

HOUSE BILL No. 5953

September 27, 2012, Introduced by Rep. Huuki and referred to the Committee on Natural Resources, Tourism, and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 11502, 11503, 11504, 11505, 11542, 20101, 20114e, and 20126 (MCL 324.11502, 324.11503, 324.11504, 324.11505, 324.11542, 324.20101, 324.20114e, and 324.20126), sections 11502, 11503, and 11505 as amended by 2007 PA 212, section 11504 as amended by 1996 PA 359, section 11542 as amended by 2004 PA 325, section 20101 as amended by 2010 PA 229, section 20114e as amended by 2012 PA 109, and section 20126 as amended by 2010 PA 227, and by adding sections 11551 and 11552.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11502. (1) "AGRONOMIC RATE" MEANS A RATE THAT MEETS BOTH

1 OF THE FOLLOWING REQUIREMENTS:

2 (A) IS GENERALLY RECOGNIZED BY THE AGRICULTURAL COMMUNITY OR
3 IS CALCULATED FOR A PARTICULAR PROPERTY TO IMPROVE THE PHYSICAL
4 NATURE OF SOIL, SUCH AS STRUCTURE, TILTH, WATER RETENTION, PH, OR
5 POROSITY, OR TO PROVIDE THE AMOUNT OF MACRO OR MICRO NUTRIENTS
6 NEEDED BY THE CROP, FOREST, OR VEGETATION GROWN ON THE LAND.

7 (B) TAKES INTO ACCOUNT AND MINIMIZES RUNOFF, THE PERCOLATION
8 OF EXCESS NUTRIENTS BEYOND THE ROOT ZONE, AND THE POTENTIAL FOR THE
9 LIBERATION OF METALS FROM THE SOIL INTO GROUNDWATER.

10 (2) ~~(1)~~ "Applicant" includes any person.

11 (3) ~~(2)~~ "Ashes" means the residue from the burning of wood,
12 ~~coal, coke, refuse,~~ SCRAP WOOD, TIRES, BIOMASS, wastewater sludge,
13 FOSSIL FUELS INCLUDING COAL OR COKE, or other combustible
14 materials.

15 (4) "BENEFICIAL USE 1" MEANS USE AS AGGREGATE, ROAD MATERIAL,
16 OR BUILDING MATERIAL THAT IN ULTIMATE USE IS OR WILL BE BONDED OR
17 ENCAPSULATED BY CEMENT, LIMES, OR ASPHALT.

18 (5) "BENEFICIAL USE 2" MEANS USE AS CONSTRUCTION FILL, SOIL
19 STABILIZER, OR ROAD BASE THAT IS PLACED AT LEAST 4 FEET ABOVE THE
20 SEASONAL GROUNDWATER TABLE, DOES NOT COME INTO CONTACT WITH A
21 SURFACE WATER BODY, AND IS COVERED BY CEMENT, ASPHALT PAVEMENT, OR
22 OTHER MATERIAL APPROVED BY THE DEPARTMENT.

23 (6) "BENEFICIAL USE 3" MEANS USE AS A ROAD SHOULDER MATERIAL
24 THAT IS PLACED AT LEAST 4 FEET ABOVE THE SEASONAL GROUNDWATER
25 TABLE, DOES NOT COME INTO CONTACT WITH A SURFACE WATER BODY, IS
26 SLOPED, AND IS COVERED BY ASPHALT PAVEMENT, CONCRETE, 6 INCHES OF
27 GRAVEL, OR OTHER MATERIAL APPROVED BY THE DEPARTMENT.

1 (7) "BENEFICIAL USE 4" MEANS LAND APPLIED, OR MIXED WITH
2 ANOTHER MATERIAL AND LAND APPLIED, FOR AN AGRICULTURAL,
3 SILVICULTURAL, OR HORTICULTURAL PURPOSE IF ALL OF THE FOLLOWING ARE
4 MET:

5 (A) THE MATERIAL IS APPLIED AT AN AGRONOMIC RATE.

6 (B) THE USE DOES NOT VIOLATE PART 31 OR PART 55 OR CREATE A
7 NUISANCE.

8 (C) THE PERSON RELYING ON THIS EXCLUSION PREPARES AND
9 MAINTAINS FOR 5 YEARS RECORDS IDENTIFYING THE SITE OR SITES OF
10 STORAGE AND APPLICATION, THE OWNER OF EACH SITE, AND THE VOLUME
11 APPLIED AT THE SITE OF APPLICATION AND SHALL MAKE SUCH RECORDS
12 AVAILABLE TO THE DEPARTMENT UPON REQUEST.

13 (8) "BENEFICIAL USE 5" MEANS ANY OF THE FOLLOWING USES:

14 (A) TO STABILIZE, NEUTRALIZE, SOLIDIFY, OR OTHERWISE TREAT
15 WASTE FOR ULTIMATE DISPOSAL AT A FACILITY LICENSED UNDER THIS PART
16 OR PART 111.

17 (B) TO TREAT WASTEWATER, WASTEWATER TREATMENT SLUDGE, OR
18 WASTEWATER SLUDGE IN COMPLIANCE WITH PART 31 AT A PRIVATE OR
19 PUBLICLY OWNED WASTEWATER TREATMENT PLANT.

20 (C) TO REMEDIATE HAZARDOUS SUBSTANCES AS PART OF A RESPONSE
21 ACTIVITY UNDER PART 201 OR PART 213 OR A CORRECTIVE ACTION UNDER
22 PART 111.

23 (D) AS CONSTRUCTION MATERIAL AT A LANDFILL LICENSED UNDER THIS
24 PART.

25 (9) "BENEFICIAL USE BY-PRODUCT" MEANS THE FOLLOWING MATERIALS
26 IF THE MATERIALS ARE USED AS SPECIFIED AND THE REQUIREMENTS OF
27 SECTION 11551(1) AND (2) ARE MET:

1 (A) COAL OR WOOD ASH, EXCEPT FOR FLUE GAS DESULFURIZATION
2 MATERIAL, USED FOR BENEFICIAL USE 1, 2, 3, 4, OR 5.

3 (B) PULP AND PAPER MILL ASH USED FOR BENEFICIAL USE 1, 2, 4,
4 OR 5.

5 (C) RAILROAD TIE ASH USED FOR BENEFICIAL USE 1, 2, 4, OR 5.

6 (D) TIRE ASH USED FOR BENEFICIAL USE 1, 2, 4, OR 5.

7 (E) UNPAINTED SCRAP WOOD ASH USED FOR BENEFICIAL USE 1, 2, 4,
8 OR 5.

9 (F) CEMENT KILN DUST USED AS A FLUE GAS SCRUBBING REAGENT OR
10 FOR BENEFICIAL USE 1, 2, 3, 4, OR 5.

11 (G) LIME KILN DUST USED AS A FLUE GAS SCRUBBING REAGENT OR FOR
12 BENEFICIAL USE 1, 2, 3, 4, OR 5.

13 (H) STAMP SANDS USED FOR BENEFICIAL USE 1, 2, OR 3.

14 (I) FOUNDRY SAND FROM FERROUS OR ALUMINUM FOUNDRIES USED FOR
15 BENEFICIAL USE 1, 2, OR 3.

16 (J) PULP AND PAPER MILL MATERIAL USED FOR BENEFICIAL USE 4.

17 (K) SPENT MEDIA FROM SANDBLASTING NEWLY MANUFACTURED,
18 UNPAINTED STEEL USED FOR BENEFICIAL USE 1, 2, OR 3.

19 (L) DEWATERED GRINDING SLUDGE FROM PUBLIC TRANSPORTATION AGENCY
20 ROAD PROJECTS USED FOR BENEFICIAL USE 1 OR 4.

21 (M) WATER TREATMENT RESIDUALS FROM THE TREATMENT AND
22 CONDITIONING OF WATER FOR DOMESTIC USE OR FROM A COMMUNITY WATER
23 SUPPLY USED FOR BENEFICIAL USE 4 OR 5.

24 (N) SOIL THAT IS WASHED OR OTHERWISE REMOVED FROM SUGAR BEETS
25 THAT HAS NOT MORE THAN 35% MOISTURE CONTENT USED FOR BENEFICIAL USE
26 4.

27 (O) FLUE GAS DESULFURIZATION MATERIAL USED FOR BENEFICIAL USE

1 1.

2 (P) OTHER MATERIALS AND USES APPROVED BY THE DEPARTMENT
3 PURSUANT TO SECTION 11552.

4 (10) ~~(3)~~—"Beverage container" means an airtight metal, glass,
5 paper, or plastic container, or a container composed of a
6 combination of these materials, which, at the time of sale,
7 contains 1 gallon or less of any of the following:

8 (a) A soft drink, soda water, carbonated natural or mineral
9 water, or other nonalcoholic carbonated drink.

10 (b) A beer, ale, or other malt drink of whatever alcoholic
11 content.

12 (c) A mixed wine drink or a mixed spirit drink.

13 (11) ~~(4)~~—"Bond" means a financial instrument executed on a
14 form approved by the department, including a surety bond from a
15 surety company authorized to transact business in this state, a
16 certificate of deposit, a cash bond, an irrevocable letter of
17 credit, insurance, a trust fund, an escrow account, or a
18 combination of any of these instruments in favor of the department.
19 The owner or operator of a disposal area who is required to
20 establish a bond under other state or federal statute may petition
21 the department to allow such a bond to meet the requirements of
22 this part. The department shall approve a bond established under
23 ~~either~~ **ANOTHER** state **STATUTE** or **A** federal statute if the bond
24 provides equivalent funds and access by the department as other
25 financial instruments allowed by this subsection.

26 (12) **"CEMENT KILN DUST" MEANS PARTICULATE MATTER COLLECTED IN**
27 **AIR EMISSION CONTROL DEVICES SERVING PORTLAND CEMENT KILNS.**

1 (13) ~~(5)~~—"Certificate of deposit" means a negotiable
 2 certificate of deposit held by a bank or other financial
 3 institution regulated and examined by a state or federal agency,
 4 the value of which is fully insured by an agency of the United
 5 States government. A certificate of deposit used to fulfill the
 6 requirements of this part shall be in the sole name of the
 7 department with a maturity date of not less than 1 year and shall
 8 be renewed not less than 60 days before the maturity date. An
 9 applicant who uses a certificate of deposit as a bond shall receive
 10 any accrued interest on that certificate of deposit upon release of
 11 the bond by the department.

12 (14) ~~(6)~~—"Certified health department" means a city, county,
 13 or district department of health that is specifically delegated
 14 authority by the department to perform designated activities as
 15 prescribed by this part.

16 (15) ~~(7)~~—"Coal or wood ash" means ~~either or both of the~~
 17 ~~following:~~ **THE NONCOMBUSTED RESIDUE REMAINING AFTER THE COMBUSTION**
 18 **OF COAL, WOOD, OR BOTH, INCLUDING, BUT NOT LIMITED TO, BOTTOM ASH,**
 19 **FLY ASH, BOILER SLAG, OR FLUIDIZED-BED COMBUSTION ASH.**

20 ~~—(a) The residue remaining after the ignition of coal or wood,~~
 21 ~~or both, and may include noncombustible materials, otherwise~~
 22 ~~referred to as bottom ash.~~

23 ~~—(b) The airborne residues from burning coal or wood, or both,~~
 24 ~~that are finely divided particles entrained in flue gases arising~~
 25 ~~from a combustion chamber, otherwise referred to as fly ash.~~

26 (16) ~~(8)~~—"Collection center" means a tract of land, building,
 27 unit, or appurtenance or combination thereof that is used to

1 collect junk motor vehicles and farm implements under section
2 11530.

3 (17) ~~(9)~~—"Composting facility" means a facility where
4 composting of yard clippings or other organic materials occurs
5 using mechanical handling techniques such as physical turning,
6 windrowing, or aeration or using other management techniques
7 approved by the director.

8 (18) ~~(10)~~—"Consistency review" means evaluation of the
9 administrative and technical components of an application for a
10 permit or license or evaluation of operating conditions in the
11 course of inspection, for the purpose of determining consistency
12 with the requirements of this part, rules promulgated under this
13 part, and approved plans and specifications.

14 (19) ~~(11)~~—"Corrective action" means the investigation,
15 assessment, cleanup, removal, containment, isolation, treatment, or
16 monitoring of constituents, as defined in a facility's approved
17 hydrogeological monitoring plan, released into the environment from
18 a disposal area, or the taking of other actions related to the
19 release as may be necessary to prevent, minimize, or mitigate
20 injury to the public health, safety, or welfare, the environment,
21 or natural resources that is consistent with 42 USC 6941 to 6949a
22 and regulations promulgated thereunder.

23 Sec. 11503. (1) "De minimis" refers to a small amount of
24 material or number of items, as applicable, commingled and
25 incidentally disposed of with other solid waste.

26 (2) "Department" means the department of environmental
27 quality.

1 (3) "Director" means the director of the department.

2 (4) "Discharge" includes, but is not limited to, any spilling,
3 leaking, pumping, pouring, emitting, emptying, discharging,
4 injecting, escaping, leaching, dumping, or disposing of a substance
5 into the environment ~~which~~**THAT** is or may become injurious to the
6 public health, safety, or welfare, or to the environment.

7 (5) "Disposal area" means 1 or more of the following at a
8 location as defined by the boundary identified in its construction
9 permit or engineering plans approved by the department:

10 (a) A solid waste transfer facility.

11 (b) Incinerator.

12 (c) Sanitary landfill.

13 (d) Processing plant.

14 (e) Other solid waste handling or disposal facility utilized
15 in the disposal of solid waste.

16 (6) "Enforceable mechanism" means a legal method whereby the
17 state, a county, a municipality, or another person is authorized to
18 take action to guarantee compliance with an approved county solid
19 waste management plan. Enforceable mechanisms include contracts,
20 intergovernmental agreements, laws, ordinances, rules, and
21 regulations.

22 (7) "Escrow account" means an account **THAT IS** managed by a
23 bank or other financial institution whose account operations are
24 regulated and examined by a federal or state agency and ~~which~~**THAT**
25 complies with section 11523b.

26 (8) "Farm" means that term as defined in section 2 of the
27 Michigan right to farm act, 1981 PA 93, MCL 286.472.

1 (9) "Farm operation" means that term as defined in section 2
2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

3 (10) "Financial assurance" means the mechanisms used to
4 demonstrate that the funds necessary to meet the cost of closure,
5 postclosure maintenance and monitoring, and corrective action will
6 be available whenever they are needed.

7 (11) "Financial test" means a corporate or local government
8 financial test or guarantee approved for type II landfills under 42
9 USC 6941 to 6949a **AND REGULATIONS PROMULGATED THEREUNDER**. An owner
10 or operator may use a single financial test for more than 1
11 facility. Information submitted to the department to document
12 compliance with the test shall include a list showing the name and
13 address of each facility and the amount of funds assured by the
14 test for each facility. For purposes of the financial test, the
15 owner or operator shall aggregate the sum of the closure,
16 postclosure, and corrective action costs it seeks to assure with
17 any other environmental obligations assured by a financial test
18 under state or federal law.

19 (12) **"FLUE GAS DESULFURIZATION MATERIAL" MEANS THE MATERIAL**
20 **RECOVERED FROM AIR POLLUTION CONTROL SYSTEMS THAT CAPTURE SULFUR**
21 **DIOXIDE FROM THE COMBUSTION OF WOOD, COAL, OR FOSSIL FUELS, OR**
22 **OTHER COMBUSTIBLE MATERIALS IF THE OTHER COMBUSTIBLE MATERIALS**
23 **CONSTITUTE LESS THAN 50% BY WEIGHT OF THE TOTAL COMBUSTED MATERIAL**
24 **AND THE DEPARTMENT DETERMINES IN WRITING THAT THE OTHER COMBUSTIBLE**
25 **MATERIALS DO NOT MATERIALLY AFFECT THE CHARACTER OF THE RESIDUE.**
26 **FLUE GAS DESULFURIZATION MATERIAL INCLUDES SYNTHETIC GYPSUM.**

27 (13) ~~(12)~~—"Food processing residuals" means any of the

1 following:

2 (a) Residuals of fruits, vegetables, aquatic plants, or field
3 crops.

4 (b) Otherwise unusable parts of fruits, vegetables, aquatic
5 plants, or field crops from the processing thereof.

6 (c) Otherwise unusable food products which do not meet size,
7 quality, or other product specifications and which were intended
8 for human or animal consumption.

9 (14) "FOUNDRY SAND" MEANS CASTING SILICA SAND, INCLUDING
10 BINDING MATERIAL AND CARBONACEOUS ADDITIVES, FROM FERROUS AND
11 NONFERROUS FOUNDRIES.

12 (15) "GAAMPS" ARE THE GENERALLY ACCEPTED AGRICULTURAL
13 MANAGEMENT PRACTICES UNDER THE MICHIGAN RIGHT TO FARM ACT, 1981 PA
14 93, MCL 286.471 TO 286.474.

15 (16) ~~(13)~~—"Garbage" means rejected food wastes including waste
16 accumulation of animal, fruit, or vegetable matter used or intended
17 for food or that results from the preparation, use, cooking,
18 dealing in, or storing of meat, fish, fowl, fruit, or vegetable
19 matter.

20 (17) "LIME KILN DUST" MEANS PARTICULATE MATTER COLLECTED IN
21 AIR EMISSION CONTROL DEVICES SERVING LIME KILNS.

22 ~~—— (14) "Scrap wood" means wood or wood product that is 1 or more
23 of the following:~~

24 ~~—— (a) Plywood, pressed board, oriented strand board, or any
25 other wood or wood product mixed with glue or filler.~~

26 ~~—— (b) Wood or wood product treated with creosote or
27 pentachlorophenol.~~

1 ~~— (c) Any other wood or wood product designated as scrap wood in~~
 2 ~~rules promulgated by the department.~~

3 ~~— (15) "Treated wood" means wood or wood product that has been~~
 4 ~~treated with 1 or more of the following:~~

5 ~~— (a) Chromated copper arsenate (CCA).~~

6 ~~— (b) Ammoniacal copper quat (ACQ).~~

7 ~~— (c) Ammoniacal copper zinc arsenate (ACZA).~~

8 ~~— (d) Any other chemical designated in rules promulgated by the~~
 9 ~~department.~~

10 ~~— (16) "Wood" means trees, branches, bark, lumber, pallets, wood~~
 11 ~~chips, sawdust, or other wood or wood product but does not include~~
 12 ~~scrap wood, treated wood, painted wood or painted wood product, or~~
 13 ~~any wood or wood product that has been contaminated during~~
 14 ~~manufacture or use.~~

15 Sec. 11504. (1) "Health officer" means a full-time
 16 administrative officer of a ~~certified city, county, or district~~
 17 ~~department of health~~ **DEPARTMENT.**

18 (2) "Inert material" means a substance that will not **LEACH,**
 19 **decompose, OR dissolve** ~~, or in any other way form a~~ **SO AS TO FORM**
 20 **AN UNACCEPTABLY** contaminated leachate upon contact with water ~~, or~~
 21 ~~other liquids determined by the department as likely to be found at~~
 22 ~~the disposal area, percolating through the substance.~~ **AREA OF**
 23 **DISPOSAL OR USE. THE FOLLOWING MATERIALS ARE INERT MATERIALS:**

24 **(A) ROCK.**

25 **(B) TREES, STUMPS, AND OTHER SIMILAR LAND-CLEARING DEBRIS**
 26 **CLEARED FROM A SITE THAT IS BURIED ON THE SITE OR ANOTHER LOCATION,**
 27 **WITH THE APPROVAL OF THE OWNER OF THAT LOCATION, IF ALL OF THE**

1 FOLLOWING CONDITIONS ARE MET:

2 (i) THE DEBRIS IS NOT BURIED IN A WETLAND OR FLOODPLAIN.

3 (ii) THE DEBRIS IS PLACED AT LEAST 3 FEET ABOVE THE GROUNDWATER
4 TABLE AS OBSERVED AT THE TIME OF PLACEMENT.

5 (iii) THE PLACEMENT OF THE DEBRIS DOES NOT VIOLATE FEDERAL,
6 STATE, OR LOCAL LAW OR CREATE A NUISANCE.

7 (C) UNCONTAMINATED EXCAVATED SOIL. EXCAVATED SOIL IS
8 CONSIDERED UNCONTAMINATED IF, BASED ON KNOWLEDGE OF PAST LAND USE
9 AND SOIL CONDITIONS AND IN THE ABSENCE OF A SOIL ANALYSIS, WHICH IS
10 NOT REQUIRED, THERE IS NO REASON TO BELIEVE THAT THE SOIL IS
11 CONTAMINATED. OTHERWISE, A DETERMINATION WHETHER EXCAVATED SOIL IS
12 CONTAMINATED SHALL BE BASED ON A SOIL ANALYSIS. IF A SOIL ANALYSIS
13 IS PERFORMED, THE SOIL IS CONSIDERED UNCONTAMINATED IF ANY
14 HAZARDOUS CONSTITUENT IN THE MATERIAL MEETS 1 OR MORE OF THE
15 FOLLOWING REQUIREMENTS:

16 (i) IT IS LISTED IN THE DEPARTMENT'S 2005 MICHIGAN BACKGROUND
17 SOIL SURVEY AND FALLS WITHIN THE TYPICAL RANGES FOR THE RELEVANT
18 SOIL OR SOIL FRACTION, SUCH AS TOPSOIL, SAND, OR CLAY.

19 (ii) IT FALLS BELOW PART 201 RESIDENTIAL DIRECT CONTACT
20 CRITERIA. THIS SUB-SUBPARAGRAPH DOES NOT APPLY UNLESS HAZARDOUS
21 CONSTITUENTS IN LEACHATE FROM THE MATERIAL, USING EPA METHODS 1311
22 OR 1312, FALL BELOW PART 201 HEALTH-BASED RESIDENTIAL DRINKING
23 WATER CRITERIA, AND DO NOT VIOLATE ANY SURFACE WATER QUALITY
24 STANDARD ESTABLISHED UNDER PART 31.

25 (D) EXCAVATED SOIL FROM A SITE OF ENVIRONMENTAL CONTAMINATION,
26 CORRECTIVE ACTION, OR RESPONSE ACTIVITY IF THE CONSTITUENTS IN THE
27 SOIL DO NOT EXCEED CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL

1 USE AS DEFINED IN SECTION 20101.

2 (E) UNCONTAMINATED DREDGINGS.

3 (F) CONSTRUCTION BRICK, MASONRY, PAVEMENT, OR BROKEN CONCRETE
4 THAT IS REUSED FOR FILL, RIP RAP, SLOPE STABILIZATION, OR OTHER
5 CONSTRUCTION, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

6 (i) THE USE OF THE MATERIAL DOES NOT VIOLATE SECTION 3108, PART
7 301, OR PART 303.

8 (ii) THE MATERIAL IS NOT MATERIALLY CONTAMINATED.

9 (iii) THE MATERIAL DOES NOT INCLUDE EXPOSED REINFORCING BARS.

10 (G) PORTLAND CEMENT CLINKER PRODUCED BY A CEMENT KILN USING
11 WOOD, FOSSIL FUELS, OR SOLID WASTE AS A FUEL OR FEEDSTOCK, BUT NOT
12 INCLUDING CEMENT KILN DUST GENERATED IN THE PROCESS.

13 (H) ASPHALT PAVEMENT OR CONCRETE PAVEMENT THAT MEETS ALL OF
14 THE FOLLOWING REQUIREMENTS:

15 (i) HAS BEEN REMOVED FROM A PUBLIC RIGHT-OF-WAY.

16 (ii) HAS BEEN STOCKPILED OR CRUSHED FOR REUSE AS AGGREGATE
17 MATERIAL.

18 (iii) DOES NOT INCLUDE EXPOSED REINFORCEMENT BARS.

19 (I) CUTTINGS, DRILLING MATERIALS, AND FLUIDS USED TO DRILL OR
20 COMPLETE A WELL INSTALLED PURSUANT TO PART 127 OF THE PUBLIC HEALTH
21 CODE, 1978 PA 368, MCL 333.12701 TO 333.12771.

22 (J) ANY OTHER MATERIAL DETERMINED AT ANY TIME BY THE
23 DEPARTMENT IN WRITING TO BE INERT.

24 (3) "Insurance" means insurance that conforms to the
25 requirements of 40 C.F.R.—CFR 258.74(d) provided by an insurer who
26 has a certificate of authority from the Michigan commissioner of
27 insurance to sell this line of coverage. An applicant for an

1 operating license shall submit evidence of the required coverage by
2 submitting both of the following to the department:

3 (a) A certificate of insurance that uses wording approved by
4 the department.

5 (b) A certified true and complete copy of the insurance
6 policy.

7 (4) "Landfill" means a disposal area that is a sanitary
8 landfill.

9 (5) "Letter of credit" means an irrevocable letter of credit
10 that complies with 40 C.F.R.—CFR 258.74(c).

11 (6) "LOW-HAZARD INDUSTRIAL WASTE" MEANS INDUSTRIAL MATERIAL
12 THAT HAS A LOW POTENTIAL FOR GROUNDWATER CONTAMINATION WHEN MANAGED
13 IN ACCORDANCE WITH THIS PART. THE FOLLOWING MATERIALS MAY BE
14 MANAGED AS LOW-HAZARD INDUSTRIAL WASTES IF NOT EXCLUDED FROM THE
15 DEFINITION OF "SOLID WASTE" IN SECTION 11506(1):

16 (A) COAL OR WOOD ASH.

17 (B) CEMENT KILN DUST.

18 (C) PULP OR PAPER MILL WASTE.

19 (D) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FOR
20 DOMESTIC USE.

21 (E) RESIDUE FROM THE THERMAL TREATMENT OF PETROLEUM
22 CONTAMINATED SOIL, MEDIA, OR DEBRIS.

23 (F) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FROM A
24 COMMUNITY WATER SUPPLY.

25 (G) FOUNDRY SAND.

26 (H) ANY OTHER MATERIAL DETERMINED BY THE DEPARTMENT IN WRITING
27 TO BE A LOW-HAZARD INDUSTRIAL WASTE.

1 (7) ~~(6)~~—"Medical waste" means that term as it is defined in
2 part 138 of the public health code, ~~Act No. 378 of the Public Acts~~
3 ~~of 1978, being sections 1978 PA 368, MCL 333.13801 to 333.13831. of~~
4 ~~the Michigan Compiled Laws.~~

5 (8) ~~(7)~~—"Municipal solid waste incinerator" means an
6 incinerator that is owned or operated by any person, and meets all
7 of the 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 licensed
14 under part 111.

15 (b) The incinerator has established contractual requirements
16 or other notification or inspection procedures sufficient to assure
17 that the incinerator receives and burns only waste referred to in
18 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 in
22 ~~40 C.F.R.—CFR 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.

26 (9) ~~(8)~~—"Municipal solid waste incinerator ash" means the
27 substances remaining after combustion in a municipal solid waste

1 incinerator.

2 (10) ~~(9)~~ "Perpetual care fund" means a perpetual care fund
3 provided for in section 11525.

4 ~~(10) "Trust fund" means a trust fund held by a trustee which~~
5 ~~has the authority to act as a trustee and whose trust operations~~
6 ~~are regulated and examined by a federal or state agency. A trust~~
7 ~~fund shall comply with section 11523b.~~

8 (11) "PULP AND PAPER MILL MATERIAL" MEANS ALL OF THE FOLLOWING
9 MATERIALS IF GENERATED AT A FACILITY THAT PRODUCES PULP OR PAPER:

10 (A) WASTEWATER TREATMENT SLUDGE, INCLUDING WOOD FIBERS,
11 MINERALS, AND MICROBIAL BIOMASS.

12 (B) REJECTS FROM SCREENS, CLEANERS, AND MILLS.

13 (C) BARK, WOOD FIBERS, AND CHIPS.

14 (D) SCRAP PAPER.

15 (E) CAUSTICIZING RESIDUES, INCLUDING LIME MUD AND GRIT AND
16 GREEN LIQUOR DREGS.

17 (F) ANY OTHER MATERIAL THAT THE DEPARTMENT DETERMINES HAS
18 CHARACTERISTICS THAT ARE SIMILAR TO ANY OF THE MATERIALS LISTED IN
19 SUBDIVISIONS (A) TO (E).

20 Sec. 11505. (1) "Recyclable materials" means source separated
21 materials, site separated materials, high grade paper, glass,
22 metal, plastic, aluminum, newspaper, corrugated paper, yard
23 clippings, and other materials that may be recycled or composted.

24 (2) "Regional solid waste management planning agency" means
25 the regional solid waste planning agency designated by the governor
26 pursuant to 42 USC 6946.

27 (3) "Resource recovery facility" means machinery, equipment,

1 structures, or any parts or accessories of machinery, equipment, or
2 structures, installed or acquired for the primary purpose of
3 recovering materials or energy from the waste stream.

4 (4) "Response activity" means an activity that is necessary to
5 protect the public health, safety, welfare, or the environment, and
6 includes, but is not limited to, evaluation, cleanup, removal,
7 containment, isolation, treatment, monitoring, maintenance,
8 replacement of water supplies, and temporary relocation of people.

9 (5) "Rubbish" means nonputrescible solid waste, excluding
10 ashes, consisting of both combustible and noncombustible waste,
11 including paper, cardboard, metal containers, yard clippings, wood,
12 glass, bedding, crockery, demolished building materials, or litter
13 of any kind that may be a detriment to the public health and
14 safety.

15 (6) "Salvaging" means the lawful and controlled removal of
16 reusable materials from solid waste.

17 (7) **"SCRAP WOOD" MEANS WOOD OR WOOD PRODUCT THAT IS 1 OR MORE**
18 **OF THE FOLLOWING:**

19 (A) **PLYWOOD, PARTICLE BOARD, PRESSED BOARD, ORIENTED STRAND**
20 **BOARD, FIBERBOARD, RESONATED WOOD, OR ANY OTHER WOOD OR WOOD**
21 **PRODUCT MIXED WITH GLUE, RESINS, OR FILLER.**

22 (B) **WOOD OR WOOD PRODUCT TREATED WITH CREOSOTE OR**
23 **PENTACHLOROPHENOL.**

24 (C) **ANY OTHER WOOD OR WOOD PRODUCT DESIGNATED AS SCRAP WOOD IN**
25 **RULES PROMULGATED BY THE DEPARTMENT.**

26 (8) ~~(7)~~—"Site separated material" means glass, metal, wood,
27 paper products, plastics, rubber, textiles, garbage, or any other

1 material approved by the department that is separated from solid
2 waste for the purpose of **RECYCLING OR** conversion into raw materials
3 or new products. ~~Site-separated material does not include the~~
4 ~~residue remaining after glass, metal, wood, paper products,~~
5 ~~plastics, rubber, textiles, or any other material approved by the~~
6 ~~department is separated from solid waste.~~

7 (9) ~~(8)~~—"Slag" means the nonmetallic product resulting from
8 melting or smelting operations for iron or steel.

9 Sec. 11542. (1) Except as provided in subsection (5) **AND**
10 **EXCEPT FOR MUNICIPAL SOLID WASTE INCINERATOR ASH THAT IS USED AS**
11 **PROVIDED IN SECTION 11506(6)**, municipal solid waste incinerator ash
12 shall be disposed of in 1 of the following:

13 (a) A landfill that meets all of the following requirements:

14 (i) The landfill is in compliance with this part and the rules
15 promulgated under this part.

16 (ii) The landfill is used exclusively for the disposal of
17 municipal solid waste incinerator ash.

18 (iii) The landfill design includes all of the following in
19 descending order according to their placement in the landfill:

20 (A) A leachate collection system.

21 (B) A synthetic liner at least 60 mils thick.

22 (C) A compacted clay liner of 5 feet or more with a maximum
23 hydraulic conductivity of 1×10^{-7} centimeters per second.

24 (D) A leak detection and leachate collection system.

25 (E) A compacted clay liner at least 3 feet thick with a
26 maximum hydraulic conductivity of 1×10^{-7} centimeters per second or
27 a synthetic liner at least 40 mils thick.

1 (b) A landfill that meets all of the following requirements:

2 (i) The landfill is in compliance with this part and the rules
3 promulgated under this part.

4 (ii) The landfill is used exclusively for the disposal of
5 municipal solid waste incinerator ash.

6 (iii) The landfill design includes all of the following in
7 descending order according to their placement in the landfill:

8 (A) A leachate collection system.

9 (B) A composite liner, as defined in R 299.4102 of the
10 Michigan administrative code.

11 (C) A leak detection and leachate collection system.

12 (D) A second composite liner.

13 (iv) If contaminants that may threaten the public health,
14 safety, or welfare, or the environment are found in the leachate
15 collection system described in subparagraph (iii) (C), the owner or
16 operator of the landfill shall determine the source and nature of
17 the contaminants and make repairs, to the extent practicable, that
18 will prevent the contaminants from entering the leachate collection
19 system. If the department determines that the source of the
20 contaminants is caused by a design failure of the landfill, the
21 department, notwithstanding an approved construction permit or
22 operating license, may require landfill cells at that landfill that
23 will be used for the disposal of municipal solid waste incinerator
24 ash, which are under construction or will be constructed in the
25 future at the landfill, to be constructed in conformance with
26 improved design standards approved by the department. However, this
27 subparagraph does not require the removal of liners or leak

1 detection and leachate collection systems that are already in place
2 in a landfill cell under construction.

3 (c) A landfill that is a monitorable unit, as defined in R
4 299.4104 of the Michigan administrative code, and that meets all of
5 the following requirements:

6 (i) The landfill is in compliance with this part and the rules
7 promulgated under this part.

8 (ii) The landfill is used exclusively for the disposal of
9 municipal solid waste incinerator ash.

10 (iii) The landfill design includes all of the following in
11 descending order according to their placement in the landfill:

12 (A) A leachate collection system.

13 (B) A synthetic liner at least 60 mils thick.

14 (C) Immediately below the synthetic liner, either 2 feet of
15 compacted clay with a maximum hydraulic conductivity of 1×10^{-7}
16 centimeters per second or a bentonite geocomposite liner, as
17 specified in R 299.4914 of the Michigan administrative code.

18 (D) At least 10 feet of either natural or compacted clay with
19 a maximum hydraulic conductivity of 1×10^{-7} centimeters per second,
20 or equivalent.

21 (d) A landfill with a design approved by the department that
22 will prevent the migration of any hazardous constituent into the
23 groundwater or surface water at least as effectively as the design
24 requirements of subdivisions (a) to (c).

25 (e) A type II landfill, as ~~defined~~ **DESCRIBED** in R 299.4105 of
26 the Michigan administrative code, if both of the following
27 conditions apply:

1 (i) The ash was generated by a municipal solid waste
2 incinerator that is designed to burn at a temperature in excess of
3 2500 degrees Fahrenheit.

4 (ii) The ash from any individual municipal solid waste
5 incinerator is disposed of pursuant to this subdivision for a
6 period not to exceed 60 days.

7 (2) Except as provided in subsection (3), a landfill that is
8 constructed pursuant to the design described in subsection (1)
9 shall be capped following its closure by all of the following in
10 descending order:

11 (a) Six inches of top soil with a vegetative cover.

12 (b) Two feet of soil to protect against animal burrowing,
13 temperature, erosion, and rooted vegetation.

14 (c) An infiltration collection system.

15 (d) A synthetic liner at least 30 mils thick.

16 (e) Two feet of compacted clay with a maximum hydraulic
17 conductivity of 1×10^{-7} centimeters per second.

18 (3) A landfill that receives municipal solid waste incinerator
19 ash under this section may be capped with a design approved by the
20 department that will prevent the migration of any hazardous
21 constituent into the groundwater or surface water at least as
22 effectively as the design requirements of subsection (2).

23 (4) If leachate is collected from a landfill under this
24 section, the leachate shall be monitored and tested in accordance
25 with this part and the rules promulgated under this part.

26 (5) As an alternative to disposal described in subsection (1),
27 the owner or operator of a municipal solid waste incinerator may

1 process municipal solid waste incinerator ash through mechanical or
2 chemical methods, or both, to substantially diminish the toxicity
3 of the ash or its constituents or limit the leachability of the ash
4 or its constituents to minimize threats to human health and the
5 environment, if processing is performed on the site of the
6 municipal solid waste incinerator or at the site of a landfill
7 described in subsection (1), if the process has been approved by
8 the department as provided by rule, and if the ash is tested after
9 processing in accordance with a protocol approved by the department
10 as provided by rule. The department shall approve the process and
11 testing protocol under this subsection only if the process and
12 testing protocol will protect human health and the environment. In
13 making this determination, the department shall consider all
14 potential pathways of human and environmental exposure, including
15 both short-term and long-term, to constituents of the ash that may
16 be released during the reuse or recycling of the ash. The
17 department shall consider requiring methods to determine the
18 leaching, total chemical analysis, respirability, and toxicity of
19 reused or recycled ash. A leaching procedure shall include testing
20 under both acidic and native conditions. If municipal solid waste
21 incinerator ash is processed in accordance with the requirements of
22 this subsection and the processed ash satisfies the testing
23 protocol approved by the department as provided by rule, the ash
24 may be disposed of in a municipal solid waste landfill, as defined
25 by R 299.4104 of the Michigan administrative code, licensed under
26 this part or may be used in any manner approved by the department.
27 If municipal solid waste incinerator ash is processed as provided

1 in this subsection, but does not satisfy the testing protocol
2 approved by the department as provided by rule, the ash shall be
3 disposed of in accordance with subsection (1).

4 (6) The disposal of municipal solid waste incinerator ash
5 within a landfill that is in compliance with subsection (1) does
6 not constitute a new proposal for which a new construction permit
7 is required under section ~~11510~~, **11509**, if a construction permit
8 has previously been issued under section 11509 for the landfill and
9 the owner or operator of the landfill submits 6 copies of an
10 operating license amendment application to the department for
11 approval pursuant to part 13. The operating license amendment
12 application shall include revised plans and specifications for all
13 facility modifications including a leachate disposal plan, an
14 erosion control plan, and a dust control plan which shall be part
15 of the operating license amendment. The dust control plan shall
16 contain sufficient detail to ensure that dust emissions are
17 controlled by available control technologies that reduce dust
18 emissions by a reasonably achievable amount to the extent necessary
19 to protect human health and the environment. The dust control plan
20 shall provide for the ash to be wet during all times that the ash
21 is exposed to the atmosphere at the landfill or otherwise to be
22 covered by daily cover material; for dust emissions to be
23 controlled during dumping, grading, loading, and bulk transporting
24 of the ash at the landfill; and for dust emissions from access
25 roads within the landfill to be controlled. With the exception of a
26 landfill that is in existence on June 12, 1989 that the department
27 determines is otherwise in compliance with this section, the owner

1 or operator of the landfill shall obtain the operating license
2 amendment prior to initiating construction. Prior to operation, the
3 owner or operator of a landfill shall submit to the department
4 certification from a licensed professional engineer that the
5 landfill has been constructed in accordance with the approved plan
6 and specifications. At the time the copies are submitted to the
7 department, the owner or operator of the landfill shall send a copy
8 of the operating license amendment application to the municipality
9 where the landfill is located. At least 30 days prior to making a
10 final decision on the operating license amendment, the department
11 shall hold at least 1 public meeting in the vicinity of the
12 landfill to receive public comments. Prior to a public meeting, the
13 department shall publish notice of the meeting in a newspaper
14 serving the local area.

15 (7) The owner or operator of a municipal solid waste
16 incinerator or a disposal area that receives municipal solid waste
17 incinerator ash shall allow the department access to the facility
18 for the purpose of supervising the collection of samples or
19 obtaining samples of ash to test or to monitor air quality at the
20 facility.

21 (8) As used in subsection (1), "landfill" means a landfill or
22 a specific portion of a landfill.

23 **SEC. 11551. (1) TO QUALIFY AS A BENEFICIAL USE BY-PRODUCT, A**
24 **MATERIAL SHALL MEET ALL OF THE FOLLOWING REQUIREMENTS:**

25 **(A) THE MATERIAL DOES NOT HAVE ANY CHARACTERISTIC OF A PART**
26 **111 HAZARDOUS WASTE, IS NOT A LISTED HAZARDOUS WASTE, AND IS NOT**
27 **MIXED WITH HAZARDOUS WASTE.**

1 (B) THE MATERIAL IS NOT USED IN QUANTITIES THAT EXCEED
2 GENERALLY ACCEPTED ENGINEERING, INDUSTRIAL, OR COMMERCIAL
3 STANDARDS.

4 (C) THE MATERIAL IS USED IN COMPLIANCE WITH THIS PART WITHIN A
5 REASONABLE TIME AFTER IT IS GENERATED. EITHER OF THE FOLLOWING
6 SHALL BE PRESUMED REASONABLE:

7 (i) STORAGE PRIOR TO ANY USE UNDER THIS PART FOR LESS THAN 3
8 YEARS.

9 (ii) USE, PURSUANT TO THIS PART AND WITHIN 4 YEARS, OF AT LEAST
10 50% OF THE MATERIAL STORED AT 1 SITE.

11 (D) THE MATERIAL IS STORED IN SUCH A MANNER THAT ITS
12 USEFULNESS IS MAINTAINED, WIND DISPERSAL IS CONTROLLED, AND LOSS OF
13 THE MATERIAL IS PREVENTED TO THE EXTENT PRACTICABLE.

14 (E) THE MATERIAL IS TRANSPORTED IN A MANNER THAT PREVENTS
15 ACCIDENTAL LEAKAGE, SPILLAGE, OR WIND DISPERSAL.

16 (2) BY OCTOBER 30 OF EACH YEAR, A GENERATOR OF MORE THAN 1,000
17 CUBIC YARDS OF BENEFICIAL USE BY-PRODUCTS IN THE IMMEDIATELY
18 PRECEDING PERIOD OF OCTOBER 1 TO SEPTEMBER 30 SHALL SUBMIT A REPORT
19 TO THE DEPARTMENT CONTAINING ALL OF THE FOLLOWING INFORMATION:

20 (A) COMPANY NAME, ADDRESS, TELEPHONE NUMBER, AND NAME OF A
21 CONTACT PERSON.

22 (B) THE TYPES OF BENEFICIAL USE BY-PRODUCTS GENERATED AND
23 STORED DURING THAT PERIOD AND THEIR APPROXIMATE AMOUNTS.

24 (C) THE APPROXIMATE AMOUNT OF BENEFICIAL USE BY-PRODUCTS
25 SHIPPED OFF-SITE DURING THAT PERIOD AND THE USES AND CONDITIONS OF
26 USE.

27 (3) THE GENERATOR MAY DESIGNATE THE INFORMATION REQUIRED IN

1 THE REPORT UNDER SUBSECTION (2) (B) AND (C) AS CONFIDENTIAL BUSINESS
2 INFORMATION. THE DEPARTMENT SHALL NOTIFY THE GENERATOR OF A REQUEST
3 FOR PUBLIC RECORDS UNDER SECTION 5 OF THE FREEDOM OF INFORMATION
4 ACT, 1976 PA 442, MCL 15.235, WHOSE SCOPE INCLUDES INFORMATION
5 DESIGNATED AS CONFIDENTIAL. UNLESS WITHIN 30 DAYS AFTER THE RECEIPT
6 OF THE NOTICE THE GENERATOR DEMONSTRATES TO THE SATISFACTION OF THE
7 DEPARTMENT THAT THE INFORMATION DESIGNATED AS CONFIDENTIAL SHOULD
8 NOT BE DISCLOSED BECAUSE THE INFORMATION CONSTITUTES A TRADE SECRET
9 OR SECRET PROCESS OR IS PRODUCTION OR COMMERCIAL INFORMATION THE
10 DISCLOSURE OF WHICH WOULD JEOPARDIZE THE COMPETITIVE POSITION OF
11 THE GENERATOR, THE DEPARTMENT SHALL GRANT THE REQUEST FOR THE
12 INFORMATION. IF THERE IS A DISPUTE OVER THE RELEASE OF INFORMATION
13 BETWEEN THE GENERATOR AND THE PERSON REQUESTING THE INFORMATION,
14 THE DIRECTOR SHALL MAKE A DECISION TO GRANT OR DENY THE REQUEST. IF
15 A REQUEST IS GRANTED, THE INFORMATION REQUESTED SHALL NOT BE
16 RELEASED UNTIL 3 DAYS HAVE ELAPSED AFTER THE DECISION HAS BEEN MADE
17 AND THE GENERATOR HAS BEEN NOTIFIED.

18 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS PART, STORAGE AND USE
19 OF BENEFICIAL USE BY-PRODUCTS SHALL COMPLY WITH ALL OTHER
20 APPLICABLE PARTS OF THIS ACT.

21 SEC. 11552. (1) CONSISTENT WITH THE REQUIREMENTS OF THIS PART,
22 THE DEPARTMENT SHALL PROMOTE AND FOSTER THE USE OF WASTES AND BY-
23 PRODUCTS FOR RECYCLING OR BENEFICIAL PURPOSES.

24 (2) ANY PERSON MAY REQUEST THE DEPARTMENT TO APPROVE A
25 MATERIAL; A MATERIAL FOR A SPECIFIED USE AS A SOURCE SEPARATED
26 MATERIAL; A BENEFICIAL USE BY-PRODUCT; OR ANOTHER MATERIAL OR USE
27 THAT CAN BE APPROVED UNDER THIS PART. THE REQUEST SHALL CONTAIN A

1 DESCRIPTION OF THE MATERIAL INCLUDING THE PROCESS GENERATING IT;
2 RESULTS OF ANALYSES OF REPRESENTATIVE SAMPLES OF THE MATERIAL FOR
3 ANY CONSTITUENTS THAT THE PERSON HAS KNOWLEDGE OR REASON TO BELIEVE
4 COULD BE PRESENT IN THE MATERIAL, BASED ON THE SOURCE OF THE
5 MATERIAL, ITS COMPOSITION, OR THE PROCESS THAT CREATED IT; AND, IF
6 APPLICABLE, A DESCRIPTION OF THE PROPOSED USE. THE DEPARTMENT SHALL
7 PROVIDE ITS DETERMINATION WITHIN 150 DAYS AFTER THE REQUEST IS
8 RECEIVED, UNLESS THE PARTIES AGREE TO AN EXTENSION. IF THE
9 DEPARTMENT DETERMINES THAT THE REQUEST DOES NOT INCLUDE SUFFICIENT
10 INFORMATION, THE DEPARTMENT SHALL, NOT MORE THAN 60 DAYS AFTER
11 RECEIPT OF THE REQUEST, NOTIFY THE REQUESTER. THE NOTICE SHALL
12 SPECIFY THE INFORMATION THAT IS REQUIRED FOR THE DEPARTMENT TO MAKE
13 A DECISION. THE 150-DAY PERIOD IS TOLLED UNTIL THE REQUESTOR
14 SUBMITS THE INFORMATION SPECIFIED IN THE NOTICE. IF A REQUEST IS
15 APPROVED WITH CONDITIONS, THE DEPARTMENT'S APPROVAL SHALL STATE
16 WITH SPECIFICITY THE CONDITIONS OF APPROVAL. IF THE REQUEST IS
17 DENIED, THE DEPARTMENT'S DENIAL SHALL, TO THE EXTENT PRACTICAL,
18 STATE WITH SPECIFICITY ALL OF THE REASONS FOR DENIAL. IF THE
19 DEPARTMENT FAILS TO APPROVE OR DENY THE REQUEST WITHIN THE 150-DAY
20 PERIOD, THE REQUEST IS CONSIDERED APPROVED. A PERSON REQUESTING
21 APPROVAL UNDER THIS SUBSECTION MAY APPEAL THE DEPARTMENT'S DECISION
22 TO THE RESPONSE ACTIVITY REVIEW PANEL AS SET FORTH IN SECTION
23 20114E OR MAY SEEK REVIEW OF ANY FINAL DEPARTMENT DECISION PURSUANT
24 TO SECTION 631 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
25 MCL 600.631.

26 (3) THE DEPARTMENT SHALL APPROVE A MATERIAL FOR A SPECIFIED
27 USE AS A BENEFICIAL USE BY-PRODUCT IF ALL OF THE FOLLOWING

1 REQUIREMENTS ARE MET:

2 (A) THE MATERIAL IS AN INDUSTRIAL OR COMMERCIAL MATERIAL THAT
3 IS OR HAS THE POTENTIAL TO BE GENERATED IN HIGH VOLUMES.

4 (B) THE PROPOSED USE SERVES A LEGITIMATE BENEFICIAL PURPOSE
5 OTHER THAN PROVIDING A MEANS TO DISCARD THE MATERIAL.

6 (C) A MARKET EXISTS FOR THE MATERIAL OR THERE IS A REASONABLE
7 POTENTIAL FOR THE CREATION OF A NEW MARKET FOR THE MATERIAL IF IT
8 IS APPROVED AS A BENEFICIAL USE BY-PRODUCT.

9 (D) FOR A MATERIAL THAT WILL BE PLACED ON THE LAND OR USED IN
10 THE OUTDOOR ENVIRONMENT, ANY HAZARDOUS CONSTITUENT IN THE MATERIAL
11 MEETS 1 OR MORE OF THE FOLLOWING REQUIREMENTS:

12 (i) IT IS LISTED IN THE DEPARTMENT'S 2005 MICHIGAN BACKGROUND
13 SOIL SURVEY AND FALLS WITHIN THE TYPICAL RANGES PUBLISHED IN THAT
14 DOCUMENT.

15 (ii) IT FALLS BELOW PART 201 RESIDENTIAL DIRECT CONTACT
16 CRITERIA. THIS SUB-SUBPARAGRAPH DOES NOT APPLY UNLESS HAZARDOUS
17 CONSTITUENTS IN LEACHATE FROM THE MATERIAL, USING EPA METHOD 1311
18 OR 1312, FALL BELOW PART 201 HEALTH-BASED RESIDENTIAL DRINKING
19 WATER CRITERIA, AND DO NOT VIOLATE ANY RELEVANT SURFACE WATER
20 QUALITY STANDARD ESTABLISHED UNDER PART 31.

21 (iii) IF CONSTITUENTS EXCEED THE RANGES AND CONCENTRATIONS SET
22 FORTH IN SUBPARAGRAPHS (i) AND (ii), THE DEPARTMENT DETERMINES THAT
23 THE MATERIAL AND USE ARE PROTECTIVE OF THE PUBLIC HEALTH AND
24 ENVIRONMENT. IN MAKING THE DETERMINATION, THE DEPARTMENT SHALL
25 CONSIDER THE POTENTIAL FOR RISK TO HUMAN HEALTH AND THE ENVIRONMENT
26 GIVEN THE ENVIRONMENTAL FATE AND TRANSPORT OF THE MATERIAL IN SOIL,
27 GROUNDWATER, OR OTHERWISE, FOR THE USE.

1 **(E) THE MATERIALS AND USES MEET ALL FEDERAL AND STATE CONSUMER**
2 **PROTECTION AND PRODUCT SAFETY LAWS AND REGULATIONS.**

3 Sec. 20101. (1) As used in this part:

4 (a) "Act of God" means an unanticipated grave natural disaster
5 or other natural phenomenon of an exceptional, inevitable, and
6 irresistible character, the effects of which could not have been
7 prevented or avoided by the exercise of due care or foresight.

8 (b) "Agricultural property" means real property used for
9 farming in any of its branches, including cultivating of soil;
10 growing and harvesting of any agricultural, horticultural, or
11 floricultural commodity; dairying; raising of livestock, bees,
12 fish, fur-bearing animals, or poultry; turf and tree farming; and
13 performing any practices on a farm as an incident to, or in
14 conjunction with, these farming operations. Agricultural property
15 does not include property used for commercial storage, processing,
16 distribution, marketing, or shipping operations.

17 (c) "All appropriate inquiry" means an evaluation of
18 environmental conditions at a property at the time of purchase,
19 occupancy, or foreclosure that reasonably defines the existing
20 conditions and circumstances at the property in conformance with 40
21 CFR 312.

22 (d) "Attorney general" means the department of the attorney
23 general.

24 (e) "Background concentration" means the concentration or
25 level of a hazardous substance that exists in the environment at or
26 regionally proximate to a facility that is not attributable to any
27 release at or regionally proximate to the facility.

1 (f) "Baseline environmental assessment" means a written
2 document that describes the results of an all appropriate inquiry
3 and the sampling and analysis that confirm that the property is a
4 facility. However, for purposes of a baseline environmental
5 assessment, the all appropriate inquiry under 40 CFR 312.20(a) may
6 be conducted within 45 days after the date of acquisition of a
7 property and the components of an all appropriate inquiry under 40
8 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or updated
9 within 45 days after the date of acquisition of a property.

10 (g) "Board" means the brownfield redevelopment board created
11 in section 20104a.

12 (h) "Cleanup criteria for unrestricted residential use" means
13 either of the following:

14 (i) Cleanup criteria that satisfy the requirements for the
15 residential category in section 20120a(1)(a) or (16).

16 (ii) Cleanup criteria for unrestricted residential use under
17 part 213.

18 (i) "Department" means the director of the department of
19 ~~natural resources and environment~~ **ENVIRONMENTAL QUALITY** or his or
20 her designee to whom the director delegates a power or duty by
21 written instrument.

22 (j) "Director" means the director of the department of ~~natural~~
23 ~~resources and environment~~ **ENVIRONMENTAL QUALITY**.

24 (k) "Directors" means the directors or their designees of the
25 departments of ~~natural resources and environment~~ **ENVIRONMENTAL**
26 **QUALITY**, community health, agriculture **AND RURAL DEVELOPMENT**, and
27 state police.

1 (l) "Disposal" means the discharge, deposit, injection,
2 dumping, spilling, leaking, or placing of any hazardous substance
3 into or on any land or water so that the hazardous substance or any
4 constituent of the hazardous substance may enter the environment or
5 be emitted into the air or discharged into any groundwater or
6 surface water.

7 (m) "Enforcement costs" means court expenses, reasonable
8 attorney fees of the attorney general, and other reasonable
9 expenses of an executive department that are incurred in relation
10 to enforcement under this part.

11 (n) "Environment" or "natural resources" means land, surface
12 water, groundwater, subsurface ~~strata~~, air, fish, wildlife, or
13 biota within the state.

14 (o) "Environmental contamination" means the release of a
15 hazardous substance, or the potential release of a discarded
16 hazardous substance, in a quantity which is or may become injurious
17 to the environment or to the public health, safety, or welfare.

18 (p) "Evaluation" means those activities including, but not
19 limited to, investigation, studies, sampling, analysis, development
20 of feasibility studies, and administrative efforts that are needed
21 to determine the nature, extent, and impact of a release or threat
22 of release and necessary response activities.

23 (q) "Exacerbation" means the occurrence of either of the
24 following caused by an activity undertaken by the person who owns
25 or operates the property, with respect to contamination for which
26 the person is not liable:

27 (i) Contamination that has migrated beyond the boundaries of

1 the property which is the source of the release at levels above
2 cleanup criteria for unrestricted residential use unless a
3 criterion is not relevant because exposure is reliably restricted
4 as otherwise provided in this part.

5 (ii) A change in facility conditions that increases response
6 activity costs.

7 (r) "Facility" means any area, place, or property where a
8 hazardous substance in excess of the concentrations that satisfy
9 the cleanup criteria for unrestricted residential use has been
10 released, deposited, disposed of, or otherwise comes to be located.
11 Facility does not include any area, place, or property where any of
12 the following conditions are satisfied:

13 (i) Response activities have been completed under this part
14 that satisfy the cleanup criteria for unrestricted residential use.

15 (ii) Corrective action has been completed under part 213 that
16 satisfies the cleanup criteria for unrestricted residential use.

17 (iii) Site-specific criteria that have been approved by the
18 department for application at the area, place, or property are met
19 or satisfied and both of the following conditions are met:

20 (A) The site-specific criteria do not depend on any land use
21 or resource use restriction to ensure protection of the public
22 health, safety, or welfare or the environment.

23 (B) Hazardous substances at the area, place, or property that
24 are not addressed by site-specific criteria satisfy the cleanup
25 criteria for unrestricted residential use.

26 (iv) **HAZARDOUS SUBSTANCES IN CONCENTRATIONS ABOVE RESIDENTIAL**
27 **CLEANUP CRITERIA ARE PRESENT DUE ONLY TO THE STORAGE OR USE OF**

1 **BENEFICIAL USE BY-PRODUCTS OR INERT MATERIALS AT THE AREA, PLACE,**
2 **OR PROPERTY IN COMPLIANCE WITH PART 115.**

3 (s) "Feasibility study" means a process for developing,
4 evaluating, and selecting appropriate response activities.

5 (t) "Financial assurance" means a performance bond, escrow,
6 cash, certificate of deposit, irrevocable letter of credit,
7 corporate guarantee, or other equivalent security, or any
8 combination thereof.

9 (u) "Foreclosure" means possession of a property by a lender
10 on which it has foreclosed on a security interest or the expiration
11 of a lawful redemption period, whichever occurs first.

12 (v) "Free product" means a hazardous substance in a liquid
13 phase equal to or greater than 1/8 inch of measurable thickness
14 that is not dissolved in water and that has been released into the
15 environment.

16 (w) "Fund" means the cleanup and redevelopment fund
17 established in section 20108.

18 (x) "Hazardous substance" means 1 or more of the following,
19 but does not include fruit, vegetable, or field crop residuals or
20 processing by-products, or aquatic plants, that are applied to the
21 land for an agricultural use or for use as an animal feed, if the
22 use is consistent with generally accepted agricultural management
23 practices developed pursuant to the Michigan right to farm act,
24 1981 PA 93, MCL 286.471 to 286.474:

25 (i) Any substance that the department demonstrates, on a case
26 by case basis, poses an unacceptable risk to the public health,
27 safety, or welfare, or the environment, considering the fate of the

1 material, dose-response, toxicity, or adverse impact on natural
2 resources.

3 (ii) Hazardous substance as defined in the comprehensive
4 environmental response, compensation, and liability act, 42 USC
5 9601 to 9675.

6 (iii) Hazardous waste as defined in part 111.

7 (iv) Petroleum as described in part 213.

8 (y) "Interim response activity" means the cleanup or removal
9 of a released hazardous substance or the taking of other actions,
10 prior to the implementation of a remedial action, as may be
11 necessary to prevent, minimize, or mitigate injury to the public
12 health, safety, or welfare, or to the environment. Interim response
13 activity also includes, but is not limited to, measures to limit
14 access, replacement of water supplies, and temporary relocation of
15 people as determined to be necessary by the department. In
16 addition, interim response activity means the taking of other
17 actions as may be necessary to prevent, minimize, or mitigate a
18 threatened release.

19 (z) "Lender" means any of the following:

20 (i) A state or nationally chartered bank.

21 (ii) A state or federally chartered savings and loan
22 association or savings bank.

23 (iii) A state or federally chartered credit union.

24 (iv) Any other state or federally chartered lending institution
25 or regulated affiliate or regulated subsidiary of any entity listed
26 in this subparagraph or subparagraphs (i) to (iii).

27 (v) An insurance company authorized to do business in this

1 state pursuant to the insurance code of 1956, 1956 PA 218, MCL
2 500.100 to 500.8302.

3 (vi) A motor vehicle **SALES** finance company subject to the motor
4 vehicle finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141,
5 with net assets in excess of \$50,000,000.00.

6 (vii) A foreign bank.

7 (viii) A retirement fund regulated pursuant to state law or a
8 pension fund regulated pursuant to federal law with net assets in
9 excess of \$50,000,000.00.

10 (ix) A state or federal agency authorized by law to hold a
11 security interest in real property or a local unit of government
12 holding a reversionary interest in real property.

13 (x) A nonprofit tax exempt organization created to promote
14 economic development in which a majority of the organization's
15 assets are held by a local unit of government.

16 (xi) Any other person who loans money for the purchase of or
17 improvement of real property.

18 (xii) Any person who retains or receives a security interest to
19 service a debt or to secure a performance obligation.

20 (aa) "Local health department" means that term as defined in
21 section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

22 (bb) "Local unit of government" means a county, city,
23 township, or village, an agency of a local unit of government, an
24 authority or any other public body or entity created by or pursuant
25 to state law. Local unit of government does not include the state
26 or federal government or a state or federal agency.

27 (cc) "Method detection limit" means the minimum concentration

1 of a hazardous substance which can be measured and reported with
2 99% confidence that the analyte concentration is greater than zero
3 and is determined from analysis of a sample in a given matrix that
4 contains the analyte.

5 (dd) "No further action letter" means a written response
6 provided by the department under section 20114d confirming that a
7 no further action report has been approved after review by the
8 department.

9 (ee) "No further action report" means a report under section
10 20114d detailing the completion of remedial actions and including a
11 postclosure plan and a postclosure agreement, if appropriate.

12 (ff) "Operator" means a person who is in control of or
13 responsible for the operation of a facility. Operator does not
14 include either of the following:

15 (i) A person who holds indicia of ownership primarily to
16 protect the person's security interest in the facility, unless that
17 person participates in the management of the facility as described
18 in section 20101a.

19 (ii) A person who is acting as a fiduciary in compliance with
20 section 20101b.

21 (gg) "Owner" means a person who owns a facility. Owner does
22 not include either of the following:

23 (i) A person who holds indicia of ownership primarily to
24 protect the person's security interest in the facility, including,
25 but not limited to, a vendor's interest under a recorded land
26 contract, unless that person participates in the management of the
27 facility as described in section 20101a.

1 (ii) A person who is acting as a fiduciary in compliance with
2 section 20101b.

3 (hh) "Panel" means the response activity review panel created
4 in section 20114e.

5 (ii) "Permitted release" means 1 or more of the following:

6 (i) A release in compliance with an applicable, legally
7 enforceable permit issued under state law.

8 (ii) A lawful and authorized discharge into a permitted waste
9 treatment facility.

10 (iii) A federally permitted release as defined in the
11 comprehensive environmental response, compensation, and liability
12 act, 42 USC 9601 to 9675.

13 (jj) "Postclosure agreement" means an agreement between the
14 department and a person who has submitted a no further action
15 report that prescribes, as appropriate, activities required to be
16 undertaken upon completion of remedial actions as provided for in
17 section 20114d.

18 (kk) "Postclosure plan" means a plan for land use or resource
19 use restrictions or permanent markers at a facility upon completion
20 of remedial actions as required under section 20114c.

21 (ll) "Release" includes, but is not limited to, any spilling,
22 leaking, pumping, pouring, emitting, emptying, discharging,
23 injecting, escaping, leaching, dumping, or disposing of a hazardous
24 substance into the environment, or the abandonment or discarding of
25 barrels, containers, and other closed receptacles containing a
26 hazardous substance. Release does not include any of the following:

27 (i) A release that results in exposure to persons solely within

1 a workplace, with respect to a claim that these persons may assert
2 against their employers.

3 (ii) Emissions from the engine exhaust of a motor vehicle,
4 rolling stock, aircraft, or vessel.

5 (iii) A release of source, by-product, or special nuclear
6 material from a nuclear incident, as those terms are defined in the
7 atomic energy act of 1954, 42 USC 2011 to 2297h-13, if the release
8 is subject to requirements with respect to financial protection
9 established by the nuclear regulatory commission under 42 USC 2210,
10 or any release of source by-product or special nuclear material
11 from any processing site designated under 42 USC 7912(a)(1) or 42
12 USC 7942(a).

13 (iv) If applied according to label directions and according to
14 generally accepted agricultural and management practices **DEVELOPED**
15 **PURSUANT TO THE MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.471**
16 **TO 286.474**, the application of a fertilizer, soil conditioner,
17 agronomically applied manure, or pesticide, or fruit, vegetable, or
18 field crop residuals or processing by-products, aquatic plants, or
19 a combination of these substances. As used in this subparagraph,
20 fertilizer and soil conditioner have the meaning given to these
21 terms in part 85, and pesticide has the meaning given to that term
22 in part 83.

23 (v) ~~A release does not include~~ **APPLICATION OF** fruits,
24 vegetables, field crop processing by-products, or aquatic plants ~~,~~
25 ~~that are applied to the land for an agricultural use or for use as~~
26 an animal feed, if the use is consistent with generally accepted
27 agricultural and management practices developed pursuant to the

1 Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

2 (vi) **THE STORAGE OR USE OF BENEFICIAL USE BY-PRODUCTS OR INERT**
3 **MATERIALS AT THE SITE OF STORAGE OR USE IF IN COMPLIANCE WITH PART**
4 **115.**

5 (mm) "Remedial action" includes, but is not limited to,
6 cleanup, removal, containment, isolation, destruction, or treatment
7 of a hazardous substance released or threatened to be released into
8 the environment, monitoring, maintenance, or the taking of other
9 actions that may be necessary to prevent, minimize, or mitigate
10 injury to the public health, safety, or welfare, or to the
11 environment.

12 (nn) "Remedial action plan" means a work plan for performing
13 remedial action under this part.

14 (oo) "Residential closure" means a facility at which the
15 contamination has been addressed in a no further action report that
16 satisfies the limited residential cleanup criteria under section
17 20120a(1)(c) or the site-specific residential cleanup criteria
18 under sections 20120a(2) and 20120b, that contains land use or
19 resource use restrictions, and that is approved by the department
20 or is considered approved by the department under section 20120d.

21 (pp) "Response activity" means evaluation, interim response
22 activity, remedial action, demolition, or the taking of other
23 actions necessary to protect the public health, safety, or welfare,
24 or the environment or the natural resources. Response activity also
25 includes health assessments or health effect studies carried out
26 under the supervision, or with the approval of, the department of
27 community health and enforcement actions related to any response

1 activity.

2 (qq) "Response activity costs" or "costs of response activity"
3 means all costs incurred in taking or conducting a response
4 activity, including enforcement costs.

5 (rr) "Response activity plan" means a plan for undertaking
6 response activities. A response activity plan may include 1 or more
7 of the following:

8 (i) A plan to undertake interim response activities.

9 (ii) A plan for evaluation activities.

10 (iii) A feasibility study.

11 (iv) A remedial action plan.

12 (ss) "Security interest" means any interest, including a
13 reversionary interest, in real property created or established for
14 the purpose of securing a loan or other obligation. Security
15 interests include, but are not limited to, mortgages, deeds of
16 trusts, liens, and title pursuant to lease financing transactions.
17 Security interests may also arise from transactions such as sale
18 and leasebacks, conditional sales, installment sales, trust receipt
19 transactions, certain assignments, factoring agreements, accounts
20 receivable financing arrangements, consignments, or any other
21 transaction in which evidence of title is created if the
22 transaction creates or establishes an interest in real property for
23 the purpose of securing a loan or other obligation.

24 (tt) "Target detection limit" means the detection limit for a
25 hazardous substance in a given environmental medium that is
26 specified by the department on a list that it publishes not more
27 than once a year. The department shall identify 1 or more

1 analytical methods, when a method is available, that are judged to
2 be capable of achieving the target detection limit for a hazardous
3 substance in a given environmental medium. The target detection
4 limit for a given hazardous substance is greater than or equal to
5 the method detection limit for that hazardous substance. In
6 establishing a target detection limit, the department shall
7 consider the following factors:

8 (i) The low level capabilities of methods published by
9 government agencies.

10 (ii) Reported method detection limits published by state
11 laboratories.

12 (iii) Reported method detection limits published by commercial
13 laboratories.

14 (iv) The need to be able to measure a hazardous substance at
15 concentrations at or below cleanup criteria.

16 (uu) "Threatened release" or "threat of release" means any
17 circumstance that may reasonably be anticipated to cause a release.

18 (vv) "Venting groundwater" means groundwater that is entering
19 a surface water of the state from a facility.

20 (2) As used in this part:

21 (a) The phrase "a person who is liable" includes a person who
22 is described as being subject to liability in section 20126. The
23 phrase "a person who is liable" does not presume that liability has
24 been adjudicated.

25 (b) The phrase "this part" includes "rules promulgated under
26 this part".

27 Sec. 20114e. (1) The director shall establish a response

1 activity review panel to advise him or her on technical or
2 scientific disputes, including disputes regarding assessment of
3 risk, concerning response activity plans and no further action
4 reports under this part, and initial assessment reports, final
5 assessment reports, and closure reports under part 213.

6 (2) The panel shall consist of 15 individuals, appointed by
7 the director. Each member of the panel shall meet all of the
8 following minimum requirements:

9 (a) Meet 1 or more of the following:

10 (i) Hold a current professional engineer's or professional
11 geologist's license or registration from a state, tribe, or United
12 States territory, or the Commonwealth of Puerto Rico, and have the
13 equivalent of 6 years of full-time relevant experience.

14 (ii) Have a baccalaureate degree from an accredited institution
15 of higher education in a discipline of engineering or science and
16 the equivalent of 10 years of full-time relevant experience.

17 (iii) Have a master's degree from an accredited institution of
18 higher education in a discipline of engineering or science and the
19 equivalent of 8 years of full-time relevant experience.

20 (b) Remain current in his or her field through participation
21 in continuing education or other activities.

22 (3) An individual is not eligible to be a member of the panel
23 if any 1 of the following is true:

24 (a) The individual is a current employee of any office,
25 department, or agency of the state.

26 (b) The individual is a party to 1 or more contracts with the
27 department and the compensation paid under those contracts

1 represented more than 5% of the individual's annual gross revenue
2 in any of the preceding 3 years.

3 (c) The individual is employed by an entity that is a party to
4 1 or more contracts with the department and the compensation paid
5 to the individual's employer under these contracts represented more
6 than 5% of the employer's annual gross revenue in any of the
7 preceding 3 years.

8 (d) The individual was employed by the department within the
9 preceding 3 years.

10 (4) An individual appointed to the panel shall serve for a
11 term of 3 years and may be reappointed for 1 additional 3-year
12 term. After serving 2 consecutive terms, the individual shall not
13 be a member of the panel for a period of at least 2 years before
14 being eligible to be appointed to the panel again. The terms for
15 members first appointed shall be staggered so that not more than 5
16 vacancies are scheduled to occur in a single year. Individuals
17 appointed to the panel shall serve without compensation. However,
18 members of the panel may be reimbursed for their actual and
19 necessary expenses incurred in the performance of their official
20 duties as members of the panel.

21 (5) A vacancy on the panel shall be filled in the same manner
22 as the original appointment.

23 (6) The business that the panel may perform shall be conducted
24 at a public meeting of the panel held in compliance with the open
25 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

26 (7) A person who submitted a response activity plan; ~~or~~ a no
27 further action report under this part; ~~or~~ an initial assessment

1 report, final assessment report, or closure report under part 213;
2 **OR A REQUEST TO APPROVE USE, REUSE, OR RECYCLING UNDER SECTION**
3 **11552** may appeal a decision made by the department regarding a
4 technical or scientific dispute, including a dispute regarding
5 assessment of risk, concerning the response activity plan, no
6 further action report, initial assessment report, final assessment
7 report, ~~or~~ closure report, **OR REQUEST UNDER SECTION 11552** by
8 submitting a petition to the director. However, an issue that was
9 addressed as part of the final decision of the director under
10 section 21332 or that is the subject of a contested case hearing
11 under section 21332 is not eligible for review by the panel. The
12 petition shall include the issues in dispute, the relevant facts
13 upon which the dispute is based, factual data, analysis, opinion,
14 and supporting documentation for the petitioner's position. The
15 petitioner shall also submit a fee of \$3,500.00. If the director
16 believes that the dispute may be able to be resolved without
17 convening the panel, the director may contact the petitioner
18 regarding the issues in dispute and may negotiate a resolution of
19 the dispute. This negotiation period shall not exceed 45 days. If
20 the dispute is resolved without convening the panel, any fee that
21 is submitted with the petition shall be returned.

22 (8) If a dispute is not resolved pursuant to subsection (7),
23 the director shall schedule a meeting of 5 members of the panel,
24 selected on the basis of their relevant expertise, within 45 days
25 after receiving the original petition. If the dispute involves an
26 underground storage tank system, at least 3 of the members selected
27 shall have relevant experience in the American society for testing

1 and materials risk-based corrective action processes described in
2 part 213. A member selected for the dispute resolution process
3 shall agree not to accept employment by the person bringing the
4 dispute before the panel, or to undertake any employment concerning
5 the facility in question for a period of 1 year after the decision
6 has been rendered on the matter if that employment would represent
7 more than 5% of the member's gross revenue in any of the preceding
8 3 years. The director shall provide a copy of all supporting
9 documentation to members of the panel who will hear the dispute. An
10 alternative member may be selected by the director to replace a
11 member who is unable to participate in the dispute resolution
12 process. Any action by the members selected to hear the dispute
13 shall require a majority of the votes cast. The members selected
14 for the dispute resolution process shall elect a chairperson of the
15 dispute resolution process. At a meeting scheduled to hear the
16 dispute, representatives of the petitioner and the department shall
17 each be afforded an opportunity to present their positions to the
18 panel. The fee that is received by the director along with the
19 petition shall be forwarded to the state treasurer for deposit into
20 the fund.

21 (9) Within 45 days after hearing the dispute, the members of
22 the panel who were selected for and participated in the dispute
23 resolution process shall make a recommendation regarding the
24 petition and provide written notice of the recommendation to the
25 director of the department and the petitioner. The written
26 recommendation shall include the specific scientific or technical
27 rationale for the recommendation. The panel's recommendation

1 regarding the petition may be to adopt, modify, or reverse, in
2 whole or in part, the department's decision that is the subject of
3 the petition. If the panel does not make its recommendation within
4 this 45-day time period, the decision of the department is the
5 final decision of the director.

6 (10) Within 60 days after receiving written notice of the
7 panel's recommendation, the director shall issue a final decision,
8 in writing, regarding the petition. However, this time period may
9 be extended by written agreement between the director and the
10 petitioner. If the director agrees with the recommendation of the
11 panel, the department shall incorporate the recommendation into its
12 response to the response activity plan, no further action report,
13 initial assessment report, final assessment report, or closure
14 report. If the director rejects the recommendation of the panel,
15 the director shall issue a written decision to the petitioner with
16 a specific rationale for rejecting the recommendation of the panel.
17 If the director fails to issue a final decision within the time
18 period provided for in this subsection, the recommendation of the
19 panel shall be considered the final decision of the director. The
20 final decision of the director under this subsection is subject to
21 review pursuant to section 631 of the revised judicature act of
22 1961, 1961 PA 236, MCL 600.631.

23 (11) Upon request of the director, the panel shall make a
24 recommendation to the department on whether a member should be
25 removed from the panel. Prior to making this recommendation, the
26 panel may convene a peer review panel to evaluate the conduct of
27 the member with regard to compliance with this part.

1 (12) A member of the panel shall not participate in the
2 dispute resolution process for any appeal in which that member has
3 a conflict of interest. The director shall select a member of the
4 panel to replace a member who has a conflict of interest under this
5 subsection. For purposes of this subsection, a member has a
6 conflict of interest if a petitioner has hired that member or the
7 member's employer on any environmental matter within the preceding
8 3 years.

9 (13) As used in this section, "relevant experience" means
10 active participation in the preparation, design, implementation,
11 and assessment of remedial investigations, feasibility studies,
12 interim response activities, and remedial actions under this part
13 or experience in the American society for testing and materials
14 risk-based corrective action processes described in part 213. This
15 experience must demonstrate the exercise of sound professional
16 judgment and knowledge of the requirements of this part or part
17 213, or both.

18 Sec. 20126. (1) Notwithstanding any other provision or rule of
19 law and except as provided in subsections (2), (3), (4), and (5)
20 and section 20128, the following persons are liable under this
21 part:

22 (a) The owner or operator of a facility if the owner or
23 operator is responsible for an activity causing a release or threat
24 of release.

25 (b) The owner or operator of a facility at the time of
26 disposal of a hazardous substance if the owner or operator is
27 responsible for an activity causing a release or threat of release.

1 (c) An owner or operator of a facility who becomes an owner or
2 operator on or after June 5, 1995, unless the owner or operator
3 complies with both of the following:

4 (i) A baseline environmental assessment is conducted prior to
5 or within 45 days after the earlier of the date of purchase,
6 occupancy, or foreclosure. For purposes of this section, assessing
7 property to conduct a baseline environmental assessment does not
8 constitute occupancy.

9 (ii) The owner or operator provides a baseline environmental
10 assessment to the department and subsequent purchaser or transferee
11 within 6 months after the earlier of the date of purchase,
12 occupancy, or foreclosure.

13 (d) A person who by contract, agreement, or otherwise arranged
14 for disposal or treatment, or arranged with a transporter for
15 transport for disposal or treatment, of a hazardous substance owned
16 or possessed by the person, by any other person, at a facility
17 owned or operated by another person and containing the hazardous
18 substance. This subdivision does not include any of the following:

19 (i) A person who, on or after June 5, 1995, arranges for the
20 sale or transport of a secondary material for use in producing a
21 new product. As used in this subparagraph, secondary material means
22 scrap metal, paper, plastic, glass, textiles, or rubber, which has
23 demonstrated reuse or recycling potential and has been separated or
24 removed from the solid waste stream for reuse or recycling, whether
25 or not subsequent separation and processing is required, if
26 substantial amounts of the material are consistently used in the
27 manufacture of products which may otherwise be produced from a raw

1 or virgin material.

2 (ii) A person who, prior to June 5, 1995, arranges for the sale
3 or transport of a secondary material for use in producing a new
4 product unless the state has incurred response activity costs
5 associated with these secondary materials prior to December 17,
6 1999. As used in this subparagraph, secondary material means scrap
7 metal, paper, plastic, glass, textiles, or rubber, which has
8 demonstrated reuse or recycling potential and has been separated or
9 removed from the solid waste stream for reuse or recycling, whether
10 or not subsequent separation and processing is required, if
11 substantial amounts of the material are consistently used in the
12 manufacture of products which may otherwise be produced from a raw
13 or virgin material.

14 (iii) A person who arranges the lawful transport or disposal of
15 any product or container commonly used in a residential household,
16 which is in a quantity commonly used in a residential household,
17 and which was used in the person's residential household.

18 (iv) **A PERSON WHO STORES OR USES OR ARRANGES FOR THE STORAGE OR**
19 **USE OF A BENEFICIAL USE BY-PRODUCT OR INERT MATERIAL IN COMPLIANCE**
20 **WITH PART 115.**

21 (e) A person who accepts or accepted any hazardous substance
22 for transport to a facility selected by that person.

23 (f) The estate or trust of a person described in subdivisions
24 (a) to (e).

25 (2) Subject to section 20107a, an owner or operator who
26 complies with subsection (1)(c) is not liable for contamination
27 existing at the facility at the earlier of the date of purchase,

1 occupancy, or foreclosure, unless the person is responsible for an
2 activity causing the contamination existing at the facility.

3 Subsection (1)(c) does not alter a person's liability with regard
4 to a subsequent release or threat of release at a facility if the
5 person is responsible for an activity causing the subsequent
6 release or threat of release.

7 (3) Notwithstanding subsection (1), the following persons are
8 not liable under this part with respect to contamination at a
9 facility resulting from a release or threat of release unless the
10 person is responsible for an activity causing that release or
11 threat of release:

12 (a) The state or a local unit of government that acquired
13 ownership or control of a facility involuntarily through
14 bankruptcy, tax delinquency, abandonment, a transfer from a lender
15 pursuant to subsection (7), or other circumstances in which the
16 government involuntarily acquires title or control by virtue of its
17 governmental function or as provided in this part, a local unit of
18 government to which ownership or control of a facility is
19 transferred by the state or by another local unit of government
20 that is not liable under subsection (1), or the state or a local
21 unit of government that acquired ownership or control of a facility
22 by seizure, receivership, or forfeiture pursuant to the operation
23 of law or by court order.

24 (b) A state or local unit of government that holds or acquires
25 an easement interest in a facility, holds or acquires an interest
26 in a facility by dedication in a plat, or by dedication pursuant to
27 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an

1 interest in a facility for a transportation or utility corridor,
2 including sewers, pipes, and pipelines, or public right of way.

3 (c) A person who holds an easement interest in a facility or
4 holds a utility franchise to provide service, for the purpose of
5 conveying or providing goods or services, including, but not
6 limited to, utilities, sewers, roads, railways, and pipelines; or a
7 person that acquires access through an easement.

8 (d) A person who owns severed subsurface mineral rights or
9 severed subsurface formations or who leases subsurface mineral
10 rights or formations.

11 (e) The state or a local unit of government that leases
12 property to a person if the state or the local unit of government
13 is not liable under this part for environmental contamination at
14 the property.

15 (f) A person who owns or occupies residential real property if
16 hazardous substance use at the property is consistent with
17 residential use.

18 (g) A person who acquires a facility as a result of the death
19 of the prior owner or operator of the facility, whether by
20 inheritance, devise, or transfer from an inter vivos or
21 testamentary trust.

22 (h) A person who did not know and had no reason to know that
23 the property was a facility. To establish that the person did not
24 know and did not have a reason to know that the property was a
25 facility, the person shall have undertaken at the time of
26 acquisition all appropriate inquiry into the previous ownership and
27 uses of the property consistent with good commercial or customary

1 practice. A determination of liability under this section shall
2 take into account any specialized knowledge or experience on the
3 part of the person, the relationship of the purchase price to the
4 value of the property if uncontaminated by a hazardous substance,
5 commonly known or reasonable ascertainable information about the
6 property, the obviousness of the presence or likely presence of a
7 release or threat of release at the property, and the ability to
8 detect a release or threat of release by appropriate inspection.

9 (i) A utility performing normal construction, maintenance, and
10 repair activities in the normal course of its utility service
11 business. This ~~subsection~~ **SUBDIVISION** does not apply to property
12 owned by the utility.

13 (j) A lessee who uses the leased property for a retail,
14 office, or commercial purpose regardless of the level of the
15 lessee's hazardous substance use.

16 (k) A person who holds a license, easement, or lease, or who
17 otherwise occupies or operates property, for the purpose of siting,
18 constructing, operating, or removing a wind energy conversion
19 system or any component of a wind energy conversion system. As used
20 in this subdivision, "wind energy conversion system" means that
21 term as defined in section 13 of the clean, renewable, and
22 efficient energy act, 2008 PA 295, MCL 460.1013.

23 (4) Notwithstanding subsection (1), the following persons are
24 not liable under this part:

25 (a) The owner or operator of a hazardous waste treatment,
26 storage, or disposal facility regulated pursuant to part 111 from
27 which there is a release or threat of release solely from the

1 treatment, storage, or disposal facility, or a waste management
2 unit at the facility and the release or threat of release is
3 subject to corrective action under part 111.

4 (b) A lender that engages in or conducts a lawful marshalling
5 or liquidation of personal property if the lender does not cause or
6 contribute to the environmental contamination. This includes
7 holding a sale of personal property on a portion of the facility.

8 (c) The owner or operator of property onto which contamination
9 has migrated unless that person is responsible for an activity
10 causing the release that is the source of the contamination.

11 (d) A person who owns or operates a facility in which the
12 release or threat of release was caused solely by 1 or more of the
13 following:

14 (i) An act of God.

15 (ii) An act of war.

16 (iii) An act or omission of a third party other than an employee
17 or agent of the person or a person in a contractual relationship
18 existing either directly or indirectly with a person who is liable
19 under this section.

20 (e) Any person for environmental contamination addressed in a
21 no further action report that is approved by the department or is
22 considered approved under section 20114d. Notwithstanding this
23 subdivision, a person may be liable under this part for the
24 following:

25 (i) A subsequent release not addressed in the no further action
26 report if the person is otherwise liable under this part for that
27 release.

1 (ii) Environmental contamination that is not addressed in the
2 no further action report and for which the person is otherwise
3 liable under this part.

4 (iii) If the no further action report relies on land use or
5 resource use restrictions, an owner or operator who desires to
6 change those restrictions is responsible for any response
7 activities necessary to comply with this part for any land use or
8 resource use other than the land use or resource use that was the
9 basis for the no further action report.

10 (iv) If the no further action report relies on monitoring
11 necessary to assure the effectiveness and integrity of the remedial
12 action, an owner or operator who is otherwise liable for
13 environmental contamination addressed in a no further action report
14 is liable under this part for additional response activities
15 necessary to address any potential exposure to the environmental
16 contamination demonstrated by the monitoring in excess of the
17 levels relied on in the no further action report.

18 (v) If the remedial actions that were the basis for the no
19 further action report fail to meet performance objectives that are
20 identified in the no further action report, an owner or operator
21 who is otherwise liable for environmental contamination addressed
22 in the no further action report is liable under this part for
23 response activities necessary to satisfy the performance objectives
24 or otherwise comply with this part.

25 (5) Notwithstanding any other provision of this part, the
26 state or a local unit of government or a lender who has not
27 participated in the management of the facility is not liable under

1 this part for costs or damages as a result of response activity
2 taken in response to a release or threat of release. For a lender,
3 this subsection applies only to response activity undertaken prior
4 to foreclosure. This subsection does not preclude liability for
5 costs or damages as a result of gross negligence, including
6 reckless, willful, or wanton misconduct, or intentional misconduct
7 by the state or local unit of government.

8 (6) In establishing liability under this section, the
9 department bears the burden of proof.

10 (7) Beginning on ~~the effective date of the 2010 amendatory act~~
11 ~~that amended this section~~ **DECEMBER 14, 2010**, the department shall
12 not implement or enforce R 299.5901 to R 299.5919 of the Michigan
13 administrative code, except the department may implement and
14 enforce the following rules:

15 (a) Subrules (2), (6), (8), and (9) of rule 903, R 299.5903 of
16 the Michigan administrative code.

17 (b) Subrules (2) through (6) of rule 905, R 299.5905 of the
18 Michigan administrative code.

19 (c) Rule 919, R 299.5919 of the Michigan administrative code.

20 (8) Notwithstanding subsection (1)(c), if the owner or
21 operator of the facility became the owner or operator of the
22 facility on or after June 5, 1995 and prior to March 6, 1996, and
23 the facility contains an underground storage tank system as defined
24 in part 213, that owner or operator is liable under this part only
25 if the owner or operator is responsible for an activity causing a
26 release or threat of release.

27 (9) An owner or operator who was in compliance with subsection

1 (1)(c) prior to ~~the effective date of the amendatory act that added~~
2 ~~this subsection~~ **DECEMBER 14, 2010**, is considered to be in
3 compliance with subsection (1)(c).

4 Enacting section 1. This amendatory act does not take effect
5 unless House Bill No. 5438 of the 96th Legislature is enacted into
6 law.