

Act No. 8
Public Acts of 2008
Approved by the Governor
February 20, 2008
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Basham, Jacobs, Cherry, Prusi, Gleason and Olshove

ENROLLED SENATE BILL No. 92

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 12101, 12102, 12103, 12105, 12107, 12111, 12112, and 12113 (MCL 324.12101, 324.12102, 324.12103, 324.12105, 324.12107, 324.12111, 324.12112, and 324.12113), sections 12101 and 12102 as amended by 2001 PA 165, sections 12103 and 12112 as amended by 2007 PA 75, and sections 12105 and 12107 as amended by 1998 PA 140, and by adding section 12102a.

The People of the State of Michigan enact:

Sec. 12101. As used in this part:

(a) "Biofuel" means any renewable liquid or gas fuel offered for sale as a fuel that is derived from recently living organisms or their metabolic by-products and meets applicable quality standards, including, but not limited to, ethanol, ethanol-blended fuel, biodiesel, and biodiesel blends.

(b) "Biogas" means a biofuel that is a gas.

(c) "Brine" means a liquid produced as a by-product of oil or natural gas production or exploration.

(d) "Container" means any portable device in which a liquid industrial waste is stored, transported, treated, or otherwise handled.

(e) "Department" means the department of environmental quality.

(f) "Designated facility" means a treatment facility, storage facility, disposal facility, or reclamation facility that receives liquid industrial waste from off-site.

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

(h) "Discarded" means any of the following:

(i) Abandoned by being disposed of, burned, or incinerated; or accumulated, stored, or treated before, or instead of, being abandoned.

(ii) Accumulated, stored, or treated before being managed in 1 of the following ways:

(A) By being used or reused in a manner constituting disposal by being applied to or placed on land or by being used to produce products that are applied to or placed on land.

(B) By being burned to recover energy or used to produce a fuel.

(C) By reclamation.

(i) "Discharge" means the accidental or intentional spilling, leaking, pumping, releasing, pouring, emitting, emptying, or dumping of liquid industrial waste into the land, air, or water.

(j) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of a liquid industrial waste into or on land or water in such a manner that the liquid industrial waste may enter the environment, or be emitted into the air, or discharged into surface water or groundwater.

(k) "Disposal facility" means a facility or a part of a facility at which liquid industrial waste is disposed.

(l) "Facility" means all contiguous land and structures, other appurtenances, and improvements on land for treating, storing, disposing of, or reclamation of liquid industrial waste.

(m) "Generator" means a person whose act or process produces liquid industrial waste.

(n) "Liquid industrial waste" means any brine, by-product, industrial wastewater, leachate, off-specification commercial chemical product, sludge, sanitary sewer clean-out residue, storm sewer clean-out residue, grease trap clean-out residue, spill residue, used oil, or other liquid waste that is produced by, is incident to, or results from industrial, commercial, or governmental activity or any other activity or enterprise determined to be liquid by method 9095 (paint filter liquids test) as described in "Test methods for evaluating solid wastes, physical/chemical methods," United States environmental protection agency publication no. SW-846, and which is discarded. Liquid industrial waste does not include any of the following:

(i) Hazardous waste regulated and required to be manifested under part 111.

(ii) Septage waste regulated under part 117.

(iii) Medical waste regulated under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(iv) A discharge to the waters of the state in accordance with a permit, order, or rule under part 31.

(v) A liquid generated by a household.

(vi) A liquid regulated under 1982 PA 239, MCL 287.651 to 287.683.

(vii) Material managed in accordance with section 12102a.

Sec. 12102. As used in this part:

(a) "Manifest" means either of the following:

(i) A form and instructions approved by the department used for identifying the quantity, composition, origin, routing, or destination of liquid industrial waste during its transportation from the point of generation to the point of disposal, treatment, storage, or reclamation.

(ii) For shipments of liquid industrial waste that are not generated or transported to a disposal facility, treatment facility, storage facility, or reclamation facility in this state, a United States environmental protection agency form number 8700-22 and 8700-22A, or its successor.

(b) "On-site" means on the same geographically contiguous property, which may be divided by a public or private right-of-way if access is by crossing rather than going along the right-of-way. On-site includes noncontiguous pieces of property owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access.

(c) "Peace officer" means any law enforcement officer who is trained and certified pursuant to the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, or an officer appointed by the director of the department of state police pursuant to section 6d of 1935 PA 59, MCL 28.6d.

(d) "Publicly owned treatment works" means any entity that treats municipal sewage or industrial waste of a liquid nature that is owned by the state or a municipality, as that term is defined in 33 USC 1362. Publicly owned treatment works include sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

(e) "Reclamation" means either processing to recover a usable product or regeneration.

(f) "Reclamation facility" means a facility or part of a facility where liquid industrial waste reclamation is conducted.

(g) "Site identification number" means a number that is assigned by the United States environmental protection agency or the department to a generator, transporter, or facility. The department may assign a number to a person or a facility to cover multiple unstaffed sites that generate uniform types of liquid industrial waste.

(h) "Storage" means the containment of liquid industrial waste, on a temporary basis, in a manner that does not constitute disposal of liquid industrial waste.

(i) "Storage facility" means a facility or part of a facility where liquid industrial waste is stored.

(j) "Surface impoundment" means a treatment facility, storage facility, or disposal facility or part of a treatment, storage, or disposal facility that is either a natural topographic depression, a human-made excavation, or a diked area formed primarily of earthen materials. A surface impoundment may be lined with human-made materials designed to hold an accumulation of liquid waste or waste containing free liquids. Surface impoundments include, but are not limited to, holding, storage, settling, aeration pits, ponds, and lagoons. Surface impoundment does not include an injection well.

(k) "Tank" means a stationary device designed to contain an accumulation of liquid industrial waste that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic to provide structural support.

(l) "Transportation" means the movement of liquid industrial waste by air, rail, public or private roadway, or water.

(m) "Transporter" means a person engaged in the off-site transportation of liquid industrial waste by air, rail, public roadway, or water.

(n) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any liquid industrial waste, to neutralize the waste, or to render the waste safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume.

(o) "Treatment facility" means a facility or part of a facility at which liquid industrial waste undergoes treatment.

(p) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and that, as a result of the use, is contaminated by physical or chemical impurities.

(q) "Vehicle" means a transport vehicle as defined by 49 CFR 171.8.

Sec. 12102a. The following materials are not liquid industrial wastes when managed as specified:

(a) A material that is used or reused as an effective substitute for commercial products or returned to the original process, if the material does not require reclamation prior to use or reuse, is not directly burned to recover energy or used to produce a fuel, and is not applied to the land or used in products applied to the land.

(b) A used oil that is directly burned to recover energy or used to produce a fuel if all of the following requirements are met:

(i) The material meets the used oil specifications of R 299.9809(1)(f) of the Michigan administrative code.

(ii) The material contains no greater than 2 ppm polychlorinated biphenyls.

(iii) The material has a minimum energy content of 17,000 BTU/lb.

(iv) The material is expressly authorized as a used oil fuel source, regulated under part 55, or, in another state, regulated under a similar air pollution control authority.

(c) A liquid fully contained inside a manufactured article, until the liquid is removed or the manufactured equipment is discarded, at which point it becomes subject to this part.

(d) A liquid waste sample transported for testing to determine its characteristics or composition. The sample becomes subject to this part when discarded.

(e) A liquid that is not regulated under part 615 that is generated in the drilling, operation, maintenance, or closure of a well, or other drilling operation, including the installation of cathodic protection or directional drilling, if either of the following applies:

(i) The liquid is left in place at the point of generation in compliance with part 31, 201, or 213.

(ii) The liquid is transported off-site from a location that is not a known facility as defined in section 20101, and all of the following occur:

(A) The disposal complies with applicable provisions of part 31 or 115.

(B) The disposal is not to a surface water.

(C) The landowner of the disposal site has authorized the disposal.

(f) A liquid vegetable or animal fat oil that is transported directly to a producer of biofuels for the purpose of converting the oil to biofuel.

(g) A liquid or a sludge and associated liquid authorized to be applied to land under part 31 or 115.

(h) A liquid residue remaining in a container after pouring, pumping, aspirating, or another practice commonly employed to remove liquids has been utilized, if not more than 1 inch of residue remains on the bottom, or, for containers less than or equal to 110 gallons in size, not more than 3% by weight of residue remains in the container, or, for containers greater than 110 gallons in size, not more than 0.3% by weight of residue remains in the container. The liquid residue becomes subject to this part when discarded.

(i) A residual amount of liquid remaining in a container and generated as a result of transportation of a solid waste in that container.

(j) A liquid brine authorized for use as dust and ice control regulated under parts 31 and 615.

(k) Food processing residuals as defined in section 11503, or site-separated material or source-separated material approved by the department under part 115, that, to produce biogas, will be decomposed in a controlled manner under anaerobic conditions using a closed system that complies with part 55.

(l) A liquid approved by the director for use as a biofuel in energy production in compliance with part 55 that is not speculatively accumulated and that is transported directly to the burner of the biofuel.

Sec. 12103. (1) A generator shall do all of the following:

(a) Characterize the waste in accordance with section 12101(n) and the requirements of part 111 and rules promulgated under that part, and maintain records of the characterization.

(b) Obtain and utilize, when needed for transportation, a site identification number. Until October 1, 2011, the department shall assess a site identification number user charge of \$50.00 for each site identification number it issues. The department shall not issue a site identification number under this subdivision unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received. Money collected under this subdivision shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(c) If transporting liquid industrial waste, other than the generator's own waste, by public roadway, engage, employ, or contract for the transportation only with a transporter registered and permitted under the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480.

(d) Except as otherwise provided in this part, utilize and retain a separate manifest for each shipment of liquid industrial waste transported to a designated facility. The department may authorize the use of a consolidated manifest for waste loads that are multiple pickups of uniform types of wastes that constitute a single shipment of waste. If a consolidated manifest is authorized by the department and utilized by a generator, a receipt shall be obtained from the transporter documenting the transporter's company name, driver's signature, date of pickup, type and quantity of waste accepted from the generator, the consolidated manifest number, and the designated facility. A generator of brine may complete a single manifest per transporter of brine, per disposal well, each month.

(e) Submit a copy of the manifest to the department by the tenth day after the end of the month in which a load of waste is transported.

(f) Certify that at the time the transporter picks up liquid industrial waste the information contained on the manifest is factual by signing the manifest. This certification is to be by the generator or his or her authorized representative.

(g) Provide to the transporter the signed copies of the manifest to accompany the liquid industrial waste to the designated facility.

(h) If a copy of the manifest, with a handwritten signature of the owner or operator of the designated facility or his or her authorized representative, is not received within 35 days after the date the waste was accepted by the initial transporter, contact the transporter or owner or operator of the designated facility, or both, to determine the status of the waste.

(i) Submit an exception report to the department if a copy of the manifest is not received with the handwritten signature of the owner or operator of the designated facility or his or her authorized representative within 45 days after the date the waste was accepted by the initial transporter. The exception report shall include both of the following:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(ii) A cover letter signed by the generator explaining the efforts taken to locate the waste and the results of those efforts.

(2) A generator who operates an on-site reclamation facility, treatment facility, or disposal facility shall keep records of all liquid waste produced and reclaimed, treated, or disposed of at his or her facility.

(3) A generator shall retain all records required pursuant to this part for a period of at least 3 years, and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required by this subsection is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as otherwise required by the department.

(4) A generator transporting its own waste in quantities of 55 gallons or less is not subject to manifest requirements if all of the following conditions are met:

(a) The waste is accompanied by a record showing the source and quantity of the waste and the designated facility where the waste is being transported.

(b) The generator obtains a signature from the designated facility acknowledging receipt of the waste and provides a copy of the record of shipment to the designated facility.

(c) The generator retains a copy of the record of shipment as part of the generator records.

Sec. 12105. (1) A transporter is subject to the registration and permitting requirements of the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480. A transporter registered and permitted under that act and licensed under part 117 shall comply with all of the following:

(a) All registration and permitting requirements of the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, and licensing requirements of this part and part 117 shall be met.

(b) Septage waste or liquid industrial waste transported in a vehicle managed under part 117 and this part shall not be disposed of on land.

(c) All waste, including septage waste, transported in a vehicle managed under part 117 and this part, shall be manifested pursuant to the requirements of sections 12103, 12109, and 12112.

(d) In addition to the requirements of this part and part 117, the words "Land Application Prohibited", in a minimum of 2-inch letters, shall be affixed in a conspicuous location and visible on both sides of the vehicle used to transport waste under part 117 and this part.

(2) A generator, subject to the reporting requirements under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, and regulations promulgated under that act, who transports brine, generated on property he or she owns or holds an interest in, to the generator's own disposal well is exempt from the provisions of this part regarding manifests.

Sec. 12107. (1) A vehicle used to transport liquid industrial waste by public roadway shall carry a copy of the registration and permit issued in accordance with the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, and shall produce it upon request of the department or peace officer.

(2) All vehicles and containers used to transport liquid industrial waste shall be closed or covered to prevent the escape of liquid industrial waste. The outside of all vehicles, containers, and accessory equipment shall be kept free of liquid industrial waste and its residue.

(3) To avoid cross-contamination, all portions of a vehicle or equipment that have been in contact with liquid industrial waste shall be cleaned and decontaminated before the transport of any products, incompatible waste, hazardous waste regulated under part 111, or other material. Before the transport of liquid industrial waste, all portions of a vehicle or equipment shall be cleaned and decontaminated, as necessary, of any hazardous waste regulated under part 111. A transporter who owns or legally controls a vehicle or equipment shall maintain as part of the transporter's records documentation that before its use for the transportation of any products, incompatible waste, hazardous waste regulated under part 111, or other material, the vehicle or equipment was decontaminated. This subsection does not apply to a vehicle if brine was transported in the vehicle and the next load transported in the vehicle is brine for disposal or well drilling or production purposes, oil or other hydrocarbons produced from an oil or gas well, or water or other fluids to be used in activities regulated under part 615 or the rules, orders, or instructions under that part.

Sec. 12111. (1) If a fire, explosion, or discharge of liquid industrial waste occurs that could threaten the public health, safety, and welfare, or the environment, or when a generator, transporter, or owner or operator of a designated facility first has knowledge that a spill has reached surface water or groundwater, the generator, transporter, or owner or operator of the designated facility shall take appropriate immediate action to protect the public health, safety, and welfare, and the environment, including notification of local authorities and the pollution emergency alerting system using the telephone number 800-292-4706, unless the incident is reported under another state law.

(2) The generator, transporter, or owner or operator of a designated facility shall, within 30 days, prepare and maintain as part of his or her records a written report documenting the incident and the response action taken, including any supporting analytical data and cleanup activities. The report shall be provided to the department upon request. Both the initial notification, as appropriate, and the report shall include all of the following information:

(a) The name and telephone number of the person reporting the incident.

(b) The name, address, telephone number, and identification number of the generator, transporter, or designated facility.

(c) The date, time, and type of incident.

(d) The name and quantity of waste involved and discharged.

(e) The extent of injuries, if any.

(f) The estimated quantity and disposition of recovered materials that resulted from the incident, if any.

(g) An assessment of actual or potential hazards to human health or the environment.

(h) The response action taken.

(3) Incidents occurring in connection with activities regulated under part 615 or the rules, orders, or instructions under that part or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that act are exempt from the requirements of this section.

Sec. 12112. (1) Except as provided in section 12103(4), the owner or operator of a facility that accepts liquid industrial waste shall accept delivery of waste at the designated facility only if delivery is accompanied by a manifest or consolidated manifest properly certified by the generator and the transporter and the facility is the destination indicated on the manifest. The facility owner or operator shall do all of the following:

(a) Obtain and utilize a site identification number either assigned from the United States environmental protection agency or the department. Until October 1, 2011, the department shall assess a site identification number user charge of \$50.00 for each site identification number it issues. The department shall not issue a site identification number under this subdivision unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received. Money collected under this subdivision shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(b) Certify on the manifest receipt of the liquid industrial waste by completing the facility section of the manifest and returning a signed copy of the manifest to the department within a period of 10 days after the end of the month for all liquid industrial waste received within the month.

(c) Return a signed copy of the manifest to the generator.

(d) Maintain records of the characterization of the waste. Characterization shall be in accordance with the requirements of part 111.

(2) All storage, treatment, and reclamation of liquid industrial waste at the designated facility shall be in either containers or tanks or as otherwise specified in section 12113(5). Storage, treatment, or reclamation regulated under part 615 or the rules, orders, or instructions promulgated under that part, or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that part are exempt from this subsection.

(3) The owner or operator of a designated facility shall not store liquid industrial waste for longer than 1 year unless the liquid industrial waste is being stored for purposes of reclamation and not less than 75% of the cumulative amount, by weight or volume, of each type of liquid industrial waste that is stored on site each calendar year is reclaimed or transferred to a different site for reclamation during that calendar year. The owner or operator of a designated facility shall maintain documentation that demonstrates compliance with this subsection.

(4) The owner or operator of a designated facility shall retain all records required pursuant to this part for a period of at least 3 years and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required by this subsection is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

Sec. 12113. (1) Storage of liquid industrial waste, whether at the location of generation, under the control of the transporter, or at the designated facility, shall be protected from weather, fire, physical damage, and vandals. All vehicles, containers, and tanks used to hold liquid industrial waste shall be closed or covered, except when necessary to add or remove waste, to prevent the escape of liquid industrial waste. The exterior of all vehicles, containers, and tanks used to hold liquid industrial waste shall be kept free of liquid industrial waste and its residue.

(2) Except as otherwise authorized pursuant to this section or other applicable statutes or rules or orders of the department, liquid industrial waste shall be managed to prevent liquid industrial waste from being discharged into the soil, surface water or groundwater, or a drain or sewer, or discharged in violation of part 55.

(3) A person shall treat, store, and dispose of liquid industrial waste in accordance with all applicable statutes and rules and orders of the department.

(4) This part does not prevent a publicly owned treatment works from accepting liquid industrial waste from the premises of a person, and does not prevent a person from engaging, employing, or contracting with a publicly owned treatment works. However, a publicly owned treatment works that receives waste by means of transportation is a designated facility and shall comply with the requirements of section 12112.

(5) A person shall not treat, store, or dispose of liquid industrial waste in a surface impoundment, unless the surface impoundment has a discharge or storage permit authorized under part 31, or, in the case of leachate, is authorized in a permit issued under part 115.

(6) Activities regulated under part 615 or the rules, orders, or instructions under that part or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that act, are exempt from the requirements of this section.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

Governor