

Act No. 61  
Public Acts of 1995  
Approved by the Governor  
March 23, 1995  
Filed with the Secretary of State  
March 24, 1995

**STATE OF MICHIGAN**  
**88TH LEGISLATURE**  
**REGULAR SESSION OF 1995**

Introduced by Reps. Middaugh, Alley, Hill and Murphy

# **ENROLLED HOUSE BILL No. 4385**

AN ACT to amend sections 502, 4904, 8703, 8715, 11110, 11115a, 11117, 11119, 11120, 12101, and 12102 of Act No. 451 of the Public Acts of 1994, 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, 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," being sections 324.502, 324.4904, 324.8703, 324.8715, 324.11110, 324.11115a, 324.11117, 324.11119, 324.11120, 324.12101, and 324.12102 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 502, 4904, 8703, 8715, 11110, 11115a, 11117, 11119, 11120, 12101, and 12102 of Act No. 451 of the Public Acts of 1994, being sections 324.502, 324.4904, 324.8703, 324.8715, 324.11110, 324.11115a, 324.11117, 324.11119, 324.11120, 324.12101, and 324.12102 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 502. (1) The powers and duties previously vested by law in the public domain commission; the state game, fish, and forest fire commissioner and the state board of fish commissioners; the geological survey; and the Michigan state park commission are transferred to and vested in the department. In addition, the powers and duties previously vested by law in each of the following are also transferred to and vested in the department:

- (a) The nongame fish and wildlife advisory committee created in former Act No. 285 of the Public Acts of 1986.
- (b) The Great Lakes fishery advisory committee.
- (c) The hunting area control committee.
- (d) The forest and mineral resource development fund board.
- (e) The state forest products industry development council.
- (f) The advisory board created in former Act No. 61 of the Public Acts of 1939.
- (g) The mineral well advisory board created in former Act No. 315 of the Public Acts of 1969.
- (h) The Michigan unitization law appeal board created in former Act No. 197 of the Public Acts of 1959.
- (i) The inventory advisory committee created in former Act No. 204 of the Public Acts of 1979.
- (j) The marine safety education commission.
- (k) The marine safety advisory council.
- (l) The wilderness and natural areas advisory board.

(m) The state recreation and cultural arts advisory committee created in former Act No. 326 of the Public Acts of 1965.

(n) The air pollution control commission.

(o) The water resources commission.

(p) The critical materials advisory committee.

(q) The clean Michigan fund act advisory panel created in former Act No. 249 of the Public Acts of 1986.

(r) The hazardous waste policy committee created in section 8a of former Act No. 64 of the Public Acts of 1979.

(2) Whenever reference is made in a law of this state to a board, commission, or officer whose powers and duties are transferred by this section, reference shall be considered to be made to the department.

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

(4) Except as provided in subsection (5), the department may enter into contracts for the taking of coal, oil, gas, and other mineral products from state owned lands, upon a royalty basis or upon another basis, and upon the terms the department considers just and equitable. This contract power includes authorization to enter into contracts for the storage of gas or other mineral products in or upon state owned lands, if the consent of the state agency having jurisdiction and control of the state owned land is first obtained. A contract permitted under this section for the taking of coal, oil, gas, or metallic mineral products, or for the storage of gas or other mineral products, is not valid unless the contract is approved by the state administrative board. Money received from a contract permitted under this subsection, except money received from lands acquired with money from the game and fish protection fund created in section 601 of the hunting and fishing license act, Act No. 86 of the Public Acts of 1980, being section 316.601 of the Michigan Compiled Laws, shall be transmitted to the state treasurer for deposit in the Michigan natural resources trust fund created in section 35 of article IX of the state constitution of 1963. However, the money received from the payment of service charges by a person using areas managed for waterfowl shall be credited to the game and fish protection fund and used only for the purposes provided by law. Money received from bonuses, rentals, delayed rentals, royalties, and the direct sale of resources, including forest resources, from lands acquired with money from the game and fish protection fund shall be credited to the game and fish protection trust fund created in the game and fish protection trust fund act, Act No. 73 of the Public Acts of 1986, being sections 300.211 to 300.216 of the Michigan Compiled Laws, except as otherwise provided by law.

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

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

Sec. 4904. The proceeds of the sale of \$50,000,000.00 of the bonds authorized by former Act No. 76 of the Public Acts of 1968 or part 45, or any series of the bonds, and any premiums and accrued interest received on the delivery of the bonds, shall be deposited with the state treasurer in the state sewer construction fund. Disbursements from the fund shall be made only for specific eligible collecting sewer projects approved, as provided in section 4912, by the appropriations committees and by the legislature by concurrent resolution adopted by a roll call vote of a majority of the members elected to and serving in each house. A concurrent resolution shall include all or part of the projects on the priority list of eligible projects reported to the legislature by the department as provided in section 4912, but in case of a part only it shall be the entire part containing all projects on the list having priorities higher than those of projects not included in the resolution and shall not include projects lower in the order of priority. The income from temporary investments of the proceeds shall be deposited in the general fund.

Sec. 8703. (1) "Envelope monitoring" means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(2) "Fertilizer" means a fertilizer as defined in part 85.

(3) "Fund" means the freshwater protection fund created in section 8716.

(4) "General screening" means monitoring of groundwater for the purpose of determining the presence and concentration of analytes.

(5) "Groundwater" means underground water within the zone of saturation.

(6) "Groundwater advisory council" means the groundwater advisory council established in section 8708.

(7) "Groundwater impact potential" means the potential for contamination of groundwater as a result of pesticide or nitrogen fertilizer use.

(8) "Groundwater protection rule" means a groundwater protection rule promulgated under part 83 or part 85, or both.

(9) "Groundwater resource protection level" means a maximum contaminant level, health advisory level, or, if the United States environmental protection agency has not established a maximum contaminant level or a health advisory level, a level established by the director of public health using a risk assessment protocol established by rule under this part.

(10) "Groundwater resource response level" means 20% of the groundwater resource protection level. In cases where 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit shall serve as the groundwater resource response level.

(11) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture pursuant to section 8707 and designed to protect groundwater from contamination by pesticides and fertilizers.

(12) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, chapter 373, 88 Stat. 1660, and regulations promulgated under that act.

(13) "Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(14) "Monitoring" means sampling and analysis to determine the levels of pesticides or their breakdown products; fertilizers or their residues; or other analytes as determined by the director.

Sec. 8715. (1) In addition to the fees provided for in part 83, a registrant shall pay an annual groundwater protection fee for each product to be registered. The specialty pesticide groundwater protection fee is \$100.00 per product. Groundwater protection fees for all other pesticides are 0.75% of the wholesale value of the previous registration year's product sales for use in this state with a \$150.00 minimum groundwater protection fee. The minimum groundwater protection fee is due in the office of the director before July 1. Sales based groundwater protection fees greater than the \$150.00 minimum are due in the office of the director before October 1 of the following registration years.

(2) An additional late fee of \$100.00 shall be paid by the registrant for each pesticide if the pesticide registration is a renewal registration and the minimum groundwater protection fee is received by the department after June 30.

(3) A person required to pay a specialty fertilizer or soil conditioner registration fee under part 85 shall pay an additional \$100.00 groundwater protection fee for each brand and product name of each grade registered.

(4) All fertilizer manufacturers or distributors licensed under part 85, except specialty fertilizer and soil conditioner registrants, shall pay an additional groundwater protection fee of 1-1/2 cents per percent of nitrogen in the fertilizer for each ton of fertilizer sold.

(5) The fees collected under this part, including any interest or dividends earned, shall be transmitted to the state treasurer, who shall credit the money received to the fund.

(6) This section is repealed November 22, 2000.

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

Sec. 11110. (1) Not later than January 1, 1990, the department shall prepare an updated state hazardous waste management plan.

(2) The updated plan shall:

(a) Update the state hazardous waste management plan adopted by the commission on January 15, 1982.

(b) Be based upon location of generators, health and safety, economics of transporting, type of waste, and existing treatment, storage, or disposal facilities.

(c) Include information generated by the department of commerce and the department on hazardous waste capacity needs in the state.

(d) Include information provided by the office of waste reduction created in part 143.

(e) Plan for the availability of hazardous waste treatment or disposal facilities that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state during the 20-year period after October 1, 1988, as is described in section 104(c)(9)(A) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9604.

(f) Plan for a reasonable geographic distribution of treatment, storage, and disposal facilities to meet existing and future needs, including proposing criteria for determining acceptable locations for these facilities. The criteria shall include a consideration of a location's geology, geography, demography, waste generation patterns, along with environmental factors, public health factors, and other relevant characteristics as determined by the department.

(g) Emphasize a shift away from the practice of landfilling hazardous waste and toward the in-plant reduction of hazardous waste and the recycling and treatment of hazardous waste.

(h) Include necessary legislative, administrative, and economic mechanisms, and a timetable to carry out the plan.

(3) The department shall instruct the office of waste reduction created in part 143 to complete studies as considered necessary for the completion of the updated plan. The studies may include:

(a) An inventory and evaluation of the sources of hazardous waste generation within this state or from other states, including the types, quantities, and chemical and physical characteristics of the hazardous waste.

(b) An inventory and evaluation of current hazardous waste management, minimization, or reduction practices and costs, including treatment, disposal, on-site recycling, reclamation, and other forms of source reduction within this state.

(c) A projection or determination of future hazardous waste management needs based on an evaluation of existing capacities, treatment or disposal capabilities, manufacturing activity, limitations, and constraints. Projection of needs shall consider the types and sizes of treatment, storage, or disposal facilities, general locations within the state, management control systems, and an identified need for a state owned treatment, storage, or disposal facility.

(d) An investigation and analysis of methods, incentives, or technologies for source reduction, reuse, recycling, or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste.

(e) An investigation and analysis of methods and incentives to encourage interstate and international cooperation in the management of hazardous waste.

(f) An estimate of the public and private cost of treating, storing, or disposing of hazardous waste.

(g) An investigation and analysis of alternate methods for treatment and disposal of hazardous waste.

(4) If the department finds in preparing the updated plan that there is a need for additional treatment or disposal facilities in the state, then the department shall identify incentives the state could offer that would encourage the construction and operation of additional treatment or disposal facilities in the state that are consistent with the updated plan. The department shall propose criteria which could be used in evaluating applicants for the incentives.

(5) Upon completion of the updated plan, the department shall publish a notice in a number of newspapers having major circulation within the state as determined by the department and shall issue a statewide news release announcing the availability of the updated plan for inspection or purchase at cost by interested persons. The announcement shall indicate where and how the updated plan may be obtained or reviewed and shall indicate that not less than 6 public hearings shall be conducted at varying locations in the state before formal adoption. The first public hearing shall not be held until 60 days have elapsed from the date of the notice announcing the availability of the updated plan. The remaining public hearings shall be held within 120 days after the first public hearing at approximately equal time intervals.

(6) After the public hearings, the department shall prepare a written summary of the comments received, provide comments on the major concerns raised, make amendments to the updated plan, and determine whether the updated plan should be adopted.

Sec. 11115a. (1) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a contaminant from any waste management unit at the facility, regardless of when the contaminant may have been placed in or released from the waste management unit. This requirement applies to a facility for which the owner or operator, or both, is applying for or has been issued a license under this part.

(2) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a contaminant from any waste management unit at the facility, the department may order, or may enter a consent order with an owner or operator, or both, of a facility specified in subsection (1), requiring corrective action at the facility. A license, permit, or order issued or entered pursuant to this subsection shall contain all of the following:

(a) Schedules of compliance for corrective action if corrective action cannot be completed before the issuance of the license, permit, or order.

(b) Assurances of financial responsibility for completing the corrective action.

(c) Requirements that corrective action be taken beyond the facility boundary if the release of a contaminant has or may have migrated or otherwise has or may have been emitted beyond the facility boundary, unless the owner or operator of the facility demonstrates to the satisfaction of the department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake this corrective action.

(3) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection and not in subsection (1) is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a hazardous waste from the facility, regardless of when the hazardous waste may have been placed in or released from the facility. This requirement applies to a facility for which the owner or operator, or both, is or was subject to the interim status requirements defined in the solid waste disposal act, except for those facilities that have received formal written approval of the withdrawal of their United States environmental protection agency part A hazardous waste permit application from the department or the United States environmental protection agency.

(4) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a hazardous waste, the department may order, or may enter a consent order with, an owner or operator, or both, of a facility specified in subsection (3), requiring corrective action at the facility. An order issued or entered pursuant to this subsection shall contain both of the following:

(a) Schedules of compliance for corrective action.

(b) Assurances of financial responsibility for completing the corrective action.

Sec. 11117. (1) A site review board shall be established to review and recommend to the department whether the department should grant or deny final approval for each site construction permit application that is referred to the board by the department. If more than 1 construction permit application for interrelated facilities on a single site within the same municipality are submitted by the same applicant, reviewed concurrently by the department, and referred to the board by the department, a single board shall be established to review the site applications concurrently but shall recommend the granting or denial of final approval for each application individually. A board shall consist of 9 voting members and a nonvoting chairperson to be appointed as provided in subsection (2).

(2) The following 9 members and 1 nonvoting chairperson shall serve on every board established to review a site construction permit application:

(a) Seven members shall be members appointed by the governor, with the advice and consent of the senate. The 7 members on each board shall include a geologist, a chemical engineer, and a toxicologist, each of whom are on the faculty of an institution of higher education within the state, a representative from a manufacturing industry, 2 representatives of the public, and a representative of a municipality. Subject to the other requirements of this subdivision, the governor may appoint more than 1 geologist, chemical engineer, toxicologist, representative from a manufacturing industry, and representative of a municipality and more than 2 representatives of the public. However, only 1 geologist, chemical engineer, toxicologist, representative from a manufacturing industry, and representative of a municipality and only 2 representatives of the public, as randomly designated by the department, shall serve on a particular board. The member who represents municipalities shall be associated with a municipality or municipal association that is or represents the same type of municipality in which a facility is proposed to be located. A member representing a municipality or the public shall not serve on a site review board that is evaluating an application for a facility located within a county or municipality that directly employs the member or in which the member resides. A vacancy shall be filled for the unexpired portion of the period in the same manner as the original appointments. All members appointed by the governor, including a chairperson appointed pursuant to subdivision (c), shall be appointed to serve on site review boards for a period of 3 years, and may be appointed for additional 3-year periods. In addition, a member may serve beyond the expiration of the member's 3-year period of service for so long a period of time as is necessary to complete action on construction permit applications pending at the expiration of the member's 3-year period of service.

(b) One member shall be appointed by the governing body of the municipality in which the treatment, storage, or disposal facility is primarily proposed to be located to serve on the board that is established to consider a particular construction permit application. One member shall be appointed by the county board of commissioners in which the treatment, storage, or disposal facility is proposed to be located and shall be a resident of the county where the facility is proposed to be located. The members serving pursuant to this subdivision shall serve until the particular construction permit application subject to their review is approved or until the application is rejected and is no longer subject to review.

(c) An attorney shall be appointed by the governor, with the advice and consent of the senate, to serve as a nonvoting chairperson on each board established to review a site construction permit. The chairperson shall have experience in conducting formal meetings where sworn testimony is received. Subject to the other requirements of this subdivision, the governor may appoint more than 1 chairperson. However, only 1 chairperson, designated by the department, shall serve on a particular board.

(3) The department shall notify the local governing body of the municipality and county government of a construction permit application filed with the department.

(4) Five of the 9 voting members of the board constitute a quorum for the transaction of business of the board and the concurrence of 5 voting members of the board constitutes a legal action of the board. All meetings of the board shall be conducted pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(5) The department shall make staff available to assist a board in carrying out its responsibilities.

(6) A site review board that is established before December 28, 1987 shall proceed and fulfill its duties pursuant to the applicable law in effect when the site review board was established.

Sec. 11119. (1) Upon receipt of a construction permit application that complies with the requirements of section 11118, the department shall:

(a) Immediately notify the permanent board members and the municipality and county in which the treatment, storage, or disposal facility is located or proposed to be located; a local soil erosion and sedimentation control agency appointed pursuant to part 91; each division within the department that has responsibility in land, air, or water management; a regional planning agency established by executive directive of the governor; and other appropriate agencies. The notice shall describe the procedure by which the permit may be approved or denied.

(b) Review the plans of the proposed treatment, storage, or disposal facility to determine if the proposed operation complies with this part and the rules promulgated under this part. The review shall be made within the department. The review shall include, but need not be limited to, a review of air quality, water quality, waste management, hydrogeology, and the applicant's disclosure statement. A written and signed review by each person within the department reviewing the permit and plans shall be received and recorded before a construction permit is referred to the site review board or is denied by the department. If the site review, plan review, and the application meet the requirements of this part and the rules promulgated under this part, the department shall refer the application to the site review board for review. An expansion of a treatment, storage, or disposal facility beyond the original authorized design capacity or beyond the area specified in the original permit, license, or other authorization or an alteration of the method of hazardous waste treatment or disposal constitutes a new proposal for which a new construction permit is required.

(c) Coordinate and review all permits that the applicant is required to obtain from the department in order to construct the proposed treatment, storage, or disposal facility.

(d) Hold a public hearing within 60 days after receipt of a complete construction permit application.

(2) The department shall refer an application to the site review board or shall notify the applicant of the intent to deny the construction permit application within 120 days after the department receives an application meeting the requirements of section 11118.

(3) If the department refers an application to the site review board, prior to the first board meeting the department shall provide each board member with a copy of the application, a staff report including a summary of public comments, a responsiveness summary, and a draft construction permit.

(4) If the department does not refer an application to the site review board or does not notify the applicant of the intent to deny the construction permit application within 120 days, the construction permit application shall be submitted to the board for action.

(5) If the department intends to deny the application, the department shall commence a public participation process that is equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act. Upon completion of the public participation process, the department shall review all the comments made during that process and shall refer the application to the site review board or deny the application. If the department refers the construction permit application to the board, the department shall proceed as described in section 11120.

Sec. 11120. (1) The department shall notify those members appointed by the governor who will serve on the board within 75 days after receipt of a construction permit application, if the department has not notified the applicant of the intent to deny the application, or at the time the department refers an application to the board, or at the time an application is automatically referred to the board pursuant to section 11119(4), whichever is earlier. At that time the department also shall notify the county and the municipality in which the proposed treatment, storage, or disposal facility is to be located and request the appointment of the members of the board as provided in section 11117(2)(b). The notification shall include a notice of intent to issue all departmental permits required for the construction, pending recommendations of the board and approval by the department. Within 45 days after the notification, the county and the municipality shall select the members to serve on the board. The board shall be created at that time and notification of the creation of the board shall be made to the chairperson.

(2) Within 30 days after creation of a board, the board shall meet to review and establish a timetable for the consideration of an application for a proposed treatment, storage, or disposal facility.

(3) The board shall do all of the following:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall do both of the following:

(i) Contain a map indicating the location of the proposed treatment, storage, or disposal facility, a description of the proposed action, and the location where the application for a construction permit may be reviewed and where copies may be obtained.

(ii) Identify the time, place, and location for the public hearing held to receive public comment and input on the application for a construction permit.

(b) Hold a public hearing within 45 days of the first board meeting.

(c) Publish the notice not less than 30 days before the date of the public hearing.

(4) Comment and input on the proposed treatment, storage, or disposal facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the board for 15 days after the public hearing date.

(5) After the public hearing comment period has been closed, the board shall list the issues that are to be addressed through a negotiation process and list the issues to be evaluated by the board through its deliberations.

(6) A negotiation process shall take place between the applicant and the affected parties, who shall be identified by the board. A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be considered an affected party. If requested by any affected party or the applicant, the board shall appoint a mediator to assist during negotiations. The negotiation process shall:

(a) Proceed concurrently with the board's hearings process.

(b) Address the list of issues referred by the board and any other issues unanimously agreed to be considered by the applicant and all affected parties.

(c) Be completed within 150 days after the first meeting of the board unless the applicant and 1 or more affected parties involved in the negotiation process jointly request an extension of not more than 60 days and the extension is approved by the board. The board shall not grant extensions in excess of 60 days. An extension granted under this subdivision may extend the time period in which the board either approves or rejects the construction permit application as specified in subsection (15).

(7) On each negotiation issue which has not reached a negotiated settlement, the board shall select between final best offers presented by affected parties. The final best offer or the negotiated settlement shall not be less stringent than the requirements of the law or pertinent decisions of the board, whichever is the most stringent.

(8) The board shall conduct formal or informal hearings to receive evidence on the disputed issues not subject to the negotiation process described in subsections (6) and (7).

(9) The formal hearings process shall be conducted by the board to receive information from technical experts on disputed issues. Any affected party may request permission by the board to participate in the board's formal hearings within 15 days after the board's public hearing. The board shall determine which affected parties shall participate in the board's formal hearing. If the board denies the request of an affected party to participate in the board's formal hearing, the board shall give the affected party notice of the board's decision and the reasons for the decision. A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be automatically entitled to participate. During the board's formal hearings process, the board shall:

(a) Receive sworn testimony.

(b) Cross-examine witnesses.

(c) Allow representatives of affected parties to cross-examine witnesses.

(d) Request participation as needed.

(10) Comments made at informal hearings shall not be made under oath and no cross-examination shall occur.

(11) The board shall deliberate on the impact of the proposed treatment, storage, or disposal facility on the municipality in which it is to be located and make a final determination as to its recommendation to the department regarding the construction permit application.

(12) The board shall consider, at a minimum, all of the following:

(a) The risk and impact of accident during the transportation of hazardous waste.

(b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed treatment, storage, or disposal facility.

(c) The risk of fires or explosions from improper treatment, storage, and disposal methods.

(d) The impact on the municipality where the proposed treatment, storage, or disposal facility is to be located in terms of health, safety, cost, and consistency with local planning and existing development. The board also shall consider local ordinances, permits, or other requirements and their potential relationship to the proposed treatment, storage, or disposal facility.

(e) The nature of the probable environmental impact, including the specification of the predictable adverse effects on the following:

(i) The natural environment and ecology.

(ii) Public health and safety.

(iii) Scenic, historic, cultural, and recreational value.

(iv) Water and air quality and wildlife.

(f) An evaluation of measures to mitigate adverse effects.

(g) The board shall consider the information contained in the construction permit application disclosure statement.

(13) The board also shall consider the concerns and objections submitted by the public. The board shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the treatment, storage, or disposal facility and operation at that site. Through deliberations, the board may modify the construction permit application in response to its findings. To the fullest extent practicable, the board also shall integrate by stipulation the provisions of the local ordinances, permits, or requirements.

(14) The board may seek the advice of any person in order to render a decision to issue its recommendation to the department to approve or deny the construction permit application.

(15) Within 180 days after the first meeting of the board, the board shall make a decision on the negotiated agreement and the final best offer from each party on each issue and shall recommend to the department that the department either approve or reject the construction permit application. The 180-day time period may be extended as provided in subdivision (6)(c). However, an extension shall not exceed 60 days.

(16) If the board recommends to the department the approval of the construction permit application and the department follows the recommendation, the department shall prepare a draft construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act. Upon completion of the public participation process, the department shall review all comments made during that process and shall issue or revise and issue the construction permit or reconvene the board to consider issues specified by the department that were raised during the public participation process. Within 30 days after having been reconvened under this subsection, the board shall recommend to the department the rejection of the application or recommend the revision and issuance of the construction permit, or recommend that the department revise the draft construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act.

(17) If the board recommends the rejection of the construction permit application, the board shall do all of the following:

(a) State its reasons in writing and indicate the necessary changes to make the application acceptable if a new application is made.

(b) Recommend that the department deny the construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act, or regulations promulgated under that act.

Sec. 12101. As used in this part:

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

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

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

(d) "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 the land or by being used to produce products that are applied to or placed on the land.

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

(C) By reclamation.

(e) "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.



(f) "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.

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

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

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

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

(k) "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 pursuant to part 111.

(ii) Septage waste regulated pursuant to part 117.

(iii) Medical waste as defined in part 138 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

(iv) A discharge permitted or authorized under part 31.

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

(vi) A household generated liquid waste.

(vii) A liquid industrial waste utilized for land application in accordance with a program for effective residuals management, approved by the director or the United States environmental protection agency, or both, pursuant to the federal water pollution control act.

(viii) Oil field brines used for public road dust control and ice removal as authorized under the terms of the rules, standards, and brine management plan approved by the department in existence on June 1, 1993, until rules are promulgated.

Sec. 12102. As used in this part:

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

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

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

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

(c) "Peace officer" means any law enforcement officer who is trained and certified pursuant to the Michigan law enforcement officers training council act of 1965, Act No. 203 of the Public Acts of 1965, being sections 28.601 to 28.616 of the Michigan Compiled Laws, or an officer appointed by the director of the department of state police pursuant to section 6d of Act No. 59 of the Public Acts of 1935, being section 28.6d of the Michigan Compiled Laws.

(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 section 502(4) of title V of the federal water pollution control act, 33 U.S.C. 1362. Publicly owned treatment works include sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

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

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

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

(j) "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.

(k) "Transportation" means the movement of liquid industrial waste by air, rail, highway, or water.

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

(m) "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.

(n) "Treatment facility" means a facility or part of a facility at which liquid industrial waste is treated.

(o) "Vehicle" means each separate conveyance used in the transportation of liquid industrial waste and is 1 of the following:

(i) A rail car as defined in 49 C.F.R. 171.8.

(ii) A semitrailer, truck, or trailer as defined in the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(iii) A truck tractor as defined in Act No. 300 of the Public Acts of 1949, only if the liquid industrial waste is actually transported in the cab of the vehicle.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) House Bill No. 4351.
- (b) House Bill No. 4350.
- (c) House Bill No. 4348.
- (d) House Bill No. 4349.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.