitted to the
5 director not later than January 5, 1984. The initial plan shall
6 be prepared for a 20-year period and shall be reviewed and
7 updated every 5 years. An updated plan and an amendment to a
8 plan shall be prepared and approved as provided in this section
9 and sections 6334, 6335, 6336, and 6337. The solid waste manage-
10 ment plan shall encompass all municipalities within the county.
11 The plan shall at a minimum comply with the requirements of
12 section 6338. The solid waste management plan shall take into
13 consideration solid waste management plans in contiguous counties
14 and existing local approved solid waste management plans as they
15 relate to the county's needs. At a minimum, a county preparing a
16 solid waste management plan shall consult with the regional plan-
17 ning agency from the beginning to the completion of the plan.

18 (3) Not later than July 1, 1981, each county shall file with
19 the director and with each municipality within the county on a
20 form provided by the director, a notice of intent, indicating the
21 county's intent to prepare a county solid waste management plan
22 or to upgrade an existing plan. The notice shall identify the
23 designated agency which shall be responsible for preparing the
24 county plan.

25 (4) If the county fails to file a notice of intent with the
26 director within the prescribed time, the director immediately
27 shall notify each municipality within the county and shall

1 request those municipalities to prepare the county solid waste
2 management plan and shall convene a meeting to discuss the plan
3 preparation. Within 4 months following notification by the
4 director, the municipalities shall decide by a majority vote of
5 the municipalities in the county whether or not to file a notice
6 of intent to prepare the county solid waste management plan.
7 Each municipality in the county shall have 1 vote. If a majority
8 does not agree, then a notice of intent shall not be filed. The
9 notice shall identify the designated agency which shall be
10 responsible for preparing the county plan.

11 (5) If the municipalities fail to file a notice of intent to
12 prepare a county solid waste management plan with the director
13 within the prescribed time, the director shall request the appro-
14 priate regional solid waste management planning agency to prepare
15 the county solid waste management plan. The regional solid waste
16 management planning agency shall respond within 90 days after the
17 date of the request.

18 (6) If the regional solid waste management planning agency
19 declines to prepare a county plan, the director shall prepare the
20 plan for the county and that plan shall be final.

21 (7) A solid waste management planning agency, upon request
22 of the director, shall submit a progress report in preparing its
23 solid waste management plan.

24 Sec. 6334. (1) The county executive of a charter county
25 that elects a county executive and that chooses to prepare a
26 solid waste management plan under section 6333 or the county
27 board of commissioners in all other counties choosing to prepare

1 an initial 20-year solid waste management plan under
2 section 6333, or the municipalities preparing an initial 20-year
3 plan under section 6333(4), shall appoint a planning committee to
4 assist the agency designated to prepare the plan under
5 section 6333. If the county charter provides procedures for
6 approval by the county board of commissioners of appointments by
7 the county executive, an appointment under this subsection is
8 subject to that approval. A planning committee appointed pursu-
9 ant to this subsection shall be appointed for terms of 2 years.
10 A planning committee appointed pursuant to this subsection may be
11 reappointed for the purpose of completing the preparation of the
12 initial plan or overseeing the implementation of the initial
13 plan. Reappointed members of a planning committee shall serve
14 for terms not to exceed 2 years as determined by the appointing
15 authority. An initial 20-year solid waste management plan shall
16 only be approved by a majority of the members appointed and
17 serving.

18 (2) A planning committee appointed pursuant to this section
19 shall consist of 14 members. Of the members appointed, 4 shall
20 represent the solid waste management industry, 2 shall represent
21 environmental interest groups, 1 shall represent county govern-
22 ment, 1 shall represent city government, 1 shall represent town-
23 ship government, 1 shall represent the regional solid waste plan-
24 ning agency, 1 shall represent industrial waste generators, and 3
25 shall represent the general public. A member appointed to repre-
26 sent a county, city, or township government shall be an elected
27 official of that government or the designee of that elected

1 official. Vacancies shall be filled in the same manner as the
2 original appointments. A member may be removed for nonperform-
3 ance of duty.

4 (3) A planning committee appointed pursuant to this section
5 shall annually elect a chairperson and shall establish procedures
6 for conducting the committee's activities and for reviewing the
7 matters to be considered by the committee.

8 Sec. 6335. A county or regional solid waste management
9 planning agency preparing a solid waste management plan shall do
10 all of the following:

11 (a) Solicit the advice and consult periodically during the
12 preparation of the plan with the municipalities, appropriate
13 organizations, and the private sector in the county under section
14 6338(1) and solicit the advice and consult with the appropriate
15 county or regional solid waste management planning agency, and
16 adjacent counties and municipalities in adjacent counties which
17 may be significantly affected by the solid waste management plan
18 for a county.

19 (b) If a planning committee has been appointed under section
20 6334, prepare the plan with the advice, consultation, and assist-
21 ance of the planning committee.

22 (c) Notify, by letter, the chief elected official of each
23 municipality and any other person so requesting within the
24 county, not less than 10 days before each public meeting of the
25 planning agency designated by the county, if that planning agency
26 plans to discuss the county plan. The letter shall indicate as
27 precisely as possible the subject matter being discussed.

1 (d) Submit for review a copy of the proposed county or
2 regional solid waste management plan to the director, to each
3 municipality within the affected county, and to adjacent counties
4 and municipalities that may be affected by the plan or that have
5 requested the opportunity to review the plan. The county plan
6 shall be submitted for review to the designated regional solid
7 waste management planning agency for that county. Reviewing
8 agencies shall be allowed an opportunity of not less than 3
9 months to review and comment on the plan before adoption of the
10 plan by the county or a designated regional solid waste manage-
11 ment planning agency. The comments of a reviewing agency shall
12 be submitted with the plan to the county board of commissioners
13 or to the regional solid waste management planning agency.

14 (e) Publish a notice, at the time the plan is submitted for
15 review under subdivision (d), of the availability of the plan for
16 inspection or copying, at cost, by an interested person.

17 (f) Conduct a public hearing on the proposed county solid
18 waste management plan before formal adoption. A notice shall be
19 published not less than 30 days before a hearing, in a paper
20 having a major circulation within the county. The notice shall
21 indicate a location where copies of the plan are available for
22 public inspection and the time and place of the public hearing.

23 Sec. 6336. (1) A municipality located in 2 counties or
24 adjacent to a municipality located in another county may request
25 to be included in the adjacent county's plan. The request shall
26 be approved by a resolution of each county board of commissioners
27 of the counties involved before the municipality may be

1 included. A municipality may appeal a decision not to be
2 included in an adjacent county's plan to the director. If there
3 is an appeal, the director shall issue a decision within
4 45 days. The decision of the director is final.

5 (2) Except as provided in subsection (3), the county board
6 of commissioners shall formally act on the plan following the
7 public hearing required by section 6335(f).

8 (3) If a planning committee has been appointed by the county
9 board of commissioners under section 6334(1), the county board of
10 commissioners, or if a plan is prepared under section 6333(4),
11 the municipalities in the county who voted in favor of filing a
12 notice of intent to prepare a county solid waste management plan,
13 shall take formal action on the plan after the completion of
14 public hearings and only after the plan has been approved by a
15 majority of the planning committee as provided in section
16 6334(1). If the county board of commissioners, or if a plan is
17 prepared under section 6333(4), a majority of the municipalities
18 in the county who voted in favor of filing a notice of intent to
19 prepare a county solid waste management plan, does not approve
20 the plan as submitted, the plan shall be returned to the planning
21 committee along with a statement of objections, to the plan.
22 Within 30 days after receipt, the planning committee shall review
23 the objections and shall return the plan with its
24 recommendations.

25 (4) Following approval the county plan shall be approved by
26 the governing bodies of not less than 67% of the municipalities
27 within each respective county before the plan may take effect.

1 (5) A county plan prepared by a regional solid waste
2 management planning agency shall be approved by the governing
3 bodies of not less than 67% of the municipalities within each
4 respective county before the plan may take effect.

5 (6) If, after the plan has been adopted, the governing
6 bodies of not less than 67% of the municipalities have not
7 approved the plan, the director shall prepare a plan for the
8 county, including those municipalities that did not approve the
9 county plan. A plan prepared by the director shall be final.

10 Sec. 6337. (1) The director shall, within 6 months after a
11 plan has been submitted for approval, approve or disapprove the
12 plan. An approved plan shall at a minimum meet the requirements
13 set forth in section 6338(1).

14 (2) The director shall review an approved plan periodically
15 and determine if revisions or corrections are necessary to bring
16 the plan into compliance with this part. The director may, after
17 notice and opportunity for a public hearing, held pursuant to the
18 administrative procedures act of 1969, Act No. 306 of the Public
19 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
20 Compiled Laws, withdraw approval of the plan. If the director
21 withdraws approval of a county plan, the director shall establish
22 a timetable or schedule for compliance with this part.

23 Sec. 6338. (1) Not later than September 11, 1979, the
24 director shall promulgate rules for the development, form, and
25 submission of initial solid waste management plans. The rules
26 shall require all of the following:

1 (a) The establishment of goals and objectives for prevention
2 of adverse effects on the public health and on the environment
3 resulting from improper solid waste collection, processing, or
4 disposal including protection of surface and groundwater quality,
5 air quality, and the land.

6 (b) An evaluation of waste problems by type and volume,
7 including residential and commercial solid waste, hazardous
8 waste, industrial sludges, pretreatment residues, municipal
9 sewage sludge, air pollution control residue, and other wastes
10 from industrial or municipal sources.

11 (c) An evaluation and selection of technically and economi-
12 cally feasible solid waste management options, which may include
13 sanitary landfill, resource recovery systems, resource conserva-
14 tion, or a combination of options.

15 (d) An inventory and description of all existing facilities
16 where solid waste is being treated, processed, or disposed of,
17 including a summary of the deficiencies, if any, of the facili-
18 ties in meeting current solid waste management needs.

19 (e) The encouragement and documentation as part of the plan,
20 of all opportunities for participation and involvement of the
21 public, all affected agencies and parties, and the private
22 sector.

23 (f) That the plan contain enforceable mechanisms for imple-
24 menting the plan, including identification of the municipalities
25 within the county responsible for the enforcement. This subdivi-
26 sion does not preclude the private sector's participation in

1 providing solid waste management services consistent with the
2 county plan.

3 (g) Current and projected population densities of each
4 county and identification of population centers and centers of
5 solid waste generation, including industrial wastes.

6 (h) That the plan area has, and will have during the plan
7 period, access to a sufficient amount of available and suitable
8 land, accessible to transportation media, to accommodate the
9 development and operation of solid waste disposal areas, or
10 resource recovery facilities provided for in the plan.

11 (i) That the solid waste disposal areas or resource recovery
12 facilities provided for in the plan are capable of being devel-
13 oped and operated in compliance with state law and rules of the
14 department pertaining to protection of the public health and the
15 environment, considering the available land in the plan area, and
16 the technical feasibility of, and economic costs associated with,
17 the facilities.

18 (j) A timetable or schedule for implementing the county
19 solid waste management plan.

20 (2) In order for a disposal area to serve the disposal needs
21 of another county, state, or country, the service, including the
22 disposal of municipal solid waste incinerator ash, must be
23 explicitly authorized in the approved solid waste management plan
24 of the receiving county. With regard to intercounty service
25 within this state, the service must also be explicitly authorized
26 in the exporting county's solid waste management plan.

1 (3) A person shall not dispose of, store, or transport solid
2 waste in this state unless the person complies with the
3 requirements of this part.

4 (4) Following approval by the director of a county solid
5 waste management plan and after July 1, 1981, an ordinance, law,
6 rule, regulation, policy, or practice of a municipality, county,
7 or governmental authority created by statute, which prohibits or
8 regulates the location or development of a solid waste disposal
9 area, and which is not part of or not consistent with the
10 approved solid waste management plan for the county, is in con-
11 flict with this part and is not enforceable.

12 Sec. 6339. (1) The director shall not approve a plan update
13 unless:

14 (a) The plan contains an analysis or evaluation of the best
15 available information applicable to the plan area in regard to
16 recyclable materials and all of the following:

17 (i) The kind and volume of material in the plan area's waste
18 stream that may be recycled or composted.

19 (ii) How various factors do or may affect a recycling and
20 composting program in the plan area. Factors shall include an
21 evaluation of the existing solid waste collection system; materi-
22 als market; transportation networks; local composting and recycl-
23 ing support groups, or both; institutional arrangements; the pop-
24 ulation in the plan area; and other pertinent factors.

25 (iii) An identification of impediments to implementing a
26 recycling and composting program and recommended strategies for
27 removing or minimizing impediments.

1 (iv) How recycling and composting and other processing or
2 disposal methods could complement each other and an examination
3 of the feasibility of excluding site separated material and
4 source separated material from other processing or disposal
5 methods.

6 (v) Identification and quantification of environmental, eco-
7 nomic, and other benefits that could result from the implementa-
8 tion of a recycling and composting program.

9 (vi) The feasibility of source separation of materials that
10 contain potentially hazardous components at disposal areas. This
11 subparagraph applies only to plan updates that are due after
12 January 31, 1989.

13 (b) The plan either provides for recycling and composting
14 recyclable materials from the plan area's waste stream or estab-
15 lishes that recycling and composting is not necessary or feasible
16 or is only necessary or feasible to a limited extent.

17 (c) A plan that proposes a recycling or composting program,
18 or both, details the major features of that program, including
19 all of the following:

20 (i) The kinds and volumes of recyclable materials that will
21 be recycled or composted.

22 (ii) Collection methods.

23 (iii) Measures that will ensure collection such as ordi-
24 nances or cooperative arrangements, or both.

25 (iv) Ordinances or regulations affecting the program.

26 (v) The role of counties and municipalities in implementing
27 the plan.

1 (vi) The involvement of existing recycling interests, solid
2 waste haulers, and the community.

3 (vii) Anticipated costs.

4 (viii) On-going program financing.

5 (ix) Equipment selection.

6 (x) Public and private sector involvement.

7 (xi) Site availability and selection.

8 (xii) Operating parameters such as pH and heat range.

9 (2) The director may promulgate rules as may be necessary to
10 implement this section.

11 Sec. 6340. Not later than September 11, 1979, the director
12 shall submit to the legislature rules that contain sanitary
13 design and operational standards for solid waste transporting
14 units and disposal areas and otherwise implement this part. The
15 rules shall include standards for hydrogeologic investigations;
16 monitoring; liner materials; leachate collection and treatment,
17 if applicable; groundwater separation distances; environmental
18 assessments; methane gas control; soil erosion; sedimentation
19 control; groundwater and surface water quality; noise and air
20 pollution; and the use of floodplains and wetlands.

21 Sec. 6341. (1) The state solid waste management plan shall
22 consist of the state solid waste plan developed under the
23 resource recovery act, Act No. 366 of the Public Acts of 1974,
24 being sections 299.301 to 299.321 of the Michigan Compiled Laws,
25 and all county plans approved or prepared by the director.

26 (2) The director shall consult and assist in the preparation
27 and implementation of the county solid waste management plans.

1 (3) The director may undertake or contract for studies or
2 reports necessary or useful in the preparation of the state solid
3 waste management plan.

4 (4) The director shall develop a strategy to encourage
5 resource recovery and establishment of waste-to-energy
6 facilities. By March 30, 1989, the director shall submit to the
7 legislature a report on the details of the strategy. The report
8 shall recommend public and private sector incentives and suggest
9 potential regulatory relief to remove constraints on the siting
10 of waste-to-energy and resource recovery facilities. The strat-
11 egy and report shall be prepared with the goal of reducing land
12 disposal to unusable residuals by the year 2005. The report
13 shall include specific recommendations for necessary legislation
14 to implement the strategy.

15 Sec. 6342. (1) Following June 12 1989, the generation,
16 transportation, treatment, storage, and disposal of municipal
17 solid waste incinerator ash shall be regulated under this part as
18 solid waste and shall not be regulated under part 61.

19 (2) Except as provided in subsection (10), municipal solid
20 waste incinerator ash shall be disposed of in 1 of the
21 following:

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

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

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

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

3 (A) A leachate collection system.

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

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

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

8 (E) A compacted clay liner at least 3 feet thick with a max-
9 imum hydraulic conductivity of 1×10^{-7} centimeters per second
10 or a synthetic liner at least 40 mils thick.

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

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

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

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

19 (A) A leachate collection system.

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

21 (C) A geotextile layer at least 100 mils thick.

22 (D) A synthetic liner at least 40 mils thick.

23 (E) A geotextile layer at least 100 mils thick.

24 (F) A leak detection and leachate collection system.

25 (G) A synthetic liner at least 40 mils thick.

26 (iv) The landfill's cells each hold a maximum of 100,000
27 cubic yards of municipal solid waste incinerator ash.

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

18 (vi) On June 12, 1989, the owner or operator of the landfill
19 has a letter of agreement with an existing municipal solid waste
20 incinerator to receive municipal solid waste incinerator ash, and
21 the owner or operator has by September 10, 1989 submitted this
22 letter to the director.

23 (c) A landfill that meets all of the following
24 requirements:

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

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

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

5 (A) A leachate collection system.

6 (B) A synthetic liner at least 80 mils thick.

7 (C) At the option of the owner or operator of the landfill,
8 a leak detection and leachate collection system.

9 (D) At least 10 feet of either natural or compacted clay
10 with a maximum hydraulic conductivity of 1×10^{-7} centimeters
11 per second.

12 (iv) If construction of the landfill begins prior to June 1,
13 1990, the liner specified in subdivision (c)(iii)(B) may be 60
14 mils thick.

15 (d) A landfill with a design approved by the director that
16 will prevent the migration of any hazardous constituent into the
17 groundwater or surface water at least as effectively as the
18 design requirements of subdivisions (a) to (c).

19 (e) A type II landfill, as defined in R 299.4105, if all of
20 the following occur:

21 (i) The ash was generated by a municipal solid waste incin-
22 erator that is designed to burn at a temperature in excess of
23 2500 degrees Fahrenheit.

24 (ii) The ash is tested by a laboratory listed on the list
25 compiled by the department under section 6344 and the ash, upon
26 testing, meets the requirements of 40 C.F.R. 261.20 to 261.24. A
27 person seeking to dispose of ash under this subdivision may

1 select an approved laboratory from the list compiled in section
2 6344 to conduct the test.

3 (iii) The ash from any individual municipal solid waste
4 incinerator is disposed of pursuant to this subdivision for a
5 period not to exceed 60 days.

6 (3) Except as provided in subsection (5), a landfill that is
7 constructed pursuant to the design described in subsection (2)(a)
8 or (b) shall be capped following its closure by all of the fol-
9 lowing in descending order:

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

11 (b) Two feet of subsurface drainage media or cobbles or a
12 combination thereof to protect against animal burrowing, tempera-
13 ture, erosion, and rooted vegetation.

14 (c) A flexible membrane liner at least 30 mils thick.

15 (d) 3 feet of compacted clay with a maximum hydraulic con-
16 ductivity of 1×10^{-7} centimeters per second.

17 (e) A synthetic liner at least 30 mils thick with a geomem-
18 brane infiltration system above the liner may be used in place of
19 the compacted clay specified in subsection (3)(d) if on June 12,
20 1989 the owner or operator of the landfill has a letter of agree-
21 ment with an existing municipal solid waste incinerator to
22 receive municipal solid waste incinerator ash, and the owner or
23 operator has by September 10, 1989 submitted this letter to the
24 director.

25 (4) Except as provided in subsection (5), a landfill that is
26 constructed pursuant to the design described in subsection (2)(c)

1 shall be capped following its closure by all of the following in
2 descending order:

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

4 (b) Two feet of compacted clay with a maximum hydraulic con-
5 ductivity of 1×10^{-7} centimeters per second of compacted clay.

6 (c) An infiltration collection system.

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

8 (e) One foot of compacted clay with a maximum hydraulic con-
9 ductivity of 1×10^{-7} centimeters per second.

10 (5) A landfill that receives municipal solid waste incinera-
11 tor ash under this section may be capped with a design approved
12 by the director that will prevent the migration of any hazardous
13 constituent into the groundwater or surface water at least as
14 effectively as the design requirements of subsections (3) and
15 (4).

16 (6) If leachate is collected from a landfill under this sec-
17 tion, the leachate shall be monitored and tested in accordance
18 with this part and the rules promulgated under this part.

19 (7) Prior to and after June 12, 1989, notwithstanding any
20 other provision in this section, municipal solid waste incinera-
21 tor ash may be stored or may continue to be stored on a temporary
22 basis if all of the following occur:

23 (a) The ash is stored in a landfill licensed under this
24 part.

25 (b) The owner or operator of the landfill, by September 12,
26 1989, does either of the following:

1 (i) Applies for an operating permit amendment pursuant to
2 subsection (11) that would allow the permanent disposal of the
3 ash at the landfill.

4 (ii) Applies for a construction permit under this part that
5 would allow the permanent disposal of the ash at the landfill.

6 (c) The ash is stored for not longer than 9 months after an
7 operating license or an operating license amendment is approved
8 or denied by the director, or by June 12, 1991, whichever occurs
9 first, unless the director has unreasonably delayed approving or
10 denying an operating license or operating license amendment.

11 (d) On June 12, 1989, the owner or operator of the landfill
12 has a letter of agreement with an existing municipal solid waste
13 incinerator or with a municipal solid waste incinerator under
14 construction to receive municipal solid waste incinerator ash,
15 and the owner or operator has by September 10, 1989 submitted
16 this letter to the director.

17 (e) The temporary storage at the landfill provides for an
18 intermediate separation of the ash from other solid waste using
19 not less than 2 feet of compacted soil or a synthetic liner at
20 least 30 mils thick and the ash is covered daily in a manner that
21 prevents the ash from blowing.

22 (f) By September 10, 1989 or prior to beginning temporary
23 storage, the owner or operator of the landfill receiving the
24 municipal solid waste incinerator ash submits an ash management
25 plan to the director that includes leachate and runoff control
26 measures and dust control measures. The director shall approve
27 or disapprove the plan submitted under this subsection within 30

1 days of receiving it. If the director disapproves the plan, he
2 or she shall notify the owner or operator submitting the plan of
3 this fact, and shall provide modifications that, if included,
4 would result in the plan's approval. If the director disapproves
5 a plan, the owner or operator of the landfill shall within 30
6 days after receipt of the director's disapproval submit a revised
7 plan that addresses all of the modifications provided by the
8 director. The director shall approve or disapprove the revised
9 plan within 30 days of receiving it, and the director shall not
10 unreasonably withhold approval of the revised plan. Upon
11 approval by the director, the plan shall become part of the oper-
12 ating license of the landfill. The operation of a landfill with-
13 out an approved plan under this subdivision shall subject the
14 owner or operator, or both, to all of the sanctions provided by
15 this part.

16 (g) By July 12, 1989 or prior to receiving the ash for tem-
17 porary storage, the owner or operator of the landfill notifies
18 the governing body of the municipality and the county board of
19 commissioners of the county in which the landfill is located of
20 its intent to temporarily store the ash.

21 (8) Following a period of temporary storage under subsection
22 (7), municipal solid waste incinerator ash shall be permanently
23 disposed of in accordance with this section. In addition to any
24 other penalty provided in this part, a person who stores munici-
25 pal solid waste incinerator ash under subsection (7) for a period
26 longer than is allowed by subsection (7) is liable for a civil
27 fine of \$5,000.00 per day of violation.

1 (9) The owner or operator of a landfill that receives
2 municipal solid waste incinerator ash under this section for tem-
3 porary storage or for disposal shall do all of the following:

4 (a) Manage the ash to control dust.

5 (b) Manage the landfill to control track out.

6 (c) Manage all access roads within the landfill to control
7 dust.

8 (d) Only dispose of wet ash in the landfill.

9 (e) If the ash was in temporary storage under subsection
10 (7), rewet the ash prior to transporting the ash to the permanent
11 landfill.

12 (10) As an alternative to disposal described in
13 subsection (2), the owner or operator of a municipal solid waste
14 incinerator may process municipal solid waste incinerator ash
15 through mechanical or chemical methods, or both, to substantially
16 diminish the toxicity of the ash or its constituents or limit the
17 leachability of the ash or its constituents to minimize threats
18 to human health and the environment, if processing is performed
19 on the site of the municipal solid waste incinerator or at the
20 site of a landfill described in subsection (2); the process has
21 been approved by the director as provided by rule; and the ash is
22 tested after processing in accordance with a protocol approved by
23 the director as provided by rule. The director shall approve the
24 process and testing protocol under this subsection only if the
25 process and testing protocol will protect human health and the
26 environment. In making this determination, the director shall
27 consider all potential pathways of human and environmental

1 exposure, including both short-term and long-term, to
2 constituents of the ash that may be released during the reuse or
3 recycling of the ash. The director shall consider requiring
4 methods to determine the leaching, total chemical analysis,
5 respirability, and toxicity of reused or recycled ash. A leach-
6 ing procedure shall include testing under both acidic and native
7 conditions. If municipal solid waste incinerator ash is pro-
8 cessed in accordance with the requirements of this subsection and
9 the processed ash satisfies the testing protocol approved by the
10 director as provided by rule, the ash may be disposed of in a
11 type II landfill, as defined by R 299.4105 of the Michigan admin-
12 istrative code, licensed under this part or may be used in any
13 manner approved by the director. If municipal solid waste incin-
14 erator ash is processed as provided in this subsection, but does
15 not satisfy the testing protocol approved by the director as pro-
16 vided by rule, the ash shall be disposed of in accordance with
17 subsection (2).

18 (11) The disposal of municipal solid waste incinerator ash
19 within a landfill that is in compliance with subsection (2) does
20 not constitute a new proposal for which a new construction permit
21 is required under section 6310, if a construction permit has pre-
22 viously been issued under section 6309 for the landfill and the
23 owner or operator of the landfill submits 6 copies of an operat-
24 ing license amendment application to the director for approval.
25 The operating license amendment application shall include revised
26 plans and specifications for all facility modifications including
27 a leachate disposal plan, an erosion control plan, and a dust

1 control plan that is part of the operating license amendment.
2 The dust control plan shall contain sufficient detail to ensure
3 that dust emissions are controlled by available control technolo-
4 gies that reduce dust emissions by a reasonably achievable amount
5 to the extent necessary to protect human health and the
6 environment. The dust control plan shall provide for the ash to
7 be wet during all times that the ash is exposed to the atmosphere
8 at the landfill or otherwise to be covered by daily cover materi-
9 al; for dust emissions to be controlled during dumping, grading,
10 loading, and bulk transporting of the ash at the landfill; and
11 for dust emissions from access roads within the landfill to be
12 controlled. With the exception of a landfill that is in exis-
13 tence on June 12, 1989 that the director determines is otherwise
14 in compliance with this section, the owner or operator of the
15 landfill shall obtain the operating license amendment prior to
16 initiating construction. Prior to operation, the owner or opera-
17 tor of a landfill shall submit to the director or the director's
18 designee certification from a licensed professional engineer that
19 the landfill has been constructed in accordance with the approved
20 plan and specifications. At the time the copies are submitted to
21 the director, the owner or operator of the landfill shall send a
22 copy of the operating license amendment application to the munic-
23 ipality where the landfill is located. At least 30 days prior to
24 making a final decision on the operating license amendment, the
25 director shall hold at least 1 public meeting in the vicinity of
26 the landfill to receive public comments. Prior to a public
27 meeting, the director shall publish notice of the meeting in a

1 newspaper serving the local area. The director shall issue a
2 final decision on an operating license amendment application
3 within 120 days after the director receives an administratively
4 complete application.

5 (12) Once every other month, the owner or operator of a
6 municipal solid waste incinerator shall collect a 24-hour compos-
7 ite sample of the municipal solid waste incinerator ash generated
8 by the incinerator. By July 12, 1989, the owner or operator of a
9 municipal solid waste incinerator shall submit a protocol for
10 sample collection to the director for approval. Each sample
11 shall be collected according to the approved protocol. The owner
12 or operator shall perform an analysis of the collected sample for
13 trace metals as totals by acid digestion using analytical methods
14 described in SW-846 "test methods for evaluating solid waste,
15 third edition". The purpose of these tests is to determine the
16 changes in characteristics of municipal solid waste incinerator
17 ash from source separation initiatives over the life of the
18 facility. If fly ash generated by the municipal solid waste
19 incinerator is processed separately from the bottom ash, the
20 owner or operator shall perform separate tests on the fly ash and
21 the bottom ash. The owner or operator of the municipal solid
22 waste incinerator shall submit these test results to the director
23 within 60 days after the sample was collected.

24 (13) The owner or operator of a municipal solid waste incin-
25 erator or a disposal area that receives municipal solid waste
26 incinerator ash shall allow the director or an agent or employee
27 of the director access to the facility for the purpose of

1 supervising the collection of samples or obtaining samples of ash
2 to test or to monitor air quality at the facility.

3 (14) As used in subsection (2), "landfill" means a landfill
4 or a specific portion of a landfill.

5 Sec. 6343. (1) If municipal solid waste incinerator ash is
6 transported, it shall be transported in compliance with
7 section 720 of the Michigan vehicle code, Act No. 300 of the
8 Public Acts of 1949, being section 257.720 of the Michigan
9 Compiled Laws.

10 (2) If municipal solid waste incinerator ash is transported
11 by rail, it shall be transported in covered, leak proof railroad
12 cars.

13 (3) The outside of all vehicles and accessory equipment used
14 to transport municipal solid waste incinerator ash shall be kept
15 free of the ash.

16 Sec. 6344. (1) The department shall compile a list of
17 approved laboratories that are capable of performing the test
18 provided for in section 6342(2)(e).

19 (2) The department shall publish the list compiled under
20 subsection (1) on or before July 1, 1989, and shall thereafter
21 make the list available to any person upon request.

22 (3) Except as provided in subsection (4), a test conducted
23 by an approved laboratory from the list compiled under subsection
24 (1) is definitive for purposes of this part.

25 (4) If the department has reason to believe that test
26 results provided by an approved laboratory are fraudulent or that
27 a test was carelessly performed, the department may conduct its

1 own test, or may have an additional test performed at the
2 department's expense.

3 Sec. 6345. Beginning June 21, 1993, a municipal solid waste
4 incinerator shall not incinerate used oil. As used in this sec-
5 tion, used oil has the meaning ascribed to this term in part 67.

6 Sec. 6346. (1) The director or a health officer may request
7 that the attorney general bring an action in the name of the
8 people of the state, or a municipality or county may bring an
9 action based on facts arising within its boundaries, for any
10 appropriate relief, including injunctive relief, for a violation
11 of this part or rules promulgated pursuant to this part.

12 (2) In addition to any other relief provided by this sec-
13 tion, the court may impose on any person who violates any provi-
14 sion of this part or rules promulgated under this part or fails
15 to comply with any permit, license, or final order issued pursu-
16 ant to this part a civil fine of not more than \$10,000.00 for
17 each day of violation.

18 (3) In addition to any other relief provided by this sec-
19 tion, the court may order a person violating this part or the
20 rules promulgated under this part either to restore or to pay to
21 the state an amount equal to the cost of restoring the natural
22 resources of this state affected by the violation to their origi-
23 nal condition before the violation, and to pay to the state the
24 costs of surveillance and enforcement incurred by the state as a
25 result of the violation.

1 (4) This part does not preclude any person from commencing a
2 civil action based on facts which may also constitute a violation
3 of this part or the rules promulgated under this part.

4 Sec. 6347. (1) In order for a county to effectively carry
5 out the planning responsibilities designated under this part, a
6 grant program is established to provide financial assistance to
7 county or regional solid waste management planning agencies.
8 Municipalities joined together with interlocal agreements relat-
9 ing to solid waste management plans, within a county having a
10 city of a population of more than 1 million, are eligible for a
11 separate planning grant in addition to those granted to
12 counties. This separate grant allocation provision does not
13 alter the planning and approval process requirements for county
14 plans as specified in this part. Eighty percent of the money for
15 the program not provided for by federal funds shall be appropri-
16 ated annually by the legislature from the general fund of the
17 state and 20% shall be appropriated by the applicant. Grant
18 funds appropriated for local planning may be used by the director
19 if the director finds it necessary to invoke the director's
20 authority to develop a local plan under section 6333(6). The
21 director shall promulgate rules for the distribution of the
22 appropriated funds.

23 (2) In order for a certified health department to effec-
24 tively carry out the responsibilities designated under this part,
25 an annual grant shall be appropriated by the legislature from the
26 general fund of the state to provide financial assistance to a
27 certified health department. A certified health department is

1 eligible to receive 100% of reasonable personnel costs as
2 determined by the department based on criteria established by
3 rule. The director shall promulgate rules for the distribution
4 of the appropriated funds.

5 Sec. 6348. (1) This part is not intended to prohibit the
6 continuation of the private sector from doing business in solid
7 waste disposal and transportation. This part is intended to
8 encourage the continuation of the private sector in the solid
9 waste disposal and transportation business when in compliance
10 with the minimum requirements of this part.

11 (2) This part is not intended to prohibit salvaging.

12 Sec. 6349. A person who violates this part, a rule promul-
13 gated under this part or a condition of a permit, license, or
14 final order issued pursuant to this part is guilty of a misde-
15 meanor, punishable by a fine of not more than \$1,000.00 for each
16 violation and costs of prosecution and, if in default of payment
17 of fine and costs, imprisonment for not more than 6 months. Each
18 day upon which a violation occurs is a separate offense.

19 PART 64 JOINT ENVIRONMENTAL MANAGEMENT AUTHORITIES

20 Sec. 6401. As used in this part:

21 (a) "Articles" means the articles of incorporation of an
22 authority.

23 (b) "Authority" means a joint city-state environmental man-
24 agement authority created pursuant to section 6402.

25 (c) "Board" means the board of directors of the authority.

26 (d) "Solid waste" means solid waste as defined in part 63.

1 (e) "State agency" means either the commission or the
2 governing body of the state park that is participating in an
3 authority.

4 Sec. 6402. (1) The governing body of any city within whose
5 corporate boundaries a state park comprises more than 75% of the
6 land area and the governing body of any such state park or, if
7 there is none, the commission may create an environmental manage-
8 ment authority for that city. An authority may contract and be
9 contracted with, sue and be sued, and take action in the courts
10 of this state. An authority, once created, shall exercise its
11 powers as an autonomous entity, independent of any state
12 department.

13 (2) An authority shall be governed by a board of directors
14 consisting of 5 voting members and 2 ex officio, nonvoting mem-
15 bers who are appointed as follows:

16 (a) One individual appointed by the state park governing
17 body, or the commission if there is no qualifying state park.

18 (b) One individual appointed by the chair of the state park
19 governing body, or the commission if there is no qualifying state
20 park.

21 (c) One individual appointed by the governing body of the
22 city.

23 (d) One individual appointed by the mayor of the city.

24 (e) One individual appointed by agreement of at least 3 of
25 the 4 individuals appointed pursuant to subdivisions (a), (b),
26 (c), and (d).

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

5 (g) One member of the joint capital outlay subcommittee of
6 the appropriations committees of the senate and house of repre-
7 sentatives, appointed by the chair of that subcommittee, shall
8 serve as an ex officio member.

9 (3) Voting members of the board shall serve terms of 4
10 years. Vacancies shall be filled in the same manner as the orig-
11 inal appointment for an unexpired term. Of the members first
12 appointed, the members appointed by the chair of the state agency
13 and the mayor of the city shall serve for 2 years, the members
14 appointed by the state agency and the governing body of the city
15 shall serve for 3 years, and the member appointed by agreement of
16 the other members shall serve for 4 years. Ex officio nonvoting
17 members do not have fixed terms of office.

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

21 (5) A majority of the members of a board constitute a quorum
22 for the purpose of conducting business and exercising the powers
23 of the authority. Official action may be taken by an authority
24 upon the vote of a majority of the board members present, unless
25 the bylaws of the authority require a larger number.

26 (6) Members of the board shall not receive compensation for
27 services as members of an authority but are entitled to necessary

1 expenses, including travel expenses, incurred in the discharge of
2 their duties.

3 (7) The business that an authority may perform shall be con-
4 ducted at a public meeting of the authority held in compliance
5 with the open meetings act, Act No. 267 of the Public Acts of
6 1976, being sections 15.261 to 15.275 of the Michigan Compiled
7 Laws. Public notice of the time, date, and place of the meeting
8 shall be given in the manner required by Act No. 267 of the
9 Public Acts of 1976.

10 (8) A writing prepared, owned, or used by an authority in
11 the performance of an official function shall be made available
12 in compliance with the freedom of information act, Act No. 442 of
13 the Public Acts of 1976, being sections 15.231 to 15.246 of the
14 Michigan Compiled Laws.

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

18 Sec. 6403. (1) A board shall draft and adopt articles of
19 incorporation and bylaws for the administration of the
20 authority.

21 (2) An authority's articles shall state the name of the
22 authority; the name of the participating city and state agency;
23 the purposes for which the authority is formed; the powers,
24 duties, and limitations of the authority and its board; the
25 manner in which participating local and state governmental units
26 shall take part in the governance of the authority; the general

1 method of amending the articles; and any other matters that the
2 board considers advisable.

3 Sec. 6404. (1) The articles of an authority shall be
4 adopted and may be amended by an affirmative vote of a majority
5 of the members serving on the governing body of the participating
6 city and state agency.

7 (2) Before the articles or amendments to the articles are
8 adopted, the articles or amendments to the articles shall be pub-
9 lished by the clerk of the city at least once in a newspaper gen-
10 erally circulated within the participating city.

11 (3) The adoption of articles or amendments to the articles
12 by the respective governing bodies shall be evidenced by an
13 endorsement on the articles or amendments by the clerk or secre-
14 tary of the governing bodies in a form substantially as follows:

15 "These articles of incorporation (or amendments to the arti-
16 cles of incorporation) were adopted by an affirmative vote of a
17 majority of the members serving on the governing body of
18 _____, _____ at a meeting duly held on the _____ day of
19 _____, A.D., _____."

20 (4) Upon adoption of the articles or amendments to the arti-
21 cles, a printed copy of the articles or the amended articles
22 shall be filed with the secretary of state, the clerk of the
23 city, and the secretary of the state commission.

24 Sec. 6405. (1) The articles may authorize an authority to
25 propose standards, criteria, and regulations.

26 (2) To the extent authorized in the articles, an authority
27 may plan, promote, finance, issue bonds for, acquire, improve,

1 enlarge, extend, own, lease, construct, replace, or contract for
2 public improvements and services, including, but not limited to,
3 the following:

4 (a) Water and sewer public improvements and services.

5 (b) Solid waste collection, recycling, and disposal.

6 (c) Other public improvements relating to environmental mat-
7 ters that the city and the state agency in writing agree to
8 assume.

9 Sec. 6406. An authority may do 1 or more of the following:

10 (a) Acquire and hold, by purchase, lease, grant, gift,
11 devise, land contract, installment purchase contract, bequest, or
12 other legal means, real and personal property inside or outside
13 the boundaries of the authority. The property may include fran-
14 chises, easements, or rights of way on, under, or above any
15 property. The authority may pay for the property from, or pledge
16 for the payment of the property, revenue of the authority.

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

21 (c) Contract with the city for the provision of services of
22 a type listed in section 6405(2) for a period not exceeding 30
23 years. The service may be established or funded in conjunction
24 with an existing service of a local governmental unit, and the
25 provision of a service of a local governmental unit may be dele-
26 gated to an authority. A charge specified in a contract is

1 subject to increase by the authority, if necessary to provide
2 funds to meet its obligations.

3 (d) Retain full-time employees to staff the authority and to
4 implement the policies of the authority.

5 (e) Provide for and be responsible for the maintenance of
6 all of the following for a public purpose, subject to the arti-
7 cles and bylaws of the authority:

8 (i) Potable water.

9 (ii) Sewage systems.

10 (iii) Solid waste management.

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

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

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

17 Sec. 6407. Upon the expiration of a term agreed by the
18 incorporating units, the authority shall be dissolved unless the
19 city and the state agency agree to extend the existence of the
20 authority for an additional term of years. The authority may
21 only be dissolved during a term upon the vote of a 2/3 majority
22 of the governing bodies of both the city and the state agency.
23 Upon dissolution, the assets of the authority become the property
24 of the city.

25 PART 65 SCRAP TIRES

26 Sec. 6501. As used in this part:

1 (a) "Bond" means a performance bond from a surety company
2 authorized to transact business in this state, a certificate of
3 deposit, a cash bond, or an irrevocable letter of credit, in
4 favor of the director.

5 (b) "Collection site" means a site, other than a landfill, a
6 racecourse, or a feed storage location that contains either of
7 the following:

8 (i) One or more pieces of adjacent real property where 500
9 or more scrap tires are accumulated and that is not associated
10 with a retail operation as provided in subparagraph (ii).

11 (ii) One or more pieces of adjacent real property where
12 1,500 or more scrap tires are accumulated if that property is
13 adjacent to and owned or leased by a person who is in the busi-
14 ness of selling tires at retail.

15 (c) "Feed storage location" means a location on 1 or more
16 pieces of adjacent real property containing a commercially oper-
17 ated farming operation where not more than 3,000 scrap tires are
18 used for the purpose of securing stored feed.

19 (d) "Fund" means the scrap tire regulatory fund created in
20 section 6508.

21 (e) "Landfill" means that term as it is defined in the solid
22 waste management act, Act No. 641 of the Public Acts of 1978,
23 being sections 299.401 to 299.437 of the Michigan Compiled Laws.

24 (f) "Racecourse" means a commercially operated track for
25 go-carts, vehicles, off-road recreational vehicles, or motorcy-
26 cles that uses not more than 3,000 scrap tires for bumpers along
27 the track for safety purposes.

1 (g) "Scrap tire" means a tire that is no longer being used
2 for its original intended purpose. Scrap tire does not include a
3 vehicle support stand.

4 (h) "Scrap tire hauler" means a person who, as part of a
5 commercial business, transports scrap tires.

6 (i) "Scrap tire processor" means a person engaged in the
7 business of storing, buying, or otherwise acquiring scrap tires,
8 and reducing their volume by shredding or otherwise facilitating
9 recycling or resource recovery techniques for scrap tires. A
10 scrap tire processor includes a person who, in addition to pro-
11 cessing the scrap tires, incinerates the tires or converts the
12 tires into a product or another end use.

13 (j) "Tire" means a continuous solid or pneumatic rubber cov-
14 ering encircling the wheel of a tractor, other farm machinery, or
15 a vehicle.

16 (k) "Tire storage area" means a location within a collection
17 site where tires are accumulated.

18 (l) "Vehicle" means every device in, upon, or by which any
19 person or property is or may be transported or drawn upon a high-
20 way, excepting devices exclusively moved by human power or used
21 exclusively upon stationary rails or tracks and excepting a
22 mobile home as defined in section 2 of the mobile home commission
23 act, Act No. 96 of the Public Acts of 1987, being section
24 125.2302 of the Michigan Compiled Laws.

25 (m) "Vehicle support stand" means equipment used to support
26 a stationary vehicle consisting of an inflated tire and wheel
27 that is attached to another wheel.

1 Sec. 6502. A person shall not discard a tire on any
2 property, other than property owned by that person, without the
3 written permission of the person who owns the property.

4 Sec. 6503. (1) Beginning January 1, 1992, a person who
5 accumulates less than 2,500 scrap tires at a collection site that
6 are not stored in a building or stored in a covered vehicle shall
7 comply with all of the following:

8 (a) Only tires shall be accumulated in a tire storage area.

9 (b) Except as provided in subdivision (f), the tires shall
10 be accumulated in piles no greater than 15 feet in height with
11 horizontal dimensions no greater than 200 by 40 feet.

12 (c) Except as provided in subdivision (f), the tires shall
13 not be within 20 feet of the property line or within 60 feet of a
14 building or structure.

15 (d) The tires shall be maintained in a manner that limits
16 the potential of mosquito breeding by complying with 1 or more of
17 the following:

18 (i) The tires shall be covered by plastic sheets or other
19 impermeable barriers to prevent the accumulation of
20 precipitation.

21 (ii) The tires shall be chemically treated to eliminate mos-
22 quito breeding.

23 (iii) The tires shall be shredded or chipped into pieces no
24 larger than 4 inches by 6 inches and stored in piles that allow
25 complete water drainage.

26 (e) Except as provided in subdivision (f), there shall be a
27 minimum separation of 20 feet between tire piles. The open space

1 between tire piles shall at all times be free of rubbish,
2 equipment, and other materials.

3 (f) Tire piles shall be accessible to fire fighting
4 equipment. If the requirement of this subdivision is met, the
5 local fire department that serves the jurisdiction in which the
6 collection site is located may approve a variance from the
7 requirements of subdivisions (b), (c), and (e). Such an approv-
8 al, if granted, shall be in writing.

9 (g) The person accumulating the tires shall maintain a bond
10 in favor of the director in an amount, as determined by the
11 director, sufficient to cover the cost of removing the tires from
12 the tire storage area. However, for collection sites with fewer
13 than 2,500 tires, the bond shall not exceed \$2,500.00. A person
14 accumulating the tires who elects to use a certificate of deposit
15 as bond shall receive any accrued interest on that certificate of
16 deposit upon release of the bond by the director. A person who
17 elects to post cash as bond shall accrue interest on that bond at
18 the annual rate of 6%, to be accrued quarterly, except that the
19 interest rate payable to an applicant shall not exceed the rate
20 of interest accrued on the state common cash fund for the quarter
21 in which an accrual is determined. Interest shall be paid to the
22 applicant upon release of the bond by the director. Any interest
23 greater than 6% shall be deposited into the fund. The director
24 may utilize a bond required under this part for removing scrap
25 tires from a collection site in case of an emergency at the col-
26 lection site, insolvency of the person accumulating the tires, or
27 if the person accumulating the tires fails to comply with the

1 requirements of this section and does not cause the removal of
2 the tires at the direction of the director or a court of compe-
3 tent jurisdiction.

4 (2) By July 1, 1991 and by January 31 of each year thereaf-
5 ter, a person who accumulates at least 2,500 but less than
6 100,000 scrap tires at a collection site that are not stored in a
7 building shall comply with all of the following:

8 (a) All of the requirements of subsection (1).

9 (b) The area in which the tires are accumulated shall be
10 completely enclosed with a fence that is at least 6 feet tall
11 with lockable gates and is designed to prevent easy access.

12 (c) An earthen berm not less than 5 feet in height shall be
13 positioned outside of the fence in which the tires are enclosed.

14 (d) The collection site shall contain sufficient drainage so
15 that water does not pool or collect on the property.

16 (e) The approach road to the tire storage area and on-site
17 access roads to the tire storage area shall be of all-weather
18 construction and maintained in good condition so that it is pass-
19 able at all times for fire fighting equipment vehicles.

20 (f) Tire storage areas shall be mowed regularly or otherwise
21 kept free of weeds, vegetation, and other growth at all times.

22 (g) An emergency procedures plan shall be prepared and dis-
23 played at the collection site. The plan shall include telephone
24 numbers of the local fire and police departments. The plan shall
25 be reviewed by the local fire department prior to being posted.

26 (3) Beginning 1 year after the effective date of this part,
27 a person who accumulates 100,000 or more scrap tires at a

1 collection site that are not stored in a building shall comply
2 with all of the requirements of subsections (1) and (2) and that
3 person shall operate as a scrap tire processor.

4 Sec. 6504. (1) By July 1, 1991 and by January 31 of each
5 year thereafter, a person who owns a collection site shall annu-
6 ally register with the department. The registration shall be on
7 a form provided by the department and shall contain information
8 as required by the department.

9 (2) A \$200.00 registration fee shall accompany each annual
10 registration under this section. The department shall deposit
11 money collected under this section into the state treasury to be
12 credited to the fund.

13 Sec. 6505. (1) By July 1, 1991 and by January 31 of each
14 year thereafter, a scrap tire hauler shall register with the
15 department on a form provided by, and containing the information
16 required by, the department.

17 (2) A person who is in the business of selling tires at
18 retail who contracts for the removal of scrap tires shall con-
19 tract with a scrap tire hauler who is registered under
20 subsection (1).

21 Sec. 6506. The department shall contact each local health
22 department as defined in section 1105 of the public health code,
23 Act No. 368 of the Public Acts of 1978, being section 333.1105 of
24 the Michigan Compiled Laws, and shall request that local health
25 department to provide a list, including the location and owner,
26 if known, of all known significant tire piles within its
27 jurisdiction.

1 Sec. 6507. By January 1, 1996, the department shall report
2 to the legislature on all of the following:

3 (a) The effectiveness of this part and whether the depart-
4 ment recommends any changes in this part.

5 (b) The volume of tires that are being disposed of in land-
6 fills and whether the department recommends banning tires from
7 landfills in the future.

8 (c) Whether a manifest system to track scrap tires would be
9 useful in the enforcement of this part.

10 (d) Whether, under certain circumstances, the fund should be
11 used for the cleanup of abandoned scrap tires on land owned by
12 persons other than the state or a municipality or county.

13 (e) Whether sufficient collection sites are available for
14 the disposal of scrap tires from private individuals.

15 Sec. 6508. (1) The scrap tire regulatory fund is created in
16 the state treasury. The fund shall receive money as provided by
17 law and any gifts or contributions to the fund. The state trea-
18 surer shall direct the investment of the fund. Interest and
19 earnings of the fund shall be credited to the fund. Money in the
20 fund at the close of the fiscal year shall remain in the fund and
21 shall not revert to the general fund.

22 (2) Money in the fund shall be used, upon appropriation, for
23 all of the following purposes:

24 (a) Not more than 50% of the money in the fund, annually,
25 for administrative costs of the department associated with this
26 part including the implementation and enforcement of this part,

1 or for the employment of not more than 13.5 full-time equated
2 positions.

3 (b) For the administrative costs of the secretary of state
4 associated with the collection of the tire disposal surcharge
5 pursuant to section 806 of the Michigan vehicle code, Act No. 300
6 of the Public Acts of 1949, being section 257.806 of the Michigan
7 Compiled Laws.

8 (c) For the cleanup or collection of abandoned scrap tires
9 on land owned by the state or a local unit of government.

10 (3) The department shall annually report to the legislature
11 on the utilization of revenues of the fund.

12 Sec. 6509. (1) A person who violates this part is guilty of
13 a misdemeanor, punishable by imprisonment for not more than 90
14 days, or a fine of not more than \$10.00 for each tire that is
15 disposed of or accumulated in violation of this part, or both.

16 (2) In addition to, or as an alternative to, the penalties
17 provided under subsection (1), the court may order a person who
18 violates this part to perform not more than 100 hours of commu-
19 nity service.

20 (3) Each day that a violation continues may constitute a
21 separate violation.

22 (4) A law enforcement officer or a conservation officer may
23 issue an appearance ticket to a person who is in violation of
24 this part.

25 PART 67 USED OIL RECYCLING

26 Sec. 6701. As used in this part:

1 (a) "Motor oil" means oil used as a lubricant in a motor
2 vehicle.

3 (b) "Oil" means petroleum based oil.

4 (c) "Recycle" means to prepare used oil for reuse as a
5 petroleum product by refining, rerefining, reclaiming, reprocess-
6 ing, or other means to utilize used oil in a manner that substi-
7 tutes for a petroleum product made from new oil, if the prepara-
8 tion or use is operationally safe, environmentally sound, and
9 complies with the law, rules, and regulations of this state and
10 the United States.

11 (d) "Used oil" means oil which through use, storage, or han-
12 dling has become unsuitable for its original purpose due to the
13 presence of impurities or loss of original properties.

14 Sec. 6702. The director shall implement a plan to promote
15 the recycling of motor oil by the public and private sectors.
16 The director shall conduct a public education program to inform
17 the public and private sectors of the need for, and benefit of,
18 collecting and recycling used oil in order to conserve resources
19 and protect the natural resources of this state.

20 Sec. 6703. (1) The director of the department of management
21 and budget shall formulate and implement a plan to recycle the
22 motor oil used by the departments and agencies of this state.

23 (2) The director shall conduct a demonstration used oil
24 recycling project that does all of the following:

25 (a) Provides for a system of used oil recycling tanks or
26 barrels for use by the general public. The recycling tanks or
27 barrels shall be located in designated state owned vehicle

1 maintenance garages or other publicly owned structures that the
2 director determines meet both of the following criteria:

3 (i) Are locations where used oil is generated from oil
4 changes for state owned vehicles, or vehicles operated under con-
5 tracts with this state.

6 (ii) Are locations where oil recycling services are not oth-
7 erwise available to the general public.

8 (b) Promotes public awareness of the availability to the
9 general public of recycling tanks or barrels for used oil.

10 (3) The director shall establish a project plan for conduct-
11 ing the demonstration project provided for in subsection (2).

12 The project plan shall include the number of locations, proposed
13 sites, methods of public notice, security procedures, and model
14 language for cooperative agreements with other state agencies for
15 use of their facilities in the demonstration project.

16 (4) Funding necessary to implement this part may come from
17 any lawful source, including appropriations, funds from private
18 sources, and funds generated from the sale of general obligation
19 bonds.

20 Sec. 6704. (1) A person shall not dispose of, or cause the
21 disposal of, used oil by dumping onto the ground, discharging,
22 dumping, or depositing used oil into sewers, drainage systems,
23 surface or groundwaters, or other waters of this state, or,
24 except as provided in subsection (2), by incineration, or as
25 refuse, or onto any public or private land unless the land is
26 designated by the state or an agency or political subdivision of
27 the state as a collection facility for the disposal, dumping, or

1 deposit of used oil and the used oil is placed in a receptacle or
2 container installed or located at the collection facility.

3 (2) Subsection (1) does not apply to the use of used oil in
4 an incinerator or other heater that is operated for purposes of
5 providing heat or energy, or as a rust preventive coating on farm
6 or construction equipment.

7 (3) Notwithstanding subsection (2), beginning March 28,
8 1994, used oil shall not be disposed of in a municipal solid
9 waste incinerator as defined in part 63.

10 (4) Beginning on July 1, 1991, a person who violates this
11 section is guilty of a misdemeanor, punishable by imprisonment
12 for 90 days, or a fine of not more than \$1,000.00, or both. In
13 place of a sentence provided in this subsection, the court may
14 order that the defendant engage in court supervised
15 recycling-related labor for a number of hours determined by the
16 court, including, but not limited to, oil recycling. A violation
17 of this section by a person, other than an individual, is punish-
18 able by a fine of not more than \$2,500.00.

19 (5) This section does not prohibit enforcement actions under
20 other state or federal laws applicable to an activity described
21 in this section.

22 (6) The department shall establish criteria to be used in
23 designating collection facilities under subsection (1). In
24 developing the criteria, the department shall seek to encourage
25 private and local collection facilities as an integral part of
26 the department's efforts to establish a statewide network of
27 collection facilities as required in section 6705(a).

1 Sec. 6705. In addition to the other powers and duties of
2 the department under this part, by January 1, 1991, the depart-
3 ment shall develop and submit to the legislature a comprehensive
4 plan that does all of the following:

5 (a) Provides for a network of private, state, and local col-
6 lection facilities on a statewide basis by July 1, 1991 to facil-
7 itate compliance with section 6704.

8 (b) Provides for a publicity program to assure that the
9 public is aware of the requirements of section 6704, the location
10 of collection facilities, and the penalties for violating
11 section 6704.

12 (c) Provides 1 or more proposed funding mechanisms that the
13 director considers feasible to assure that an operational collec-
14 tion facility network is available statewide by July 1, 1991.

15 PART 69 DISPOSAL OF BATTERIES

16 Sec. 6901. As used in this part:

17 (a) "Distributor" means a person who sells batteries to
18 retailers in this state.

19 (b) "Lead acid battery" means a storage battery in which the
20 electrodes are grids of lead containing lead oxides that change
21 in composition during charging and discharging, and the electro-
22 lyte is dilute sulfuric acid.

23 (c) "Manufacturer" means a person who produces batteries for
24 sale in this state.

25 (d) "Mercury battery" means a dry cell storage battery that
26 delivers an essentially constant output voltage throughout its

1 useful life by means of a chemical reaction between zinc and
2 mercuric oxide.

3 (e) "Nickel cadmium battery" means a sealed storage battery
4 having a nickel anode, a cadmium cathode, and an alkaline elec-
5 trolyte, widely used in cordless appliances, and may serve as a
6 primary battery.

7 (f) "Retailer" means a person who sells or offers to sell
8 batteries to consumers within this state.

9 (g) "Solid waste disposal area" means a disposal area as
10 defined in part 63.

11 Sec. 6902. (1) A person other than a retailer, distributor,
12 or manufacturer shall not dispose of a lead acid battery except
13 by delivery to 1 of the following:

14 (a) A retailer.

15 (b) A distributor.

16 (c) A manufacturer.

17 (d) A collection, recycling, or smelting facility approved
18 by the department.

19 (2) A retailer shall not dispose of used lead acid batteries
20 except by delivery to 1 of the following:

21 (a) A distributor or his or her authorized agent.

22 (b) A collection, recycling, or smelting facility approved
23 by the department.

24 (c) A manufacturer.

25 (3) A distributor shall dispose of lead acid batteries by
26 delivery to a manufacturer or to a collection, recycling, or
27 smelting facility approved by the department.

1 (4) A manufacturer shall dispose of lead acid batteries by
2 delivery to a recycling or smelting facility approved by the
3 department.

4 Sec. 6903. A retailer of lead acid batteries shall do all
5 of the following:

6 (a) Accept, at or near the point at which lead acid batte-
7 ries are offered for sale, in a quantity at least equal to the
8 number of new lead acid batteries sold by the retailer, used lead
9 acid batteries from customers, if offered by the customers.

10 (b) Post a written notice in a location that is readily vis-
11 ible to customers within the retail establishment that is at
12 least 8-1/2 inches by 11 inches in size and contains the univer-
13 sal recycling symbol and essentially all of the following:

14 (i) Recycle your used lead acid batteries.

15 (ii) It is illegal to discard a lead acid battery except by
16 delivery to a retailer, a distributor, a manufacturer, or a col-
17 lection, recycling, or smelting facility approved by the
18 department.

19 (iii) State law requires retailers to accept used lead acid
20 batteries upon the purchase or within 30 calendar days of the
21 purchase of a lead acid battery.

22 (c) After January 1, 1993, the notice described in
23 subdivision (b) shall also include information pertaining to the
24 required deposit for lead acid batteries and the availability of
25 refunds under this part.

1 (d) The format, design, and wording of the notice described
2 in this section shall be provided to retailers of lead acid
3 batteries by the department.

4 Sec. 6904. (1) The department shall produce, print, and
5 make available to retailers notices required by section 6903.

6 (2) A retailer who fails to post a notice required by this
7 part following warning by the department is subject to a civil
8 fine of \$25.00 per day of violation.

9 (3) A default in the payment of a civil fine ordered under
10 this part may be remedied by any means authorized under the
11 revised judicature act of 1961, Act No. 236 of the Public Acts of
12 1961, being sections 600.101 to 600.9947 of the Michigan Compiled
13 Laws.

14 Sec. 6905. (1) A distributor shall accept used lead acid
15 batteries from retailers in a quantity at least equal to the
16 number of new lead acid batteries sold by the distributor.

17 (2) A distributor accepting lead acid batteries from a
18 retailer as required under this section shall remove the lead
19 acid batteries from the point of collection within 90 days of
20 receiving the batteries.

21 Sec. 6906. (1) Beginning on January 1, 1993, a person who
22 purchases a lead acid battery from a retailer shall exchange a
23 used lead acid battery for the battery purchased. If a person
24 purchasing a lead acid battery does not exchange a used lead acid
25 battery, the purchaser shall pay to the retailer a deposit of
26 \$6.00 and shall receive from the retailer a voucher approved by
27 the retailer. If within 30 calendar days of purchase of a lead

1 acid battery the person who purchased a lead acid battery returns
2 to the retailer any used lead acid battery, accompanied by the
3 voucher, he or she is be entitled to a full refund of the \$6.00
4 deposit. If the person returns a used lead acid battery, accom-
5 panied by a voucher that was approved by the retailer who sold
6 the battery, to a collection, recycling, or smelting facility
7 approved by the department, he or she is entitled to a full
8 refund of the \$6.00 deposit and the collection, recycling, or
9 smelting facility may seek from the battery retailer who issued
10 the original voucher reimbursement for the \$6.00 deposit that was
11 refunded.

12 (2) A deposit received by a retailer under subsection (1)
13 that is unredeemed at the time of purchase or within 30 calendar
14 days of purchase, minus a 1/2% deposit administration fee that
15 may be retained by the retailer, shall escheat to the state on a
16 quarterly basis and shall be deposited in the environmental
17 response fund established in section 4509.

18 (3) The requirements of this section do not apply to a
19 retailer who sells a lead acid battery as a component part within
20 a motorized vehicle sold by that person.

21 Sec. 6907. (1) The department shall enforce this part.

22 (2) A person other than a retailer, distributor, or manufac-
23 turer who violates section 2 by improperly disposing of lead acid
24 batteries is guilty of a misdemeanor, punishable by a fine of not
25 more than \$25.00, plus the costs of prosecution. Each battery
26 that is unlawfully disposed of is a separate violation.

1 (3) Except as otherwise provided in this part, a retailer,
2 manufacturer, or distributor who violates this part is guilty of
3 a misdemeanor, punishable by imprisonment for not more than 60
4 days or a fine of not more than \$1,000.00, or both, plus the
5 costs of prosecution.

6 PART 71 LIQUID INDUSTRIAL WASTES

7 Sec. 7101. As used in this part:

8 (a) "Commission" means the water resources commission, its
9 staff, or its designated representative.

10 (b) "Liquid industrial waste" means any liquid waste, other
11 than unpolluted water, that is produced by, or incident to, or
12 results from an industrial or commercial activity or the conduct
13 of any enterprise.

14 (c) "Tank" means any container that is placed on a vehicle
15 to transport liquid industrial waste.

16 (d) "Person", as used in this part, does not include a local
17 unit of government.

18 Sec. 7102. A person shall not engage in or carry on the
19 business of removing liquid industrial waste from the premises of
20 another person unless he or she is licensed as provided in this
21 part. A person who engages in or carries on the business of
22 removing liquid industrial waste as described in this part shall
23 be bonded as provided in this part.

24 Sec. 7103. A person shall not engage, employ, or contract
25 with any other person except a licensee under this part, to
26 remove liquid industrial wastes from his or her premises.

1 Sec. 7104. A person who engages, employs or contracts with
2 any other person to remove liquid waste from his or her premises
3 shall maintain detailed records of all such waste removals effec-
4 tuated on forms provided by the commission and shall submit this
5 information in the detail and with the frequency required by the
6 commission.

7 Sec. 7105. This part does not prevent the removal of liquid
8 industrial waste from the premises of another person by a munici-
9 pal waste collection and treatment entity and does not prevent a
10 person from contracting or otherwise arranging with a municipal
11 waste collection and treatment entity for that removal.

12 Sec. 7106. Subject to section 7107 and before engaging in
13 the business of removing liquid industrial waste from the
14 premises of another, a person shall obtain a license using an
15 application blank prepared by the commission. The application
16 shall be accompanied by a license fee of \$100.00 and by a surety
17 bond covering the period and any renewal thereof for which the
18 license is issued by a surety company registered in the state, to
19 indemnify the commission for the abatement of pollution of waters
20 that results from any improper disposal of industrial waste by
21 the licensee. The bonds shall be \$15,000.00 for residents of the
22 state and \$30,000.00 for nonresidents. The commission shall be
23 the obligee and the bond shall be for the benefit and purpose to
24 indemnify the state for the elimination of hazardous or nuisance
25 conditions and for the abatement of any pollution of waters that
26 results from the improper disposal of industrial waste by the
27 licensee. In lieu of surety bonds, the licensee may deposit cash

1 or other securities acceptable to the commission in the required
2 amounts. The surety, upon 30 days' notice in writing to the com-
3 mission and to the licensee, may cancel a bond, but a cancella-
4 tion does not affect any rights which have accrued on the bond
5 before the effective date of the cancellation.

6 Sec. 7107. A person licensed pursuant to section 6131 who
7 transports hazardous waste within this state and also transports
8 liquid industrial waste is exempt from the business license and
9 surety bond requirements of section 7106, but is subject to all
10 other provisions of this part and rules promulgated under this
11 part, including those pertaining to vehicle licensure.

12 Sec. 7108. The commission shall issue a license to an
13 applicant, if after conducting an investigation as it considers
14 necessary, the commission is satisfied that the applicant has the
15 qualifications, experience, reputation, and equipment to perform
16 the services in a manner not detrimental to the public interest,
17 in a way that will not cause unlawful pollution of the waters of
18 the state, and meets the bonding requirements of this part.

19 Sec. 7109. (1) All trucks or other vehicles used to trans-
20 port or carry liquid industrial wastes shall carry within the
21 truck or vehicle a license issued by the commission which shall
22 be made available for inspection by a representative of the com-
23 mission or any law enforcement agent.

24 (2) An application for a vehicle license required under this
25 section shall state the make, model, and year of the vehicle, and
26 the capacity of the tank used in transporting industrial wastes
27 and any other information required by the commission. An

1 application for a vehicle license shall be accompanied by a
2 license fee of \$10.00 for each vehicle sought to be licensed.
3 The license fee is payable to the state. The commission shall
4 issue a license to an applicant if, after conducting an investi-
5 gation as it considers necessary, the commission is satisfied
6 that the truck or vehicle and equipment is proper and adequate
7 for the purpose. The license is not transferable from 1 vehicle
8 to another. In addition to the vehicle license, which is carried
9 on the vehicle at all times, there shall be painted on both sides
10 of the vehicle in letters not less than 2 inches high the words
11 "licensed industrial waste hauling vehicle". These words shall
12 be followed with the vehicle license number. Directly adjacent
13 to the words and vehicle license number a seal furnished by the
14 commission shall be affixed that designates the year for which
15 the license was issued. The year on the seal shall correspond to
16 the year that appears on the license plate of the vehicle.

17 (3) All licenses issued under this part expire on the last
18 day of February of each year. Application for renewal of a
19 license may be made after November 30 of each year. The fee for
20 renewal shall be the same as for an original license.

21 Sec. 7110. (1) The tank on a vehicle required to be
22 licensed under this part shall be kept tightly closed in transit,
23 to prevent the escape of contents or odors and the outside of all
24 vehicles and accessory equipment shall be kept clean.

25 (2) The licensee shall dispose of all wastes in conformance
26 with part 11.

1 (3) The licensee shall keep records of all trips where the
2 pickup, hauling, or disposal of liquid wastes are involved. The
3 records shall state the date, source of the waste, quantity,
4 type, and the point and method of disposal, and total mileage of
5 the trip. Trip records for the last 2 months shall be carried on
6 the vehicle for inspection. The licensee shall preserve trip
7 records for 2 years.

8 (4) The licensee shall not dispose of wastes onto or into
9 the ground except at locations specifically approved by the
10 commission. Waste shall not be placed in a location where the
11 waste may enter any public or private drain, pond, stream, or
12 other body of surface water or groundwater.

13 Sec. 7111. If the commission determines hazardous or nui-
14 sance conditions or that unlawful pollution of the waters of the
15 state has resulted or may result from the handling or disposal of
16 liquid industrial wastes by a licensee, it shall first notify the
17 licensee and afford him or her with the opportunity to take cor-
18 rective action or to abate the pollution or take the necessary
19 means to prevent the occurrence of unlawful pollution. If the
20 licensee does not effect the correction, abatement or prevention
21 within a reasonable time, the commission shall do so and is enti-
22 tled to indemnification by the bond for the actual costs of the
23 correction, abatement, or prevention.

24 Sec. 7112. (1) A person who violates this part may have his
25 or her license revoked by the commission.

26 (2) A person who is convicted of violating this part by a
27 court of competent jurisdiction shall be fined not less than

1 \$500.00 and costs of prosecution, and if the person defaults in
2 the payment of fine and costs, he or she shall be imprisoned for
3 not less than 10 days or more than 30 days. When the violation
4 is of a continuing nature, each day upon which a violation occurs
5 is a separate offense.

6 PART 75 WASTE MINIMIZATION

7 Sec. 7501. As used in this part:

8 (a) "Office" means the office of waste reduction.

9 (b) "Waste" means hazardous waste as defined in

10 section 6103; solid waste as defined in section 6306; liquid
11 industrial waste as defined in section 7101; discharges regulated
12 by part 11; and air contaminants regulated by part 39.

13 (c) "Waste reduction" means any practice, including, but not
14 limited to, an equipment or technology modification, a process or
15 procedure modification, a reformulation or redesign of a product,
16 a substitution of raw materials, or improved management, train-
17 ing, or inventory control, which is undertaken by a person to
18 reduce the volume or quantity or toxicity of waste that may be
19 released into the environment or that is treated at a location
20 other than the location where it is produced.

21 Sec. 7502. (1) The office of waste reduction is created
22 within the department to advise the director on methods of incor-
23 porating waste reduction goals within the department's regulatory
24 and permit programs, including data collection and analysis to
25 advance the concept and implementation of waste reduction.

26 (2) The department shall employ personnel and provide
27 support staff as are necessary to implement this part.

1 Sec. 7503. (1) The office shall do all of the following:

2 (a) Identify opportunities to encourage waste reduction
3 through the department's regulatory programs.

4 (b) Identify opportunities to encourage waste reduction
5 through the department's permit programs.

6 (c) Identify how waste reduction efforts should be docu-
7 mented in environmental impact statements.

8 (d) Analyze and make recommendations on the value of impos-
9 ing statewide goals or goals for particular wastes, or both, for
10 waste reduction, minimum recycling standards, and waste treatment
11 standards.

12 (e) Publish an annual analysis of waste reduction efforts
13 and potentials in the state.

14 (2) In performing its responsibilities under subsection (1),
15 the office shall place a particular emphasis on in-plant waste
16 reduction.

17 (3) Consistent with the congressional declaration in section
18 1003(b) of subtitle A of the solid waste disposal act, title II
19 of Public Law 89-272, 42 U.S.C. 6902, that it is the national
20 policy of the United States that, wherever feasible, hazardous
21 waste is to be reduced or eliminated as expeditiously as possi-
22 ble, the office shall place a particular emphasis on the reduc-
23 tion of a waste that is a hazardous waste as defined in
24 section 6103.

25 Sec. 7504. (1) The office shall provide staff and services
26 to the hazardous waste policy committee created in part 61.

1 (2) The office shall complete the studies provided in
2 section 6110(3), upon the request of the hazardous waste policy
3 committee and shall provide the information generated by those
4 studies to the hazardous waste policy committee.

5 (3) The department shall assure that relevant information
6 received under section 313 of subtitle B of the emergency plan-
7 ning and community right-to-know act of 1986, title III of Public
8 Law 99-499, 42 U.S.C. 11023, is transmitted to the hazardous
9 waste policy committee by the office.

10 Sec. 7505. (1) Upon request, the office shall provide
11 information to the waste reduction assistance service created in
12 part 77 and to the department of commerce liaison created in
13 part 77.

14 (2) The director shall designate 1 individual from the
15 department to serve as a liaison between the department and the
16 waste reduction assistance service in the department of commerce
17 on all matters related to waste reduction.

18 Sec. 7506. The office shall prepare and deliver, prior to
19 January 1 of each year, a report detailing the efforts the office
20 has undertaken during the previous fiscal year to implement this
21 part. The annual report shall be delivered to the legislature,
22 the governor, and the chairpersons of the appropriations commit-
23 tees in the senate and the house of representatives for their use
24 in evaluating future appropriations for the office. The first
25 annual report shall include the information generated pursuant to
26 sections 7503 and 7504 and shall recommend changes in policies

1 and regulatory approaches which will encourage waste reduction.
2 Subsequent annual reports may include this information.

3 PART 77 WASTE REDUCTION ASSISTANCE

4 Sec. 7701. As used in this part:

5 (a) "Committee" means the waste reduction advisory
6 committee.

7 (b) "Department" means the department of commerce.

8 (c) "Director" means the director of commerce.

9 (d) "Service" means the waste reduction assistance service
10 created in section 7702.

11 (e) "Waste" means hazardous waste as defined in
12 section 6103; solid waste as defined in section 6306; liquid
13 industrial waste as defined in section 7101; discharges regulated
14 by part 11; and air contaminants regulated by part 39.

15 (f) "Waste reduction" means any practice, including, but not
16 limited to, an equipment or technology modification, a process or
17 procedure modification, a reformulation or redesign of a product,
18 a substitution of raw materials, or improved management, train-
19 ing, or inventory control, which is undertaken by a person to
20 reduce the volume or quantity or toxicity of waste which may be
21 released into the environment or which is treated at a location
22 other than the location where it is produced.

23 Sec. 7702. (1) The waste reduction assistance service is
24 created within the department. The service shall inform, assist,
25 educate, and provide funding, as provided in this part, to per-
26 sons to facilitate a reduction in the amount of waste generated

1 in the state. The service shall place a particular emphasis on
2 in-plant waste reduction.

3 (2) The department shall employ personnel and provide staff
4 and services as are necessary to administer the service and to
5 implement this part.

6 Sec. 7703. (1) The service shall establish a waste reduction
7 information clearinghouse that shall do all of the following:

8 (a) Upon request, provide specific waste reduction informa-
9 tion to any person.

10 (b) Publish information describing waste reduction
11 technologies.

12 (c) Distribute available publications pertaining to waste
13 reduction.

14 (d) Sponsor waste reduction workshops targeted at specific
15 industries.

16 (e) Participate in conferences and meetings of business
17 organizations.

18 (f) Provide information and application forms as necessary
19 to fulfill the department's responsibilities under sections 7705
20 and 7706.

21 (2) The service may contract to have any of the activities
22 provided in subsection (1) performed by persons other than
23 department personnel.

24 Sec. 7704. The service shall provide technical assistance
25 regarding waste reduction to business and industry throughout the
26 state and shall do all of the following:

1 (a) Provide instruction on self-conducted waste audits
2 pertaining to waste reduction.

3 (b) Provide consultant referrals pertaining to waste
4 reduction.

5 (c) Provide on-site assistance to business and industry per-
6 taining to waste reduction.

7 (d) Provide other information and assistance that is consid-
8 ered appropriate by the service.

9 Sec. 7705. (1) The department shall establish a waste
10 reduction grants program.

11 (2) Information and applications for grants provided by this
12 section shall be distributed upon request through the service.
13 Additionally, the service shall, upon request, make referrals and
14 provide information about other state agencies and programs and
15 federal agencies and programs where funding alternatives may be
16 available.

17 (3) An application for a grant under this section shall be
18 on a form provided by the department and contain information as
19 required by the director.

20 (4) The director, after the consideration of the recommenda-
21 tions of the committee, shall make waste reduction grants for
22 either or both of the following purposes:

23 (a) To fund projects that demonstrate new and emerging waste
24 reduction technologies. A grant made under this subdivision
25 shall require that information generated by the project is avail-
26 able to the service for distribution through the waste reduction
27 information clearinghouse created in section 7703.

1 (b) To fund waste reduction projects.

2 (5) The director, in making grants pursuant to this section,
3 shall consider all of the following:

4 (a) The severity of the waste problem being addressed.

5 (b) The extent that the technological development will
6 reduce waste at its source.

7 (c) The potential for the application of the waste reduction
8 technology to other persons.

9 (d) The ability of the applicant to contribute matching
10 funds.

11 (e) The percentage reduction of volume or quantity or toxic-
12 ity of waste that will be achieved.

13 (f) Whether the project is consistent with state law and
14 policy.

15 (g) Additional criteria as the director considers
16 appropriate.

17 Sec. 7706. (1) The department shall establish a waste
18 reduction research grants program.

19 (2) Information and applications for grants under this sec-
20 tion shall be distributed upon request through the service.

21 (3) An application for a grant under this section shall be
22 on a form provided by the department and shall contain informa-
23 tion required by the director.

24 (4) The director, after consideration of the recommendations
25 of the committee, shall make grants to colleges and universities,
26 nonprofit corporations, or industry associations or other persons

1 for industry specific research projects pertaining to waste
2 reduction.

3 (5) The director, in making grants pursuant to this section,
4 shall consider all of the following:

5 (a) The severity of the waste problem being addressed.

6 (b) The extent that the technological development will
7 reduce the volume or quantity or toxicity of waste generated.

8 (c) The potential for the application of waste reduction
9 technology to other persons or businesses.

10 (d) The ability of the applicant to contribute matching
11 funds.

12 (e) The percentage reduction of volume or quantity or toxic-
13 ity of waste that will be achieved.

14 (f) The likelihood of the applicant's project qualifying for
15 other research grants or subsequent research grants from other
16 sources.

17 (g) Whether the project is consistent with state law and
18 policy.

19 (h) Additional criteria as the director considers
20 appropriate.

21 Sec. 7707. (1) The waste reduction advisory committee is
22 created within the department. The committee shall consist of
23 the following members who shall be appointed by the governor with
24 the advice and consent of the senate:

25 (a) One individual from a major industry.

26 (b) One individual from a small business.

1 (c) One individual from an environmental organization.

2 (d) One individual who has knowledge and experience in waste
3 reduction methods and technology.

4 (e) One individual from the general public.

5 (2) The governor shall select 1 of the individuals appointed
6 in subsection (1) to serve as the chairperson of the committee.

7 The committee shall meet when necessary at the call of the
8 chairperson.

9 (3) Members of the committee shall be appointed for terms of
10 2 years each. However, of the members first appointed, 3 shall
11 be appointed to serve for terms of 3 years.

12 (4) A vacancy on the committee shall be filled in the same
13 manner as the original appointment. A member of the committee
14 whose term has expired shall not continue to serve as a member of
15 the committee unless he or she has been reappointed by the gover-
16 nor with the advice and consent of the senate.

17 (5) A meeting of the committee shall be held in compliance
18 with the open meetings act, Act No. 267 of the Public Acts of
19 1976, being sections 15.261 to 15.275 of the Michigan Compiled
20 Laws, and notice of the time, date, and place of the meeting
21 shall be given in the manner required by that act.

22 Sec. 7708. The committee shall do all of the following:

23 (a) Advise the service on the administration of the waste
24 reduction information clearinghouse and the technical assistance
25 program.

26 (b) Provide information to the service regarding waste
27 reduction technology.

1 (c) Review applications and make recommendations to the
2 director regarding grants available pursuant to sections 7705 and
3 7706.

4 Sec. 7709. The director shall designate 1 individual from
5 the department to serve as a liaison between the department and
6 the office of waste reduction in the department of natural
7 resources created in part 75 on all matters related to waste
8 reduction.

9 Sec. 7710. The service shall prepare and deliver, prior to
10 January 1 of each year, a report detailing the efforts the serv-
11 ice has undertaken during the previous fiscal year to implement
12 this part. The annual report shall be delivered to the legisla-
13 ture, the governor, and the chairpersons of the appropriations
14 committees in the senate and the house of representatives for
15 their use in evaluating future appropriations for the service.

16 PART 81 LABELING OF PLASTIC PRODUCTS

17 Sec. 8101. As used in this part:

18 (a) "Degradable" means capable of being broken down by bio-
19 degradation, photodegradation, or chemical degradation into com-
20 ponent parts within 360 days under exposure to the elements.

21 (b) "Label" means a molded, imprinted, or raised symbol on
22 or near the bottom of a plastic product.

23 (c) "Plastic" means any material made of polymeric organic
24 compounds and additives that can be shaped by flow.

25 (d) "Plastic bottle" means a rigid plastic container with a
26 capacity of 16 ounces or more that has a neck that is smaller
27 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 multi-layer.

(n) "D" means degradable.

Sec. 8102. (1) Beginning January 1, 1992, 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

1 designed so that a triangle or arrows of not less than 1/2 inch
2 height cannot be added to the product, a smaller label may be
3 used if the label can be easily read. The code shall appear on
4 or near the bottom of the plastic product as follows:

- 5 (a) 1 PETE.
- 6 (b) 2 HDPE.
- 7 (c) 3 V.
- 8 (d) 4 LDPE.
- 9 (e) 5 PP.
- 10 (f) 6 PS.
- 11 (g) 7 OTHER.
- 12 (h) 8 D.

13 (2) The department shall maintain a list of the label code
14 provided in subsection (1) and shall provide a copy of that list
15 to any person upon request.

16 Sec. 8103. Additional staff shall not be hired by the
17 department for the purposes of enforcing this part.

18 Sec. 8104. (1) A person who violates this part is subject
19 to a civil fine of \$500.00 per violation.

20 (2) A default in the payment of a civil fine ordered under
21 this part may be remedied by any means authorized under the
22 revised judicature act of 1961, Act No. 236 of the Public Acts of
23 1961, being sections 600.101 to 600.9947 of the Michigan Compiled
24 Laws.

25 PART 83 DEGRADABLE PACKAGING FOR CONTAINERS

26 Sec. 8301. As used in this part:

1 (a) "Containers" means glass, metal, or plastic bottles,
2 cans, jars, or other receptacles that contain any substance.

3 (b) "Degradable" means capable of being broken down by bio-
4 degradation, photodegradation, or chemical degradation into com-
5 ponent parts within 360 days under exposure to the elements.

6 Sec. 8302. (1) A person shall not sell or offer for sale in
7 this state containers connected to each other by a separate hold-
8 ing device that is constructed of plastic rings unless the device
9 is degradable and bears a distinguishing symbol.

10 (2) A manufacturer of container holding devices that are
11 constructed of plastic rings who sells or offers for sale or pro-
12 vides for the sale or offer for sale in this state of these
13 devices shall design a distinguishing symbol indicating that the
14 devices are degradable and shall register the distinguishing
15 symbol with the department and provide the department with a
16 sample of the device. The department may require test data that
17 show that the device is degradable as required in this part.

18 (3) As used in this part, a separate holding device does not
19 include a vacuum-packed wrapping that completely encases the con-
20 tainers that it connects.

21 Sec. 8303. A person who violates this part is guilty of a
22 misdemeanor, punishable by a fine of \$500.00 for each day this
23 part is violated.

24 PART 85 RECYCLING MAKES CENTS, OFFICE PAPER RECOVERY

25 Sec. 8501. As used in this part:

26 (a) "Recycled paper" and "recycled wastepaper" means a paper
27 product that contains not less than 50% wastepaper.

1 (b) "Wastepaper" means any discarded paper that is generated
 2 after the completion of the paper manufacturing process, and,
 3 includes but is not limited to, trimmings, printed paper, cutting
 4 and converting paper, or post-consumer paper. Wastepaper does
 5 not include mill broke or other in-plant residual wastes.

6 Sec. 8502. (1) The department shall establish and implement
 7 a paper recycling system to recycle wastepaper products that are
 8 recyclable and for which there is an accessible and available
 9 market. The recycling system shall include the recyclable waste-
 10 paper products generated in the offices and other facilities of
 11 state departments and state agencies, the offices and other
 12 facilities of the legislature, and the judicial offices and other
 13 facilities within this state. The department may work with other
 14 state departments and hire private contractors to establish or
 15 implement all or a portion of the recycling system under this
 16 part. The paper recycling system established by the department
 17 shall provide for the recycling of wastepaper in the offices and
 18 facilities that participate in that system, in accord with the
 19 following schedule:

20 (a) January 1, 1989.....20% or more.

21 (b) January 1, 1990.....25% or more.

22 (c) January 1, 1992.....50% or more.

23 (d) January 1, 2000.....85% or more.

24 (2) The paper recycling system established by the department
 25 shall provide for the expansion and improvement of any wastepaper
 26 recycling system that exists on March 30, 1989 and for all of the
 27 following:

1 (a) An aggressive program to locate and develop, if
2 necessary, markets for recyclable wastepaper products.

3 (b) An education program to assure that employees who par-
4 ticipate in the recycling system are knowledgeable about both of
5 the following:

6 (i) The importance of recycling paper.

7 (ii) The components of the paper recycling system and how
8 the system will impact each employee.

9 (c) The recovery of all wastepaper for which a market is
10 available and accessible.

11 (d) The separation of the recyclable wastepaper by the gen-
12 erator in close proximity to the point at which the paper product
13 enters the waste stream.

14 (e) A central collection system within each building or
15 office of facility that is participating in the recycling
16 system.

17 (f) The compiling of information and the preparation of an
18 annual written report to be sent to the governor, the senate
19 majority leader, the speaker of the house, and the chief justice
20 of the supreme court, detailing the implementation and operation
21 of the paper recycling system; the level of participation in the
22 paper recycling system of offices, facilities, and agencies
23 within each branch of government; the availability of markets for
24 the wastepaper collected; recommendations on how the market for
25 recycled paper can be stimulated; and recommendations regarding
26 whether the system can be and should be expanded.

1 Sec. 8503. The proceeds of the paper recycling system shall
2 be forwarded to the state treasurer and credited to the office
3 services revolving fund created in section 269 of the management
4 and budget act, Act No. 431 of the Public Acts of 1984, being
5 section 18.1269 of the Michigan Compiled Laws, to be utilized by
6 the department of management and budget to implement this part
7 and to reimburse other state departments that incur expenses
8 under this part.

9 PART 91 CLEAN MICHIGAN FUND

10 Sec. 9101. For purposes of this part, the words and phrases
11 defined in sections 9102 and 9103 have the meanings ascribed to
12 them in those sections.

13 Sec. 9102. (1) "Approved solid waste management plan" means
14 a solid waste management plan submitted and approved under
15 part 63.

16 (2) "Capital costs" means those allowable costs, as deter-
17 mined by the department, of constructing or equipping, or both,
18 of a solid waste transfer facility, a recycling project, or a
19 composting project.

20 (3) "Composting project" means a project in which yard
21 wastes, including leaves and grass clippings, are converted into
22 humus through natural biological processes.

23 (4) "Disposal area" means disposal area as defined in
24 part 63.

25 (5) "Fund" means the clean Michigan fund created in
26 section 9104.

1 (6) "Municipality" means a county, city, village, township,
2 or an agency of a county, city, village, or township; an
3 authority or any other public body created by or pursuant to
4 state law; or this state or an agency or department of this
5 state.

6 (7) "Nonprofit private entity" means a private entity that
7 carries out any lawful purpose or purposes not involving pecuni-
8 ary profit or gain for its directors, officers, shareholders, or
9 members.

10 Sec. 9103. (1) "Private entity" means an individual, trust,
11 firm, joint stock company, corporation, or association that is
12 not a local unit of government.

13 (2) "Recycling project" means a project in which materials
14 that otherwise would become solid waste are collected, separated,
15 or processed and returned for conversion into raw materials or
16 products.

17 (3) "Resource recovery" means the processing or collecting
18 of solid wastes so as to produce materials or energy that may be
19 used in manufacturing, agriculture, heat production, or other
20 productive processes or purposes designed to reuse materials or
21 products or to conserve natural resources.

22 (4) "Site separated material" means glass, metals, wood,
23 paper products, plastics, rubber, textiles, or any other material
24 approved by the department, that is separated from solid waste
25 for conversion into raw materials or new products.

26 (5) "Solid waste" means solid waste as defined in part 63.

1 (6) "Solid waste transfer facility" means a solid waste
2 transfer facility as defined in part 63.

3 (7) "Source separated material" means glass, metals, wood,
4 paper products, plastics, rubber, textiles, or any other material
5 approved by the department that is separated at the source of
6 generation for conversion into raw material or new products.

7 (8) "Waste-to-energy" means a process that specifically is
8 designed to recover energy through the combustion or volume
9 reduction of solid waste.

10 Sec. 9104. The clean Michigan fund is created in the state
11 treasury. The fund shall consist of appropriations from the gen-
12 eral fund or any other fund, as provided by law, and any gifts
13 and donations to the fund. The fund shall be expended only for
14 the programs described in this part, for the staffing and admin-
15 istrative costs to the department of administering those pro-
16 grams, and for any costs associated with the advisory panel
17 described in section 9120.

18 Sec. 9105. (1) The commission may make grants to counties
19 having a population less than 12,000 enabling such a county to
20 establish a revolving loan fund with money received from the
21 commission. The initial grant shall be used by the county to
22 establish a revolving loan fund that shall be allocated and real-
23 located as provided in this section. Not more than 1% of a grant
24 made pursuant to this section may be utilized by a county for the
25 administration of the loan program.

26 (2) Grant money loaned by a county under this section shall
27 be loaned to a private entity or nonprofit private entity only

1 for purposes and programs that would be eligible to receive a
2 grant under this part and may not be used for any other purpose,
3 except administration costs.

4 (3) A county that receives a grant under this section shall
5 establish a county loan board to review applications for loans
6 submitted to the county and the board shall make recommendations
7 to the county board of commissioners. The county loan board
8 shall consist of a member to represent each of the following:

9 (a) The county.

10 (b) Nonprofit private entities and private entities engaged
11 in resource recovery alternatives.

12 (c) Conservation or environmental organizations.

13 (d) The department.

14 (e) A member of the general public.

15 (4) Upon receipt of the recommendations of the county loan
16 board, the county board of commissioners of a county that
17 receives a grant under this section shall determine when a loan
18 shall be made. The board of commissioners shall not make a loan
19 unless both of the following conditions are met:

20 (a) The loan applicant is seeking a loan for a purpose or
21 program that would be eligible to receive a grant under this
22 part.

23 (b) The amount of the proposed loan is not more than
24 \$300,000.00.

25 (5) The county shall provide the department with an annual
26 audit of the revolving loan fund using generally accepted
27 accounting procedures.

1 (6) A county may be liable to the commission for the full
2 amount of a grant made pursuant to this section if at any time
3 the county makes a loan in a manner or to an entity that is sub-
4 stantially out of compliance with this part.

5 (7) A grant to a county made under this section shall not
6 exceed \$300,000.00.

7 Sec. 9106. (1) The commission shall cause to be conducted a
8 series of waste stream assessments in representative areas of the
9 state. The assessments shall determine the characteristics of
10 the waste stream and document seasonal fluctuations in the volume
11 of waste.

12 (2) The commission shall select a site for a waste stream
13 assessment subject to the following prerequisites:

14 (a) The site is located in a county that has an approved
15 solid waste management plan.

16 (b) The approved solid waste management plan for the county
17 proposes some type of resource recovery.

18 (c) The site has not been the subject of an adequate waste
19 stream assessment within the 5 years before the assessment autho-
20 rized by this part is performed.

21 (3) The commission shall consider the following in determin-
22 ing appropriate sites for inclusion in the waste stream
23 assessment:

24 (a) The extent to which the owners of the disposal areas in
25 the proposed study site will do the following:

26 (i) Provide an area on the site for scales and for
27 composition studies.

1 (ii) Provide temporary shelter for work during inclement
2 weather.

3 (iii) Enlist the cooperation of solid waste haulers.

4 (b) The likelihood that a resource recovery project or
5 projects will be undertaken at the proposed site.

6 (c) The likelihood that the data resulting from the assess-
7 ment of the proposed site will be usable or useful in evaluating
8 the waste stream in other similar areas of the state.

9 (d) The extent to which selection of the site contributes to
10 the achievement of a balanced distribution of assessments
11 throughout the state.

12 (e) The availability of a scale at the proposed site.

13 (4) The commission shall not expend more than 5% of the
14 total amount in the fund in any state fiscal year on the assess-
15 ments described in this section. The commission shall not expend
16 more than \$50,000.00 for any single assessment conducted under
17 this section.

18 Sec. 9107. (1) The commission shall cause to be conducted a
19 series of recycling and composting feasibility studies. A study
20 shall establish a basis upon which a decision to commit financial
21 resources to a proposed recycling or composting project can be
22 made. The commission shall prescribe the elements to be included
23 within a study.

24 (2) The commission shall select a site for a recycling and
25 composting feasibility study subject to the following
26 prerequisites:

1 (a) The site is located in a county that has an approved
2 solid waste management plan.

3 (b) The recycling or composting project proposed by the
4 municipality is consistent with the approved solid waste manage-
5 ment plan.

6 (3) The commission shall consider the following factors in
7 selecting a site for a recycling and composting feasibility
8 study:

9 (a) The extent to which a municipality commits to proceeding
10 with the project if the study determines that the project is
11 feasible.

12 (b) The degree of demonstrated municipality, community
13 group, or volunteer interest in undertaking a recycling or com-
14 posting project.

15 (c) A demonstration that a recycling or composting project
16 undertaken on the basis of the study would provide a necessary
17 solid waste management alternative, given the status of existing
18 disposal areas serving the location.

19 (d) The extent to which selection of the site contributes to
20 the achievement of a balanced distribution of studies throughout
21 the state.

22 (e) The demonstrated capability of the municipality in which
23 the site is located to work with adjacent municipalities on
24 alternative resource recovery projects.

25 (4) The commission shall not expend more than 5% of the
26 total amount in the fund in any state fiscal year on the studies
27 described in this section. The commission shall not expend more

1 than \$30,000.00 for any single study conducted under this
2 section.

3 Sec. 9108. (1) The commission shall cause to be conducted a
4 series of waste-to-energy feasibility studies. A study shall
5 establish a basis upon which a decision to commit financial
6 resources to a proposed waste-to-energy project can be made. The
7 commission shall prescribe the elements to be included in the
8 study.

9 (2) The commission shall select a site for a waste-to-energy
10 feasibility study subject to the following prerequisites:

11 (a) The site is located in a county that has an approved
12 solid waste management plan.

13 (b) The waste-to-energy project proposed is consistent with
14 the approved solid waste management plan.

15 (3) The commission shall consider the following factors in
16 selecting a site for a waste-to-energy feasibility study:

17 (a) The extent to which the municipality proposing the
18 project has done the following:

19 (i) Held meetings to discuss a waste-to-energy project.

20 (ii) Sought funding for studies of a waste-to-energy
21 project.

22 (iii) Sought feasibility data on its own.

23 (b) The availability of letters of interest from potential
24 energy markets.

25 (c) Whether a recycling feasibility study for the area to be
26 served by the proposed waste-to-energy facility is available.

1 (d) Whether a waste-to-energy facility undertaken on the
2 basis of the study would provide a necessary solid waste
3 management alternative, given the status of existing disposal
4 areas serving the location.

5 (e) The extent to which selection of the site contributes to
6 the achievement of a balanced distribution of studies throughout
7 the state.

8 (f) The demonstrated efforts of the municipality in which
9 the site is located in working towards alternative resource
10 recovery solutions to solid waste management problems, such as
11 implementing recycling or composting programs in the area to be
12 served.

13 (g) The demonstrated capability of the municipality in which
14 the site is located to work with adjacent municipalities on
15 alternative resource recovery projects.

16 (4) The commission shall not expend more than 15% of the
17 total amount in the fund in any state fiscal year for the studies
18 described in this section. The commission shall not expend more
19 than \$400,000.00 for any single study conducted under this
20 section.

21 Sec. 9109. (1) The commission shall establish an educa-
22 tional program with respect to resource recovery to accomplish
23 the following:

24 (a) To promote on a statewide basis the purchase of recycled
25 products and materials.

1 (b) To develop promotional materials for distribution by
2 municipalities in support of their resource recovery
3 initiatives.

4 (2) The department shall establish a resource recovery edu-
5 cation grant program. The program shall provide funding for the
6 direct promotion of local resource recovery initiatives by munic-
7 ipalities, nonprofit private entities, and private entities. The
8 commission shall make the grants described in this subsection.

9 (3) The commission shall not make a resource recovery educa-
10 tion grant unless both of the following conditions are met:

11 (a) The proposed education project is conducted in a county
12 that has an approved solid waste management plan.

13 (b) A local resource recovery project is planned or under
14 way and the proposed education project directly promotes the use
15 of that project.

16 (4) The commission shall consider the following factors in
17 selecting recipients of resource recovery education grants:

18 (a) Whether the education program has measurable
19 objectives.

20 (b) The extent of background research completed.

21 (c) The type and extent of follow-up or evaluation, or both,
22 to be conducted.

23 (d) The level of commitment by local officials.

24 (e) The extent to which the recipient commits its own finan-
25 cial resources to the education project.

1 (f) The extent to which selection of the project contributes
2 to the achievement of a balanced distribution of grants
3 throughout the state.

4 (5) The commission shall not expend more than 25% of the
5 total amount in the trust fund in any state fiscal year on the
6 educational program and the education grant program described in
7 this section. The commission shall not expend more than
8 \$50,000.00 for any single education grant made under this
9 section.

10 Sec. 9110. (1) The department shall establish a solid waste
11 transfer station grant program. The program shall provide fund-
12 ing to municipalities, nonprofit private entities, and private
13 entities for the cost of transfer station construction. The com-
14 mission shall make the grants described in this section.

15 (2) The commission shall not make a solid waste transfer
16 station grant unless both of the following conditions are met:

17 (a) The proposed transfer station is located in a county
18 that has an approved solid waste management plan.

19 (b) The proposed solid waste transfer station is consistent
20 with the approved solid waste management plans of all of the
21 affected counties.

22 (3) The commission shall consider the following factors in
23 selecting recipients for solid waste transfer station grants:

24 (a) The potential for providing to the municipality resource
25 recovery alternatives otherwise not available to the municipality
26 without the proposed transfer station.

1 (b) The willingness of the municipality to form or
2 participate in a joint solid waste management system with
3 adjacent municipalities.

4 (c) The applicant demonstrates that the proposed transfer
5 station replaces a sanitary landfill or open dump closed accord-
6 ing to the standards contained in part 63.

7 (4) The commission shall not dispense a solid waste transfer
8 station grant unless all permits that are required by state law
9 and that are specifically applicable to the nature of the pro-
10 posed project have been obtained.

11 (5) The commission shall not expend more than 25% of the
12 total amount in the fund in any state fiscal year on the solid
13 waste transfer station grant program. The commission shall not
14 expend more than \$300,000.00 for any single transfer station
15 grant made under this section.

16 Sec. 9111. (1) The department shall establish a recycling
17 and composting capital grant program. The program shall provide
18 funding for the capital costs of recycling and composting pro-
19 grams undertaken by municipalities, nonprofit private entities,
20 or private entities. The commission shall make the grants
21 described in this section.

22 (2) The commission shall not make a recycling or composting
23 capital grant unless all of the following conditions are met:

24 (a) The proposed recycling or composting project is located
25 in a county that has an approved solid waste management plan.

26 (b) The proposed recycling or composting project is
27 consistent with the approved solid waste management plan.

1 (c) The applicant provides either a feasibility study with
2 positive results supportive of project initiation or sufficient
3 data justifying project expansion.

4 (d) The equipment obtained with the grant is used for source
5 separated materials or site separated materials, or both.

6 (3) The commission shall consider the following factors in
7 selecting recipients for recycling and composting capital
8 grants:

9 (a) The likelihood of project success as indicated by the
10 feasibility study results.

11 (b) The availability of an appropriate site.

12 (c) A demonstration by the applicant that the materials to
13 be collected or processed, or both, are not being recovered pres-
14 ently and would not be recovered otherwise, but for the proposed
15 recycling or composting project.

16 (d) A demonstration by the applicant that the materials to
17 be collected or processed, or both, will be absorbed in an exist-
18 ing market without displacing existing resource recovery opera-
19 tions, or that the materials, by being collected or processed, or
20 both, will create a new market.

21 (e) The business and accounting plans for the proposed recy-
22 cling or composting project.

23 (f) The need for a new or expanded recycling or composting
24 program in the area to be served, relative to the needs of other
25 areas.

1 (g) The extent to which selection of the recycling or
2 composting program contributes to the achievement of a balanced
3 distribution of grants throughout the state.

4 (h) A demonstration by the applicant that land, buildings,
5 personnel, support services, or funds have been committed to the
6 recycling or composting project.

7 (i) The portion of the waste stream that is projected to be
8 diverted from landfills, compared to the projected costs of the
9 recycling or composting project.

10 (j) The immediacy of the reduction in waste resulting from
11 the recycling or composting program.

12 (k) The potential of the recycling or composting project to
13 be replicated in similar areas of the state.

14 (l) The availability of capacity at existing licensed land-
15 fills that serve the area to be served by the proposed recycling
16 or composting program.

17 (m) The demonstrated municipality, community group, or vol-
18 unteer interest in undertaking a recycling or composting
19 project.

20 (n) The demonstrated capability of the applicant in working
21 with adjacent municipalities on alternative resource recovery
22 projects, such as development of a regional resource recovery
23 organization, jointly sponsored resource recovery initiatives, or
24 regional materials marketing strategies.

25 (4) The commission shall not dispense a recycling or com-
26 posting capital grant unless all the permits that are required by
27 this part and as otherwise required by state law and that are

1 specifically applicable to the nature of the proposed project
2 have been obtained.

3 (5) The commission shall not expend more than 20% of the
4 total amount in the fund in any state fiscal year on the recycl-
5 ing and composting capital grant program. The commission shall
6 not expend more than \$500,000.00 for any single recycling or com-
7 posting capital grant made under this section.

8 Sec. 9112. (1) The department shall establish a
9 waste-to-energy capital grant program. The program shall provide
10 funding for the capital costs of waste-to-energy programs under-
11 taken by municipalities, nonprofit private entities, or private
12 entities. The commission shall make the grants described in this
13 section.

14 (2) The commission shall not make a waste-to-energy capital
15 grant unless all of the following conditions are met:

16 (a) The proposed waste-to-energy project is located in a
17 county that has an approved solid waste management plan.

18 (b) The proposed waste-to-energy project is consistent with
19 the approved solid waste management plan.

20 (c) The applicant provides either a feasibility study with
21 positive results supportive of project initiation or sufficient
22 data justifying project expansion.

23 (3) The commission shall consider the following factors in
24 selecting recipients for waste-to-energy capital grants:

25 (a) The likelihood of project success as indicated by the
26 feasibility study results.

1 (b) The availability of an appropriate site.

2 (c) A demonstration by the applicant that the materials to
3 be collected or processed, or both, are not being recovered
4 presently.

5 (d) The business and accounting plans for the proposed
6 waste-to-energy project.

7 (e) The need for a new or expanded waste-to-energy program
8 in the area to be served, relative to the needs of other areas.

9 (f) The extent to which selection of the waste-to-energy
10 program contributes to the achievement of a balanced distribution
11 of grants throughout the state.

12 (g) A demonstration by the applicant that land, buildings,
13 personnel, support services, or funds have been committed to the
14 waste-to-energy project.

15 (h) The portion of the waste stream that is projected to be
16 diverted from landfills, compared to the projected costs of the
17 waste-to-energy project.

18 (i) The potential of the waste-to-energy project to be rep-
19 licated in similar areas of the state.

20 (4) The commission shall not dispense a waste-to-energy cap-
21 ital grant unless all the permits that are required by this part
22 and as otherwise required by state law and that are specifically
23 applicable to the nature of the proposed project have been
24 obtained.

25 (5) The commission shall not expend more than 30% of the
26 total amount in the fund in any state fiscal year on the
27 waste-to-energy capital grant program. The commission shall not

1 expend more than \$2,000,000.00 for any single waste-to-energy
2 grant made under this section.

3 Sec. 9113. (1) The department shall establish a recycling
4 operational grant program. The program shall provide temporary
5 operating subsidies to assist municipalities, nonprofit private
6 entities, and private entities in recapturing the difference
7 between the cost of collection, processing, and transportation
8 and the revenues generated from the sale of the recovered
9 materials. The commission shall make the grants described in
10 this section.

11 (2) The commission shall not make a recycling operational
12 grant unless all of the following conditions are met:

13 (a) The proposed recycling project is located in a county
14 with an approved solid waste management plan.

15 (b) The proposed recycling project is consistent with the
16 approved solid waste management plan.

17 (c) A positive feasibility study of the proposed recycling
18 project, or sufficient data justifying project expansion, is
19 available.

20 (d) The applicant agrees to match the grant on a dollar for
21 dollar basis.

22 (e) The applicant agrees to continue support for the recycl-
23 ing project if the project is within 10% of previous disposal
24 costs.

25 (f) The applicant agrees to provide the department with an
26 annual operation report.

1 (g) The need for an operating subsidy is demonstrated.

2 (h) The grant is used for a project handling source
3 separated material or site separated material, or both.

4 (3) The commission shall consider the following factors in
5 determining whether to make a recycling operational grant:

6 (a) The portion of the waste stream projected to be diverted
7 from a landfill, compared to projected costs.

8 (b) A demonstration by the applicant that land, buildings,
9 personnel, support services, or funds have been committed to the
10 recycling project.

11 (c) The applicant's willingness to show others the program.

12 (d) The potential of the recycling project to be replicated
13 in similar areas of the state.

14 (e) The extent to which selection of the project contributes
15 to the achievement of a balanced distribution of grants through-
16 out the state.

17 (f) The demonstrated municipality, community group, or vol-
18 unteer interest in undertaking a recycling project.

19 (g) The demonstrated capability of the applicant in working
20 with adjacent municipalities on alternative resource recovery
21 projects, such as development of a regional resource recovery
22 organization, jointly sponsored resource recovery initiatives, or
23 regional materials marketing strategies.

24 (h) The availability of capacity at existing licensed land-
25 fills that serve the area to be served by the proposed recycling
26 project.

1 (i) The existence of a plan for transferring financial
2 responsibility for the program to another funding source.

3 (j) The existence of sources of capital funding for the
4 project.

5 (4) The commission shall not dispense a recycling oper-
6 ational grant unless all the permits that are required by this
7 part and as otherwise required by state law and that are specifi-
8 cally applicable to the nature of the proposed project have been
9 obtained.

10 (5) The commission shall not expend more than 5% of the
11 total amount in the fund in any state fiscal year for the recycl-
12 ing operational grant program. The commission shall not expend
13 more than \$150,000.00 for any single recycling operational grant
14 made under this section.

15 Sec. 9114. (1) The department shall establish a composting
16 operational grant program. The program shall provide temporary
17 operating subsidies to assist municipalities, nonprofit entities,
18 and private entities in undertaking composting projects. The
19 commission shall make the grants described in this section.

20 (2) The commission shall not make a composting operational
21 grant unless all of the following conditions are met:

22 (a) The proposed composting project is located in a county
23 with an approved solid waste management plan.

24 (b) The proposed composting project is consistent with the
25 approved solid waste management plan.

1 (c) A positive feasibility study of the proposed composting
2 project, or sufficient data justifying project expansion, is
3 available.

4 (d) The applicant agrees to match the grant on a dollar for
5 dollar basis.

6 (e) The applicant agrees to provide the department with an
7 annual operation report.

8 (3) The commission shall consider the following factors in
9 determining whether to make a composting operational grant:

10 (a) The portion of the waste stream projected to be diverted
11 from a landfill, compared to projected costs.

12 (b) A demonstration by the applicant that land, buildings,
13 personnel, support services, or funds have been committed to the
14 composting project.

15 (c) The applicant's willingness to show others the program.

16 (d) The potential of the composting project to be replicated
17 in similar areas of the state.

18 (e) The extent to which selection of the project contributes
19 to the achievement of a balanced distribution of grants through-
20 out the state.

21 (f) The demonstrated municipality, community group, or vol-
22 unteer interest in undertaking a composting project.

23 (g) The demonstrated capability in working with adjacent
24 municipalities on alternative resource recovery projects, such as
25 development of a regional resource recovery organization, jointly
26 sponsored resource recovery initiatives, or regional materials
27 marketing strategies.

1 (h) The availability of capacity at existing licensed
2 landfills that serve the area to be served by the proposed com-
3 posting project.

4 (i) A plan for transferring financial responsibility for the
5 program to another funding source has been developed.

6 (j) The sources of capital funding for the project.

7 (4) The commission shall not dispense a composting oper-
8 ational grant unless all the permits that are required by this
9 part and as otherwise required by state law and that are specifi-
10 cally applicable to the nature of the proposed project have been
11 obtained.

12 (5) The commission shall not expend more than 5% of the
13 total amount in the fund in any state fiscal year for the com-
14 posting operational grant program. The commission shall not
15 expend more than \$150,000.00 for any single composting oper-
16 ational grant made under this section.

17 Sec. 9115. (1) The department shall establish a household
18 hazardous waste disposal grant program. The program shall assist
19 municipalities in projects that educate citizens as to methods of
20 household hazardous waste reduction and disposal option, promote
21 the safe handling of household hazardous waste, or dispose of
22 household hazardous waste at a state or federally permitted or
23 licensed hazardous waste treatment, storage, or disposal
24 facility. The commission shall make the grants described in this
25 section.

1 (2) The commission shall not make a household hazardous
2 waste disposal grant unless all of the following conditions are
3 met:

4 (a) The project is not funded under a federal program.

5 (b) The municipality commits to contributing 20% of the
6 total project cost in cash or in-kind services, or both.

7 (c) The project is completed within 1 year after receipt of
8 the grant.

9 (d) The project is consistent with this part and other state
10 law and policy.

11 (3) The commission shall not dispense a household hazardous
12 waste disposal grant unless all the permits that are required by
13 this part and otherwise required by state law and that are spe-
14 cifically applicable to the nature of the proposed project have
15 been obtained.

16 (4) The commission shall not expend more than 2% of the
17 total amount in the fund in any state fiscal year for the house-
18 hold hazardous waste disposal grant program. The commission
19 shall not expend more than \$15,000.00 for any single household
20 hazardous waste disposal grant made under this section.

21 Sec. 9116. (1) The commission shall cause to be conducted a
22 statewide market development research study to assess the current
23 markets and the potential for and the means for expansion of
24 markets for recycled materials in this state. The commission
25 shall not expend more than 2.5% of the total amount in the fund
26 in any state fiscal year for the market development research
27 study. In addition, the commission shall establish a market

1 development plan based on the market development research study.
2 The plan shall identify the barriers in attracting or expanding
3 industries that use recycled materials and determine the appro-
4 priate methods for eliminating those barriers. The department of
5 commerce shall serve as project coordinator for the market devel-
6 opment study funded and administered by the commission pursuant
7 to this section.

8 (2) The department shall establish a market development
9 grant program. The program shall encourage expansion of the use
10 of recycled materials and the development of innovative technolo-
11 gies to use recycled materials. The commission shall make a
12 grant under the program described in this section.

13 (3) The commission shall select development projects subject
14 to the following prerequisites:

15 (a) The project is beyond the research stage and a demon-
16 stration has indicated that it is technically feasible.

17 (b) The recipient of the grant is a municipality, nonprofit
18 private entity, or a private entity in this state.

19 (c) The project shall be performed in this state.

20 (4) The department shall consider the following factors in
21 selecting recipients of market development grants:

22 (a) The contribution that would be made by the project
23 toward the goal of increasing the use of recycled materials.

24 (b) The market's need for the development of the technology
25 or equipment.

26 (c) The potential impact of the technology or equipment on
27 the cost effectiveness of using recycled materials.

1 (d) The potential for development of new resource recovery
2 markets and for the generation of positive economic impacts.

3 (e) The potential of the project for commercial
4 application.

5 (f) The stage of the development of the technology or equip-
6 ment proposed to be used in the project.

7 (g) The environmental, economic, and social benefits to the
8 state of the development of the technology or equipment.

9 (h) The future sources of capital funding for the project.

10 (i) The extent to which the applicant has committed land,
11 buildings, personnel, support services, or funds to the project.

12 (j) The potential of the project for developing multiple
13 markets.

14 (5) The commission shall not dispense a market development
15 grant unless all the permits that are required by this part and
16 as otherwise required by state law and that are specifically
17 applicable to the nature of the proposed project have been
18 obtained.

19 (6) The commission shall not expend more than 25% of the
20 total amount in the fund in any state fiscal year for the market
21 development grant program. The commission shall not expend more
2 than \$500,000.00 for any single grant made under this program.

3 Sec. 9117. (1) The department shall establish a program to
4 perform hydrogeological monitoring studies on open and closed
5 sanitary landfills and open dumps owned by municipalities. The
6 program shall determine the extent of groundwater contamination
7 associated with the sanitary landfills and open dumps and the

1 need for remedial actions on those sites. The commission shall
2 determine which landfills and dumps owned by municipalities are
3 to be monitored. In determining the order in which the landfills
4 and dumps owned by municipalities are to be monitored, the com-
5 mission shall consider the potential threat of human exposure to
6 environmental contamination originating from the sanitary land-
7 fill or open dump and the likelihood that hazardous waste was
8 accepted at the landfill or dump.

9 (2) The commission shall not expend more than 10% of the
10 total amount in the fund in any state fiscal year for the program
11 to perform hydrogeological monitoring studies. The commission
12 shall not expend more than \$50,000.00 for any single hydrogeolog-
13 ical monitoring study performed under this section.

14 Sec. 9118. (1) The department shall establish a sanitary
15 landfill and open dump closure or reclosure matching grant
16 program. The program shall provide up to 75% of the funding for
17 the closure or reclosure of sanitary landfills and open dumps
18 owned or operated by municipalities. In addition, the program
19 shall provide up to 75% reimbursement for the closure of munici-
20 pally owned sanitary landfills and open dumps or the reclosure of
21 municipally owned sanitary landfills and open dumps that were
22 closed after January 11, 1979, the effective date of former Act
23 No. 641 of the Public Acts of 1978 according to the standards
24 prescribed by that former act, which is currently part 63, but
25 before December 4, 1986. The commission shall make the grants
26 described in this section.

1 (2) The commission shall not make a closure or reclosure
2 grant unless all of the following requirements are met:

3 (a) The sanitary landfill or open dump proposed for closure
4 or reclosure is located in a county that has an approved solid
5 waste management plan.

6 (b) The grant is for the closure of an operating sanitary
7 landfill or open dump that is not operated according to the stan-
8 dards contained in part 63 and the rules promulgated under that
9 part or the grant is for the reclosure of a closed sanitary land-
10 fill or dump that was not closed according to the standards con-
11 tained in part 63 and the rules promulgated under that part.

12 (c) If the grant is reimbursement for the closure or reclo-
13 sure of a landfill or dump, the closure or reclosure was made
14 according to the standards of part 63, and the rules promulgated
15 under that part.

16 (d) The grant shall be used only for a closure or reclosure
17 that is a complete closure of an entire landfill or dump.

18 (e) The closure or reclosure will be accomplished completely
19 within 1 year after receipt of the grant.

20 (3) The commission shall consider the following factors in
21 selecting recipients of closure or reclosure grants:

22 (a) The degree of effort demonstrated by the municipality in
23 working toward alternative solutions to solid waste management
24 problems.

25 (b) The degree of the potential threat of groundwater
26 contamination.

1 (c) The likelihood that hazardous waste was accepted.

2 (d) The municipality's willingness to work with adjacent
3 municipalities on alternative solutions.

4 (e) The municipality's commitment to refrain from operating
5 unlicensed disposal areas in the future.

6 (4) The commission shall not expend more than 25% of the
7 total amount in the fund in any state fiscal year for the sani-
8 tary landfill and open dump closure or reclosure matching grant
9 program. The commission shall not expend more than \$600,000.00
10 for any single grant made under this section.

11 Sec. 9119. Any project of the type for which a grant may be
12 available under section 9111, that produces site separated mate-
13 rials, and for which the licenses or permits required by this
14 part and as otherwise required by law have been obtained, is eli-
15 gible to receive a grant under this part.

16 Sec. 9120. (1) An 11-member advisory panel shall be
17 appointed to review the applications submitted to the commission
18 for inclusion in the studies and assessments and for receipt of
19 the grants to be made under this part and shall make recommenda-
20 tions to the commission. The advisory panel shall include 1
21 member of the commission and 1 member of the general public,
22 appointed by the governor. The member of the commission shall be
23 the chairperson of the panel. In addition, the governor, the
24 majority leader of the senate, and the speaker of the house of
25 representatives each shall appoint a member to represent each of
26 the following:

1 (a) Municipalities.

2 (b) Nonprofit private entities and private entities engaged
3 in resource recovery alternatives.

4 (c) Conservation or environmental organizations.

5 (2) A member shall serve for a term of 2 years. However, of
6 the members first appointed, the members appointed by the gover-
7 nor shall be appointed for terms of 3 years.

8 (3) Members of the advisory panel and relatives and business
9 associates of the members of the panel are not eligible for any
10 grant under this part.

11 Sec. 9121. (1) The commission shall administer the studies,
12 assessments, and programs described in this part according to the
13 following:

14 (a) Within 60 days after enactment of the general appropria-
15 tions bill for the department for a state fiscal year, the com-
16 mission shall issue a request for applications for inclusion in
17 any study or assessment to be conducted that year and for receipt
18 of any grant available during that year.

19 (b) The commission shall not accept any applications after
20 60 days from the issuance of a request for applications.

21 (c) Within 90 days after the application period closes, the
22 advisory panel established in section 20 shall complete its
23 review of the applications and submit its recommendations to the
24 commission.

25 (d) Within 45 days after the advisory panel recommendations
26 are made, the commission shall complete its review of the
27 application and recommendations and make its determinations.

1 (2) An application for inclusion in any study or assessment
2 described in this part or for any grant available under this part
3 shall be made on a form prescribed by the department. The
4 department may require the applicant to provide any information
5 reasonably necessary to allow the commission to make the determi-
6 nations required by this part.

7 (3) Each recipient of a grant and each participant in a
8 study or assessment under this part shall complete and return a
9 project summary on a form developed by the department by a date
10 specified by the advisory panel. A recipient or participant who
11 fails to submit a project summary as required by this section is
12 not eligible to be a recipient or participant under this part for
13 5 years after the year for which the failure occurs.

14 (4) The project summary form developed by the department
15 shall not exceed 1 page and shall obtain the following
16 information:

17 (a) The name, address, and telephone number of the recipient
18 or participant.

19 (b) The name of the project.

20 (c) The amount of money received.

21 (d) The county in which the project is located.

22 (e) A brief summary of the activities and accomplishments of
23 the project.

24 (5) A completed project summary is available to the public
25 under the freedom of information act, Act No. 442 of the Public
26 Acts of 1976, being sections 15.231 to 15.246 of the Michigan
27 Compiled Laws.

1 Sec. 9122. (1) Not later than March 31 of each year, the
2 commission shall report the following information regarding the
3 projects financed under this act for that fiscal year to the gov-
4 ernor, the standing committees of the senate and the house of
5 representatives that primarily consider issues pertaining to the
6 protection of natural resources and the environment, and the sub-
7 committees of the house of representatives and the senate on
8 appropriations for the department:

9 (a) The name, address, and telephone number of the recipient
10 or participant.

11 (b) The nature of the project.

12 (c) The amount of money received.

13 (d) The county in which the project is located.

14 (2) Not later than September 30 of each year, the commission
15 shall submit to the governor and the legislature a report on the
16 projects financed under this act during the previous fiscal
17 year. The report shall consist of the project summaries
18 described in section 9121, along with an introduction and conclu-
19 sion prepared by the advisory panel.

20 Sec. 9123. By December 4, 1989, the commission shall ana-
21 lyze the studies and assessments funded by this part and report
22 to the legislature as to whether and to what extent the studies
23 and assessments support the feasibility of constructing recycl-
24 ing, composting, and waste-to-energy facilities.

25 ARTICLE XV

PART 651

1
2 Sec. 65101. (1) The following acts and parts of acts which
3 are codified in articles I to IV are repealed:

4	<u>PUBLIC ACT NUMBER</u>	<u>YEAR OF ACT</u>	<u>MICHIGAN COMPILED LAWS SECTIONS</u>
5	91	1990	30.431 to 30.432
6	320	1927	123.241 to 123.253
7	199	1991	123.1031 to 123.1037
8	171	1976	286.551 to 286.581
9	17	1921	299.1 to 299.10
10	60	1976	299.351 to 299.360
11	249	1986	299.371 to 299.393
12	641	1978	299.401 to 299.437
13	411	1988	299.461 to 299.464
14	414	1988	299.481 to 299.484
15	64	1979	299.501 to 299.551
16	133	1990	299.561 to 299.572
17	307	1982	299.601 to 299.618
18	171	1986	299.621 to 299.625
19	423	1984	299.701 to 299.712
20	518	1988	299.801 to 299.828
21	478	1988	299.831 to 299.850
22	20	1990	299.861 to 299.869
23	350	1865	307.22 to 307.32
24	411	1980	319.311 to 319.316
25	245	1929	323.1 to 323.12a
26	211	1956	323.151 to 323.162

1	226	1971	323.231 to 323.236
2	136	1969	323.271 to 323.280
3	271	1974	323.291 to 323.293
4	159	1969	323.401 to 323.412
5	181	1986	325.311 to 325.332
6	167	1970	323.331 to 323.342
7	317	1988	323.451 to 323.470
8	98	1913	325.201 to 325.214
9	399	1976	325.1001 to 325.1023
10	348	1965	336.11 to 336.36
11	145	1988	445.581 to 445.584
12	127	1970	691.1201 to 691.1207
13	106	1963	752.901 to 752.906

14 (2) The following acts and parts of acts are repealed:

15 (a) Act No. 366 of the Public Acts of 1974, being sections
16 299.301 to 299.321 of the Michigan Compiled Laws.

17 (b) Act No. 329 of the Public Acts of 1966, being sections
18 323.111 to 323.128 of the Michigan Compiled Laws.

19 (c) Act No. 13 of the Public Acts of 1956, being sections
20 323.201 to 323.203 of the Michigan Compiled Laws.