



HOUSE BILL No. 4385

February 14, 1995, Introduced by Reps. Middaugh, Alley, Hill and Murphy and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 502, 4904, 8703, 8715, 11110, 11115a, 11117, 11119, and 11120 of Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," being sections 324.502, 324.4904, 324.8703, 324.8715, 324.11110, 324.11115a, 324.11117, 324.11119, and 324.11120 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 502, 4904, 8703, 8715, 11110, 11115a,
2 11117, 11119, and 11120 of Act No. 451 of the Public Acts of
3 1994, being sections 324.502, 324.4904, 324.8703, 324.8715,
4 324.11110, 324.11115a, 324.11117, 324.11119, and 324.11120 of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 502. (1) The powers and duties previously vested by
7 law in the public domain commission; the state game, fish, and

1 forest fire commissioner and the state board of fish
2 commissioners; the geological survey; and the Michigan state park
3 commission are transferred to and vested in the department. IN
4 ADDITION, THE POWERS AND DUTIES PREVIOUSLY VESTED BY LAW IN EACH
5 OF THE FOLLOWING ARE ALSO TRANSFERRED TO AND VESTED IN THE
6 DEPARTMENT:

7 (A) THE NONGAME FISH AND WILDLIFE ADVISORY COMMITTEE CREATED
8 IN FORMER ACT NO. 285 OF THE PUBLIC ACTS OF 1986.

9 (B) THE GREAT LAKES FISHERY ADVISORY COMMITTEE.

10 (C) THE HUNTING AREA CONTROL COMMITTEE.

11 (D) THE FOREST AND MINERAL RESOURCE DEVELOPMENT FUND BOARD.

12 (E) THE STATE FOREST PRODUCTS INDUSTRY DEVELOPMENT COUNCIL.

13 (F) THE ADVISORY BOARD CREATED IN FORMER ACT NO. 61 OF THE
14 PUBLIC ACTS OF 1939.

15 (G) THE MINERAL WELL ADVISORY BOARD CREATED IN FORMER ACT
16 NO. 315 OF THE PUBLIC ACTS OF 1969.

17 (H) THE MICHIGAN UNITIZATION LAW APPEAL BOARD CREATED IN
18 FORMER ACT NO. 197 OF THE PUBLIC ACTS OF 1959.

19 (I) THE INVENTORY ADVISORY COMMITTEE CREATED IN FORMER ACT
20 NO. 204 OF THE PUBLIC ACTS OF 1979.

21 (J) THE MARINE SAFETY EDUCATION COMMISSION.

22 (K) THE MARINE SAFETY ADVISORY COUNCIL.

23 (L) THE WILDERNESS AND NATURAL AREAS ADVISORY BOARD.

24 (M) THE STATE RECREATION AND CULTURAL ARTS ADVISORY COMMIT-
25 TEE CREATED IN FORMER ACT NO. 326 OF THE PUBLIC ACTS OF 1965.

26 (N) THE AIR POLLUTION CONTROL COMMISSION.

1 (O) THE WATER RESOURCES COMMISSION.

2 (P) THE CRITICAL MATERIALS ADVISORY COMMITTEE.

3 (Q) THE CLEAN MICHIGAN FUND ACT ADVISORY PANEL CREATED IN
4 FORMER ACT NO. 249 OF THE PUBLIC ACTS OF 1986.

5 (R) THE HAZARDOUS WASTE POLICY COMMITTEE CREATED IN
6 SECTION 8A OF FORMER ACT NO. 64 OF THE PUBLIC ACTS OF 1979.

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

11 (3) ~~(2)~~ The commission may promulgate rules, not inconsis-
12 tent with law, governing its organization and procedure. The
13 department may promulgate and enforce reasonable rules concerning
14 the use and occupancy of lands and property under its control in
15 accordance with section 504; may provide and develop facilities
16 for outdoor recreation; may conduct investigations it considers
17 necessary for the proper administration of this part; may remove
18 and dispose of forest products as required for the protection,
19 reforestation, and proper development and conservation of the
20 lands and property under control of the department; and may
21 require the payment of a fee as provided by law for a daily
22 permit or other authorization that allows the person to hunt and
23 take waterfowl on a public hunting area managed and developed for
24 waterfowl.

25 (4) ~~(3)~~ Except as provided in subsection ~~(4)~~ (5), the
26 department may enter into contracts for the taking of coal, oil,
27 gas, and other mineral products from state owned lands, upon a

1 royalty basis or upon another basis, and upon the terms the
2 department considers just and equitable. This contract power
3 includes authorization to enter into contracts for the storage of
4 gas or other mineral products in or upon state owned lands, if
5 the consent of the state agency having jurisdiction and control
6 of the state owned land is first obtained. A contract permitted
7 under this section for the taking of coal, oil, gas, or metallic
8 mineral products, or for the storage of gas or other mineral
9 products, is not valid unless the contract is approved by the
10 state administrative board. Money received from a contract per-
11 mitted under this subsection, except money received from lands
12 acquired with money from the game and fish protection fund cre-
13 ated in section 601 of the hunting and fishing license act, Act
14 No. 86 of the Public Acts of 1980, being section 316.601 of the
15 Michigan Compiled Laws, shall be transmitted to the state trea-
16 surer for deposit in the Michigan natural resources trust fund
17 created in section 35 of article IX of the state constitution of
18 1963. However, the money received from the payment of service
19 charges by a person using areas managed for waterfowl shall be
20 credited to the game and fish protection fund and used only for
21 the purposes provided by law. Money received from bonuses,
22 rentals, delayed rentals, royalties, and the direct sale of
23 resources, including forest resources, from lands acquired with
24 money from the game and fish protection fund shall be credited to
25 the game and fish protection trust fund created in the game and
26 fish protection trust fund act, Act No. 73 of the Public Acts of

1 1986, being sections 300.211 to 300.216 of the Michigan Compiled
2 Laws, except as otherwise provided by law.

3 (5) ~~(4)~~ The department shall not enter into a contract
4 that permits drilling operations for the taking of oil or gas
5 from the lake bottomlands of the Great Lakes or connecting or
6 connected bays, harbors, or waterways, unless all drilling opera-
7 tions originate from locations above and inland of the ordinary
8 high-water mark. The department shall not enter into a contract
9 for exploration of the lake bottomlands of the Great Lakes or
10 connecting or connected bays, harbors, or waterways that permits
11 drilling operations unless all drilling operations originate from
12 locations above and inland of the ordinary high-water mark.

13 (6) ~~(5)~~ This section does not permit a contract for the
14 taking of gravel, sand, coal, oil, gas, or other metallic mineral
15 products that does not comply with applicable local ordinances
16 and state law.

17 Sec. 4904. The proceeds of the sale of \$50,000,000.00 of
18 the bonds authorized by FORMER Act No. 76 of the Public Acts of
19 1968 ~~, being sections 323.371 to 323.382 of the Michigan~~
20 ~~Compiled Laws~~ OR PART 45, or any series of the bonds, and any
21 premiums and accrued interest received on the delivery of the
22 bonds, shall be deposited with the state treasurer in the state
23 sewer construction fund. Disbursements from the fund shall be
24 made only for specific eligible collecting sewer projects
25 approved, as provided in section 4912, by the appropriations com-
26 mittees and by the legislature by concurrent resolution adopted
27 by a roll call vote of a majority of the members elected to and

1 serving in each house. A concurrent resolution shall include all
2 or part of the projects on the priority list of eligible projects
3 reported to the legislature by the department as provided in
4 section 4912, but in case of a part only it shall be the entire
5 part containing all projects on the list having priorities higher
6 than those of projects not included in the resolution and shall
7 not include projects lower in the order of priority. The income
8 from temporary investments of the proceeds shall be deposited in
9 the general fund.

10 Sec. 8703. (1) "Envelope monitoring" means monitoring of
11 groundwater in areas adjacent to properties where groundwater is
12 contaminated to determine the concentration and spatial distribu-
13 tion of the contaminant in the aquifer.

14 (2) "Fertilizer" means a fertilizer as defined in ~~the fer-~~
15 ~~tilizer act of 1975~~ PART 85.

16 ~~(3) "Fertilizer act of 1975" means the fertilizer act of~~
17 ~~1975, Act No. 198 of the Public Acts of 1975, being sections~~
18 ~~286.751 to 286.767 of the Michigan Compiled Laws.~~

19 (3) ~~(4)~~ "Fund" means the freshwater protection fund cre-
20 ated in section 8716.

21 (4) ~~(5)~~ "General screening" means monitoring of groundwa-
22 ter for the purpose of determining the presence and concentration
23 of analytes.

24 (5) ~~(6)~~ "Groundwater" means underground water within the
25 zone of saturation.

26 (6) ~~(7)~~ "Groundwater advisory council" means the
27 groundwater advisory council established in section 8708.

1 (7) ~~(8)~~ "Groundwater impact potential" means the potential
2 for contamination of groundwater as a result of pesticide or
3 nitrogen fertilizer use.

4 (8) ~~(9)~~ "Groundwater protection rule" means a groundwater
5 protection rule promulgated under part 83 ~~7~~ or ~~the fertilizer~~
6 ~~act of 1975~~ PART 85, or both.

7 (9) ~~(10)~~ "Groundwater resource protection level" means a
8 maximum contaminant level, health advisory level, or, if the
9 United States environmental protection agency has not established
10 a maximum contaminant level or a health advisory level, a level
11 established by the director of public health using a risk assess-
12 ment protocol established by rule under this part.

13 (10) ~~(11)~~ "Groundwater resource response level" means 20%
14 of the groundwater resource protection level. In cases where 20%
15 of the groundwater resource protection level is less than the
16 method detection limit, the method detection limit shall serve as
17 the groundwater resource response level.

18 (11) ~~(12)~~ "Groundwater stewardship practices" means any of
19 a set of voluntary practices adopted by the commission of agri-
20 culture pursuant to section 8707 and designed to protect ground-
21 water from contamination by pesticides and fertilizers.

22 (12) ~~(13)~~ "Maximum contaminant level" means that term as
23 it is defined in title XIV of the public health service act,
24 chapter 373, 88 Stat. 1660, and regulations promulgated under
25 that act.

26 (13) ~~(14)~~ "Method detection limit" means the minimum
27 concentration of a substance that can be measured and reported

1 with 99% confidence that the analyte concentration is greater
2 than 0 and is determined from analysis of a sample in a given
3 matrix that contains the analyte.

4 (14) ~~(15)~~ "Monitoring" means sampling and analysis to
5 determine the levels of pesticides or their breakdown products;
6 fertilizers or their residues; or other analytes as determined by
7 the director.

8 Sec. 8715. (1) In addition to the fees provided for in part
9 83, a registrant shall pay an annual groundwater protection fee
10 for each product to be registered. The specialty pesticide
11 groundwater protection fee is \$100.00 per product. Groundwater
12 protection fees for all other pesticides are 0.75% of the whole-
13 sale value of the previous registration year's product sales for
14 use in this state with a \$150.00 minimum groundwater protection
15 fee. The minimum groundwater protection fee is due in the office
16 of the director before July 1. Sales based groundwater protec-
17 tion fees greater than the \$150.00 minimum are due in the office
18 of the director before October 1 of the following registration
19 years.

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

24 (3) A person required to pay a specialty fertilizer or soil
25 conditioner registration fee under ~~the fertilizer act of 1975,~~
26 ~~Act No. 198 of the Public Acts of 1975, being sections 286.751 to~~
27 ~~286.767 of the Michigan Compiled Laws,~~ PART 85 shall pay an

1 additional \$100.00 groundwater protection fee for each brand and
2 product name of each grade registered.

3 (4) All fertilizer manufacturers or distributors licensed
4 under ~~the fertilizer act of 1975~~ PART 85, except specialty fer-
5 tilizer and soil conditioner registrants, shall pay an additional
6 groundwater protection fee of 1-1/2 cents per percent of nitrogen
7 in the fertilizer for each ton of fertilizer sold.

8 (5) The fees collected under this part, including any inter-
9 est or dividends earned, shall be transmitted to the state trea-
10 surer, who shall credit the money received to the fund.

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

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

18 Sec. 11110. (1) Not later than January 1, 1990, the depart-
19 ment shall prepare an updated state hazardous waste management
20 plan.

21 (2) The updated plan shall:

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

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

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

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

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

14 (f) Plan for a reasonable geographic distribution of treat-
15 ment, storage, and disposal facilities to meet existing and
16 future needs, including proposing criteria for determining
17 acceptable locations for these facilities. The criteria shall
18 include a consideration of a location's geology, geography,
19 demography, waste generation patterns, along with environmental
20 factors, public health factors, and other relevant characteris-
21 tics as determined by the ~~committee~~ DEPARTMENT.

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

25 (h) Include necessary legislative, administrative, and eco-
26 nomic mechanisms, and a timetable to carry out the plan.

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

5 (a) An inventory and evaluation of the sources of hazardous
6 waste generation within this state or from other states, includ-
7 ing the types, quantities, and chemical and physical characteris-
8 tics of the hazardous waste.

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

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

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

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

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

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

5 (4) If the department finds in preparing the updated plan
6 that there is a need for additional treatment or disposal facili-
7 ties in the state, then the department shall identify incentives
8 the state could offer that would encourage the construction and
9 operation of additional treatment or disposal facilities in the
10 state that are consistent with the updated plan. The department
11 shall propose criteria which could be used in evaluating appli-
12 cants for the incentives.

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

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

5 Sec. 11115a. (1) ~~The~~ BEGINNING ON JUNE 4, 1992, THE owner
6 or operator, or both, of a facility specified in this subsection
7 is subject to the corrective action requirements specified in
8 this part and the rules promulgated under this part for all
9 releases of a contaminant from any waste management unit at the
10 facility, regardless of when the contaminant may have been placed
11 in or released from the waste management unit. This requirement
12 applies to a facility for which the owner or operator, or both,
13 is applying for or has been issued a license under this part.

14 (2) ~~If~~ BEGINNING ON JUNE 4, 1992, IF the department, on
15 the basis of any information, determines that there is or has
16 been a release of a contaminant from any waste management unit at
17 the facility, the department may order, or may enter a consent
18 order with an owner or operator, or both, of a facility specified
19 in subsection (1), requiring corrective action at the facility.
20 A license, permit, or order issued or entered pursuant to this
21 subsection shall contain all of the following:

22 (a) Schedules of compliance for corrective action if correc-
23 tive action cannot be completed before the issuance of the
24 license, permit, or order.

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

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

9 (3) Beginning on June 4, 1992, the owner or operator, or
10 both, of a facility specified in this subsection and not in
11 subsection (1) is subject to the corrective action requirements
12 specified in this part and the rules promulgated under this part
13 for all releases of a hazardous waste from the facility, regard-
14 less of when the hazardous waste may have been placed in or
15 released from the facility. This requirement applies to a facil-
16 ity for which the owner or operator, or both, is or was subject
17 to the interim status requirements defined in the solid waste
18 disposal act, except for those facilities that have received
19 formal written approval of the withdrawal of their United States
20 environmental protection agency part A hazardous waste permit
21 application from the department or the United States environmen-
22 tal protection agency.

23 (4) ~~IF~~ BEGINNING ON JUNE 4, 1992, IF the department, on
24 the basis of any information, determines that there is or has
25 been a release of a hazardous waste, the department may order, or
26 may enter a consent order with, an owner or operator, or both, of
27 a facility specified in subsection (3), requiring corrective

1 action at the facility. An order issued or entered pursuant to
2 this subsection shall contain both of the following:

3 (a) Schedules of compliance for corrective action.

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

6 Sec. 11117. (1) A site review board shall be established to
7 review and recommend to the department whether the department
8 should grant or deny final approval for each site construction
9 permit application that is referred to the board by the
10 department. If more than 1 construction permit application for
11 interrelated facilities on a single site within the same munici-
12 pality are submitted by the same applicant, reviewed concurrently
13 by the department, and referred to the board by the department, a
14 single board shall be established to review the site applications
15 concurrently but shall ~~grant or deny~~ RECOMMEND THE GRANTING OR
16 DENIAL OF final approval for each application individually. A
17 board shall consist of 9 voting members and a nonvoting chair-
18 person to be appointed as provided in subsection (2).

19 (2) The following 9 members and 1 nonvoting chairperson
20 shall serve on every board established to review a site construc-
21 tion permit application:

22 (a) Seven members shall be members appointed by the gover-
23 nor, with the advice and consent of the senate. The 7 members on
24 each board shall include a geologist, a chemical engineer, and a
25 toxicologist, each of whom are on the faculty of an institution
26 of higher education within the state, a representative from a
27 manufacturing industry, 2 representatives of the public, and a

1 representative of a municipality. Subject to the other
2 requirements of this subdivision, the governor may appoint more
3 than 1 geologist, chemical engineer, toxicologist, representative
4 from a manufacturing industry, and representative of a municipal-
5 ity and more than 2 representatives of the public. However, only
6 1 geologist, chemical engineer, toxicologist, representative from
7 a manufacturing industry, and representative of a municipality
8 and only 2 representatives of the public, as randomly designated
9 by the department, shall serve on a particular board. The member
10 who represents municipalities shall be associated with a munici-
11 pality or municipal association that is or represents the same
12 type of municipality in which a facility is proposed to be
13 located. A member representing a municipality or the public
14 shall not serve on a site review board that is evaluating an
15 application for a facility located within a county or municipal-
16 ity that directly employs the member or in which the member
17 resides. A vacancy shall be filled for the unexpired portion of
18 the period in the same manner as the original appointments. All
19 members appointed by the governor, including a chairperson
20 appointed pursuant to subdivision (c), shall be appointed to
21 serve on site review boards for a period of 3 years, and may be
22 appointed for additional 3-year periods. In addition, a member
23 may serve beyond the expiration of the member's 3-year period of
24 service for so long a period of time as is necessary to complete
25 action on construction permit applications pending at the expira-
26 tion of the member's 3-year period of service.

1 (b) One member shall be appointed by the governing body of
2 the municipality in which the treatment, storage, or disposal
3 facility is primarily proposed to be located to serve on the
4 board that is established to consider a particular construction
5 permit application. One member shall be appointed by the county
6 board of commissioners in which the treatment, storage, or dis-
7 posal facility is proposed to be located and shall be a resident
8 of the county where the facility is proposed to be located. The
9 members serving pursuant to this subdivision shall serve until
10 the particular construction permit application subject to their
11 review is approved or until the application is rejected and is no
12 longer subject to review.

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

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

24 (4) Five of the 9 voting members of the board constitute a
25 quorum for the transaction of business of the board and the con-
26 currence of 5 voting members of the board constitutes a legal
27 action of the board. All meetings of the board shall be

1 conducted pursuant to the open meetings act, Act No. 267 of the
2 Public Acts of 1976, being sections 15.261 to 15.275 of the
3 Michigan Compiled Laws.

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

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

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

13 (a) Immediately notify the permanent board members and the
14 municipality and county in which the treatment, storage, or dis-
15 posal facility is located or proposed to be located; a local soil
16 erosion and sedimentation control agency appointed pursuant to
17 ~~the soil erosion and sedimentation control act of 1972, Act~~
18 ~~No. 347 of the Public Acts of 1972, being sections 282.101 to~~
19 ~~282.125 of the Michigan Compiled Laws~~ PART 91; each division
20 within the department that has responsibility in land, air, or
21 water management; a regional planning agency established by exec-
22 utive directive of the governor; and other appropriate agencies.
23 The notice shall describe the procedure by which the permit may
24 be approved or denied.

25 (b) Review the plans of the proposed treatment, storage, or
26 disposal facility to determine if the proposed operation complies
27 with this part and the rules promulgated under this part. The

1 review shall be made within the department. The review shall
2 include, but need not be limited to, a review of air quality,
3 water quality, waste management, hydrogeology, and the
4 applicant's disclosure statement. A written and signed review by
5 each person within the department reviewing the permit and plans
6 shall be received and recorded before a construction permit is
7 referred to the site review board or is denied by the
8 department. If the site review, plan review, and the application
9 meet the requirements of this part and the rules promulgated
10 under this part, the department shall refer the application to
11 the site review board for review. An expansion of a treatment,
12 storage, or disposal facility beyond the original authorized
13 design capacity or beyond the area specified in the original
14 permit, license, or other authorization or an alteration of the
15 method of hazardous waste treatment or disposal constitutes a new
16 proposal for which a new construction permit is required.

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

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

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

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

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

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

21 Sec. 11120. (1) The department shall notify those members
22 appointed by the governor who will serve on the board within 75
23 days after receipt of a construction permit application, if the
24 department has not notified the applicant of the intent to deny
25 the application, or at the time the department refers an applica-
26 tion to the board, or at the time an application is automatically
27 referred to the board pursuant to section 11119(4), whichever is

1 earlier. At that time the department also shall notify the
2 county and the municipality in which the proposed treatment,
3 storage, or disposal facility is to be located and request the
4 appointment of the members of the board as provided in section
5 11117(2)(b). The notification shall include a notice of intent
6 to issue all departmental permits required for the construction,
7 pending recommendations of the board and approval by the
8 department. Within 45 days after the notification, the county
9 and the municipality shall select the members to serve on the
10 board. The board shall be created at that time and notification
11 of the creation of the board shall be made to the chairperson.

12 (2) Within 30 days after creation of a board, the board
13 shall meet to review and establish a timetable for the considera-
14 tion of an application for a proposed treatment, storage, or dis-
15 posal facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (9) The formal hearings process shall be conducted by the
19 board to receive information from technical experts on disputed
20 issues. Any affected party may request permission by the board
21 to participate in the board's formal hearings within 15 days
22 after the board's public hearing. The board shall determine
23 which affected parties shall participate in the board's formal
24 hearing. If the board denies the request of an affected party to
25 participate in the board's formal hearing, the board shall give
26 the affected party notice of the board's decision and the reasons
27 for the decision. A representative of the municipality and a

1 representative of the county in which the facility is proposed to
2 be located shall each be automatically entitled to participate.

3 During the board's formal hearings process, the board shall:

4 (a) Receive sworn testimony.

5 (b) Cross-examine witnesses.

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

8 (d) Request participation as needed.

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

11 (11) The board shall deliberate on the impact of the pro-
12 posed treatment, storage, or disposal facility on the municipal-
13 ity in which it is to be located and make a final determination
14 as to its recommendation to the department regarding the con-
15 struction permit application.

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

18 (a) The risk and impact of accident during the transporta-
19 tion of hazardous waste.

20 (b) The risk and impact of contamination of ground and sur-
21 face water by leaching and runoff from the proposed treatment,
22 storage, or disposal facility.

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

25 (d) The impact on the municipality where the proposed treat-
26 ment, storage, or disposal facility is to be located in terms of
27 health, safety, cost, and consistency with local planning and

1 existing development. The board also shall consider local
2 ordinances, permits, or other requirements and their potential
3 relationship to the proposed treatment, storage, or disposal
4 facility.

5 (e) The nature of the probable environmental impact, includ-
6 ing the specification of the predictable adverse effects on the
7 following:

8 (i) The natural environment and ecology.

9 (ii) Public health and safety.

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

11 (iv) Water and air quality and wildlife.

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

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

15 (13) The board also shall consider the concerns and objec-
16 tions submitted by the public. The board shall facilitate
17 efforts to provide that the concerns and objections are mitigated
18 by establishing additional stipulations specifically applicable
19 to the treatment, storage, or disposal facility and operation at
20 that site. Through deliberations, the board may modify the con-
21 struction permit application in response to its findings. To the
22 fullest extent practicable, the board also shall integrate by
23 stipulation the provisions of the local ordinances, permits, or
24 requirements.

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

1 (15) Within 180 days after the first meeting of the board,
2 the board shall make a decision on the negotiated agreement and
3 the final best offer from each party on each issue and shall rec-
4 ommend to the department that the department either approve or
5 reject the construction permit application. The 180-day time
6 period may be extended as provided in subdivision (6)(c).

7 However, an extension shall not exceed 60 days.

8 (16) If the board recommends to the department the approval
9 of the construction permit application and the department follows
10 the recommendation, the department shall prepare a draft con-
11 struction permit and initiate a public participation process
12 equivalent to that required by the applicable provisions of the
13 solid waste disposal act or regulations promulgated under that
14 act. Upon completion of the public participation process, the
15 department shall review all comments made during that process and
16 shall issue or revise and issue the construction permit or recon-
17 vene the board to consider issues specified by the department
18 that were raised during the public participation process. Within
19 30 days after having been reconvened under this subsection, the
20 board shall recommend to the department the rejection of the
21 application or recommend the revision and issuance of the con-
22 struction permit, or recommend that the department revise the
23 draft construction permit and initiate a public participation
24 process equivalent to that required by the applicable provisions
25 of the solid waste disposal act or regulations promulgated under
26 that act.

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

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

7 (b) ~~Direct~~ RECOMMEND THAT the department ~~to~~ deny the
 8 construction permit and initiate a public participation process
 9 equivalent to that required by the applicable provisions of the
 10 solid waste disposal act, or regulations promulgated under that
 11 act.

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

15 (a) Senate Bill No. _____ or House Bill No. 4351 (request
 16 no. 02005'95).

17 (b) Senate Bill No. _____ or House Bill No. 4350 (request
 18 no. 02005'95 a).

19 (c) Senate Bill No. _____ or House Bill No. 4348 (request
 20 no. 02006'95).

21 (d) Senate Bill No. _____ or House Bill No. 4349 (request
 22 no. 02006'95 a).