

HOUSE BILL No. 5400

March 11, 2014, Introduced by Reps. Schmidt, Graves, Potvin, Goike, McBroom, LaFontaine, Clemente, Jacobsen, Kivela, Zorn, Rendon, Dianda, Foster, MacGregor, Glardon, Victory, Kesto, Haveman, Poleski, Forlini, Haugh, Lane, Brunner, Durhal, Santana and Crawford and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 8504, 8505, 11502, 11503, 11504, 11505, 11506, 11542, 20101, 20114e, and 20115 (MCL 324.8504, 324.8505, 324.11502, 324.11503, 324.11504, 324.11505, 324.11506, 324.11542, 324.20101, 324.20114e, and 324.20115), sections 8504 and 11542 as amended by 2004 PA 325, section 8505 as amended by 2006 PA 503, sections 11502, 11503, and 11505 as amended by 2007 PA 212, section 11504 as amended by 2013 PA 250, sections 11506 and 20114e as amended by 2012 PA 446, section 20101 as amended by 2013 PA 141, and section 20115 as amended by 1995 PA 117, and by adding sections 3112e, 11551, 11551a, 11552, 11553, and 11554.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 3112E. (1) NOTWITHSTANDING SECTIONS 3112 AND 3113, A**
2 **PERMIT IS NOT REQUIRED UNDER THIS PART FOR THE USE OF A MATERIAL**

1 IN COMPLIANCE WITH PART 115 AS BENEFICIAL USE 3.

2 (2) AS USED IN SUBSECTION (1), "BENEFICIAL USE 3" MEANS THAT
3 TERM AS DEFINED IN SECTION 11502.

4 Sec. 8504. (1) A person shall not manufacture or distribute
5 fertilizer in this state, except specialty fertilizer and soil
6 conditioners, until the appropriate groundwater protection fee
7 provided in section 8715 has been submitted, and except as
8 authorized by a license to manufacture or distribute issued by
9 the department pursuant to part 13. An application for a license
10 shall be accompanied by ~~a payment of~~ a fee of \$100.00 for each of
11 the following:

12 (a) Each fixed location at which fertilizer is manufactured
13 in this state.

14 (b) Each mobile unit used to manufacture fertilizer in this
15 state.

16 (c) Each location out of ~~the~~ **THIS** state that applies
17 labeling showing **AN** out-of-state origin of fertilizer distributed
18 in this state to nonlicensees.

19 (2) An application for a license to manufacture or
20 distribute fertilizer shall include **ALL OF THE FOLLOWING**:

21 (a) The name and address of the applicant.

22 (b) The name and address of each bulk distribution point in
23 the state not licensed for fertilizer manufacture or
24 distribution. The name and address shown on the license shall be
25 shown on all labels, pertinent invoices, and bulk storage for
26 fertilizers distributed by the licensee in this state.

27 (C) IF THE FERTILIZER IS A BENEFICIAL USE BY-PRODUCT

1 INTENDED FOR BENEFICIAL USE 3 AS THOSE TERMS ARE DEFINED IN
2 SECTION 11502, ANY FORM, REPORT, OR DATA REQUIRED FOR A SPECIALTY
3 FERTILIZER UNDER SECTION 8505(2) AND (3).

4 (3) The licensee shall inform the director in writing of
5 additional distribution points established during the period of
6 the license.

7 (4) A distributor is not required to obtain a license if the
8 distributor is selling fertilizer of a distributor or a
9 manufacturer licensed under this part.

10 (5) All licenses to manufacture or distribute fertilizer
11 expire on December 31 of each year.

12 Sec. 8505. (1) A person shall not distribute a specialty
13 fertilizer or soil conditioner unless it is registered with the
14 department. An application **FOR REGISTRATION** listing each brand
15 and product name of each grade of specialty fertilizer or soil
16 conditioner shall be made on a form furnished by the director.
17 ~~and~~ **A LABEL FOR EACH BRAND AND PRODUCT NAME OF EACH GRADE SHALL**
18 **BE INCLUDED WITH THE APPLICATION.**

19 (2) **IF THE SPECIALTY FERTILIZER OR SOIL CONDITIONER IS A**
20 **BENEFICIAL USE BY-PRODUCT INTENDED FOR BENEFICIAL USE 3 AS THOSE**
21 **TERMS ARE DEFINED IN SECTION 11502, THE APPLICATION SHALL INCLUDE**
22 **ALL OF THE FOLLOWING:**

23 (A) **A FORM LABEL INVOICE OR FORM BILL OF LADING THAT**
24 **INCLUDES ALL OF THE FOLLOWING:**

25 (i) **A BLANK DESIGNATED FOR THE NET WEIGHT OF THE CONTENTS OF**
26 **THE PACKAGE OR SHIPMENT OR, FOR A SOIL CONDITIONER, THE NET**
27 **WEIGHT OR VOLUME OF THE CONTENTS OF THE PACKAGE OR SHIPMENT.**

- 1 (ii) THE BRAND OR PRODUCT NAME.
- 2 (iii) THE NAME AND ADDRESS OF THE MANUFACTURER OR DISTRIBUTOR.
- 3 (iv) THE GRADE, UNLESS NO PRIMARY NUTRIENTS ARE CLAIMED.
- 4 (v) FOR A SPECIALTY FERTILIZER, THE MINIMUM PERCENTAGE OF
- 5 EACH PLANT NUTRIENT GUARANTEED OR CLAIMED TO BE PRESENT.
- 6 (vi) DIRECTIONS FOR USE TO ENSURE THE FERTILIZER OR SOIL
- 7 CONDITIONER IS APPLIED AT AN AGRONOMIC RATE BASED ON THE ANALYSIS
- 8 UNDER SUBDIVISION (B) (iii) .
- 9 (vii) A BLANK DESIGNATED FOR THE NAME AND ADDRESS OF THE
- 10 PURCHASER.
- 11 (viii) A BLANK DESIGNATED FOR THE DATE OF THE SALE OR
- 12 TRANSFER.
- 13 (B) A LABORATORY ANALYSIS REPORT THAT CONTAINS ALL OF THE
- 14 FOLLOWING, SUBJECT TO SUBSECTION (3) :
- 15 (i) SAMPLING TEST RESULTS THAT DEMONSTRATE THAT THE LEVEL OF
- 16 METALS IN THE SPECIALTY FERTILIZER OR SOIL CONDITIONER DOES NOT
- 17 POSE A RISK OF HARM TO HUMAN HEALTH OR THE ENVIRONMENT. THIS
- 18 REQUIREMENT CAN BE SATISFIED BY COMPLYING WITH THE LEVELS
- 19 ESTABLISHED PURSUANT TO THE ASSOCIATION OF AMERICAN PLANT FOOD
- 20 CONTROL OFFICIALS' STATEMENT OF UNIFORM INTERPRETATION AND POLICY
- 21 NUMBER 25.
- 22 (ii) FOR A SPECIALTY FERTILIZER, A DEMONSTRATION THAT THE
- 23 MATERIAL CONTAINS THE MINIMUM PERCENTAGE OF EACH PLANT NUTRIENT
- 24 GUARANTEED OR CLAIMED TO BE PRESENT.
- 25 (iii) FOR A SPECIALTY FERTILIZER, CONSISTENT WITH GENERALLY
- 26 ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES, ALL OF THE
- 27 FOLLOWING:

1 (A) THE PERCENTAGE OF DRY SOLIDS, TOTAL KJELDAHL NITROGEN,
2 AMMONIUM NITROGEN, NITRATE NITROGEN, PHOSPHORUS, AND POTASSIUM IN
3 THE SPECIALTY FERTILIZER.

4 (B) THE PH OF AND THE LEVELS OF CALCIUM, MAGNESIUM, SULFATE,
5 CHROMIUM, COPPER, SILVER, AND BORON IN THE FERTILIZER.

6 (iv) FOR A SOIL CONDITIONER, TO DETERMINE AN AGRONOMIC RATE
7 CONSISTENT WITH GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT
8 PRACTICES, ALL OF THE FOLLOWING:

9 (A) THE PERCENTAGE OF DRY SOLIDS IN THE SOIL CONDITIONER.

10 (B) THE LEVELS OF CALCIUM, MAGNESIUM, SULFATE, CHROMIUM,
11 COPPER, SILVER, AND BORON IN THE SOIL CONDITIONER.

12 (C) FOR A SOIL CONDITIONER, SUBJECT TO SUBSECTION (3),
13 SCIENTIFICALLY ACCEPTABLE DATA THAT GIVE REASONABLE ASSURANCE
14 THAT THE SOIL CONDITIONER WILL IMPROVE THE PHYSICAL NATURE OF THE
15 SOIL BY ALTERING THE SOIL STRUCTURE, MAKING SOIL NUTRIENTS MORE
16 AVAILABLE, OR OTHERWISE ENHANCING THE SOIL MEDIA RESULTING IN
17 BENEFICIAL CROP RESPONSE OR OTHER PLANT GROWTH.

18 (3) THE SAME LABORATORY ANALYSIS REPORT UNDER SUBSECTION
19 (2) (B) AND SCIENTIFICALLY ACCEPTABLE DATA UNDER SUBSECTION (2) (C)
20 INCLUDED WITH AN APPLICATION FOR 1 YEAR MAY BE INCLUDED WITH AN
21 APPLICATION FOR A SUBSEQUENT YEAR UNLESS THE RAW MATERIALS OR
22 PROCESSES USED TO GENERATE THE SPECIALTY FERTILIZER OR SOIL
23 CONDITIONER HAVE CHANGED IN A WAY THAT CAN REASONABLY BE EXPECTED
24 TO MATERIALLY AFFECT THE LABORATORY ANALYSIS REPORT OR
25 SCIENTIFICALLY ACCEPTABLE DATA.

26 (4) AN APPLICATION UNDER SUBSECTION (1) shall be accompanied
27 with the fees described in subsection ~~(2)~~-(6) for each brand and

1 product name of each grade. ~~Labels for each brand and product~~
2 ~~name of each grade shall accompany the application.~~

3 (5) Upon approval of an application by the director, a copy
4 of the registration approval shall be furnished to the applicant.
5 All registrations expire on December 31 of each year.

6 (6) ~~(2)~~A person applying for a registration under
7 subsection (1) shall pay the following annual fees for each brand
8 and product name of each grade:

9 (a) Registration fee of \$25.00.

10 (b) Appropriate groundwater ~~and freshwater~~ protection fees
11 **FEE** provided for in section 8715.

12 (7) ~~(3)~~A distributor is not required to register a brand of
13 fertilizer that is registered under this part by another person,
14 if the label does not differ in any respect.

15 (8) ~~(4)~~A manufacturer or distributor of custom blend
16 specialty fertilizers for home lawns, golf courses, recreational
17 areas, or other nonfarm areas ~~shall~~**IS** not ~~be~~ required to
18 register each grade distributed but shall license their firm on
19 an application furnished by the director for an annual fee of
20 \$100.00 and shall label the fertilizer as provided in section
21 8502. The label of each fertilizer distributed under this
22 subsection shall be maintained by the manufacturer or distributor
23 for 1 year for inspection by the director.

24 (9) ~~(5)~~A manufacturer or distributor of soil conditioners
25 blended according to specifications provided to a blender or
26 blended as specifically requested by the consumer prior to
27 blending shall either register each brand or blend distributed or

1 license its firm on an application furnished by the director for
 2 an annual fee of \$100.00 and shall label the soil conditioner as
 3 provided in section 8502. The label of each soil conditioner
 4 distributed under this subsection shall be maintained by the
 5 manufacturer or distributor for 1 year for inspection by the
 6 director.

7 Sec. 11502. (1) ~~"Applicant" includes any person.~~ **"AGRONOMIC**
 8 **RATE" MEANS A RATE THAT MEETS BOTH OF THE FOLLOWING REQUIREMENTS:**

9 (A) IS GENERALLY RECOGNIZED BY THE AGRICULTURAL COMMUNITY OR
 10 IS CALCULATED FOR A PARTICULAR AREA OF LAND TO IMPROVE THE
 11 PHYSICAL NATURE OF SOIL, SUCH AS STRUCTURE, TILTH, WATER
 12 RETENTION, PH, OR POROSITY, OR TO PROVIDE MACRONUTRIENTS OR
 13 MICRONUTRIENTS IN AN AMOUNT NOT MATERIALLY IN EXCESS OF THAT
 14 NEEDED BY THE CROP, FOREST, OR VEGETATION GROWN ON THE LAND.

15 (B) TAKES INTO ACCOUNT AND MINIMIZES RUNOFF OF BENEFICIAL
 16 USE BY-PRODUCTS TO SURFACE WATER OR NEIGHBORING PROPERTIES, THE
 17 PERCOLATION OF EXCESS NUTRIENTS BEYOND THE ROOT ZONE, AND THE
 18 LIBERATION OF METALS FROM THE SOIL INTO GROUNDWATER.

19 (2) "Ashes" means the residue from the burning of wood,
 20 ~~coal, coke, refuse,~~ **SCRAP WOOD, TIRES, BIOMASS,** wastewater
 21 sludge, **FOSSIL FUELS INCLUDING COAL OR COKE,** or other combustible
 22 materials.

23 (3) **"BENEFICIAL USE 1" MEANS USE AS AGGREGATE, ROAD**
 24 **MATERIAL, OR BUILDING MATERIAL THAT IN ULTIMATE USE IS OR WILL BE**
 25 **BONDED OR ENCAPSULATED BY CEMENT, LIMES, OR ASPHALT.**

26 (4) **"BENEFICIAL USE 2" MEANS USE AS ANY OF THE FOLLOWING:**

27 (A) **CONSTRUCTION FILL AT ELIGIBLE NONRESIDENTIAL PROPERTY**

1 THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

2 (i) IS PLACED AT LEAST 4 FEET ABOVE THE SEASONAL GROUNDWATER
3 TABLE.

4 (ii) DOES NOT COME INTO CONTACT WITH A SURFACE WATER BODY.

5 (iii) IS COVERED BY CONCRETE, ASPHALT PAVEMENT, OR OTHER
6 MATERIAL APPROVED BY THE DEPARTMENT.

7 (iv) EXCLUDING CONSTRUCTION FILL PLACED UNDERNEATH A BUILDING
8 OR OTHER STRUCTURE, DOES NOT EXCEED 4 FEET IN THICKNESS, EXCEPT
9 FOR AREAS WHERE EXCEEDANCES ARE INCIDENTAL TO VARIATIONS IN THE
10 EXISTING TOPOGRAPHY.

11 (B) ROAD BASE OR SOIL STABILIZER THAT DOES NOT EXCEED 4 FEET
12 IN THICKNESS EXCEPT FOR AREAS WHERE EXCEEDANCES ARE INCIDENTAL TO
13 VARIATIONS IN EXISTING TOPOGRAPHY IS PLACED AT LEAST 4 FEET ABOVE
14 THE SEASONAL GROUNDWATER TABLE, DOES NOT COME INTO CONTACT WITH A
15 SURFACE WATER BODY, AND IS COVERED BY CONCRETE, ASPHALT PAVEMENT,
16 OR OTHER MATERIAL APPROVED BY THE DEPARTMENT.

17 (C) ROAD SHOULDER MATERIAL THAT DOES NOT EXCEED 4 FEET IN
18 THICKNESS EXCEPT FOR AREAS WHERE EXCEEDANCES ARE INCIDENTAL TO
19 VARIATIONS IN EXISTING TOPOGRAPHY IS PLACED AT LEAST 4 FEET ABOVE
20 THE SEASONAL GROUNDWATER TABLE, DOES NOT COME INTO CONTACT WITH A
21 SURFACE WATER BODY, IS SLOPED, AND IS COVERED BY ASPHALT
22 PAVEMENT, CONCRETE, 6 INCHES OF GRAVEL, OR OTHER MATERIAL
23 APPROVED BY THE DEPARTMENT.

24 (5) "BENEFICIAL USE 3" MEANS APPLIED TO LAND AS A FERTILIZER
25 OR SOIL CONDITIONER UNDER PART 85 OR A LIMING MATERIAL UNDER 1955
26 PA 162, MCL 290.531 TO 290.538, IF ALL OF THE FOLLOWING
27 REQUIREMENTS ARE MET:

1 (A) THE MATERIAL IS APPLIED AT AN AGRONOMIC RATE CONSISTENT
2 WITH GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES.

3 (B) THE USE, PLACEMENT, OR STORAGE AT THE LOCATION OF USE
4 DOES NOT DO ANY OF THE FOLLOWING:

5 (i) VIOLATE PART 55 OR CREATE A NUISANCE.

6 (ii) CAUSE GROUNDWATER TO NO LONGER BE FIT FOR 1 OR MORE
7 PROTECTED USES AS DEFINED IN R 323.2202 OF THE MICHIGAN
8 ADMINISTRATIVE CODE.

9 (iii) VIOLATE A PART 31 SURFACE WATER QUALITY STANDARD.

10 (C) THE USE, PLACEMENT, OR STORAGE AT THE LOCATION OF USE IS
11 ISOLATED Laterally FROM ANY PUBLIC WATER SUPPLY WELL AND ANY
12 DOMESTIC WELL AT A DISTANCE THAT MEETS OR EXCEEDS THE DISTANCES
13 SET FORTH IN R 323.2204 (2) (D) (i) OF THE MICHIGAN ADMINISTRATIVE
14 CODE.

15 (6) "BENEFICIAL USE 4" MEANS ANY OF THE FOLLOWING USES:

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

19 (B) TO TREAT WASTEWATER, WASTEWATER TREATMENT SLUDGE, OR
20 WASTEWATER SLUDGE IN COMPLIANCE WITH PART 31 OR THE FEDERAL WATER
21 POLLUTION CONTROL ACT, 33 USC 1251 TO 1387 AT A PRIVATE OR
22 PUBLICLY OWNED WASTEWATER TREATMENT PLANT.

23 (C) TO STABILIZE, NEUTRALIZE, SOLIDIFY, CAP, OR OTHERWISE
24 REMEDIATE HAZARDOUS SUBSTANCES OR CONTAMINANTS AS PART OF A
25 RESPONSE ACTIVITY IN COMPLIANCE WITH PART 201, PART 213, OR THE
26 COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY
27 ACT OF 1980, 42 USC 9601 TO 9657, OR A CORRECTIVE ACTION IN

1 COMPLIANCE WITH PART 111 OR THE SOLID WASTE DISPOSAL ACT, 42 USC
2 6901 TO 6992K.

3 (D) AS CONSTRUCTION MATERIAL AT A LANDFILL LICENSED UNDER
4 THIS PART, INCLUDING, BUT NOT LIMITED TO, LINER MATERIAL,
5 LEACHATE LINER COVER MATERIAL, STRUCTURAL FILL MATERIAL, COVER
6 MATERIAL, BLENDED CAP MATERIAL, OR ROAD CONSTRUCTION MATERIAL.

7 (7) "BENEFICIAL USE BY-PRODUCT" MEANS THE FOLLOWING
8 MATERIALS IF THE MATERIALS ARE STORED FOR BENEFICIAL USE OR ARE
9 USED BENEFICIALLY AS SPECIFIED AND THE REQUIREMENTS OF SECTION
10 11551(1) ARE MET:

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

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

16 (C) MIXED WOOD ASH USED FOR BENEFICIAL USE 1, 2, 3, OR 4.

17 (D) CEMENT KILN DUST USED AS A FLUE GAS SCRUBBING REAGENT OR
18 FOR BENEFICIAL USE 1, 2, 3, OR 4.

19 (E) LIME KILN DUST USED AS A FLUE GAS SCRUBBING REAGENT OR
20 FOR BENEFICIAL USE 1, 2, 3, OR 4.

21 (F) STAMP SANDS USED FOR BENEFICIAL USE 1 OR 2.

22 (G) FOUNDRY SAND FROM FERROUS OR ALUMINUM FOUNDRIES USED FOR
23 BENEFICIAL USE 1, 2, 3, OR 4.

24 (H) PULP AND PAPER MILL MATERIAL, OTHER THAN THE FOLLOWING,
25 USED FOR BENEFICIAL USE 3:

26 (i) REJECTS, FROM SCREENS, CLEANERS, AND MILLS DISPERSION
27 EQUIPMENT, CONTAINING MORE THAN DE MINIMIS AMOUNTS OF PLASTIC.

- 1 (ii) SCRAP PAPER.
- 2 (I) SPENT MEDIA FROM SANDBLASTING, WITH UNCONTAMINATED SAND,
3 NEWLY MANUFACTURED, UNPAINTED STEEL USED FOR BENEFICIAL USE 1 OR
4 2.
- 5 (J) DEWATERED GRINDING SLUDGE FROM PUBLIC TRANSPORTATION
6 AGENCY ROAD PROJECTS USED FOR BENEFICIAL USE 1 OR 3.
- 7 (K) LIME SOFTENING RESIDUALS FROM THE TREATMENT AND
8 CONDITIONING OF WATER FOR DOMESTIC USE OR FROM A COMMUNITY WATER
9 SUPPLY USED FOR BENEFICIAL USE 3 OR 4.
- 10 (l) SOIL THAT IS WASHED OR OTHERWISE REMOVED FROM SUGAR BEETS
11 THAT HAS NOT MORE THAN 35% MOISTURE CONTENT USED FOR BENEFICIAL
12 USE 3.
- 13 (M) FLUE GAS DESULFURIZATION MATERIAL USED FOR BENEFICIAL
14 USE 1 OR 3.
- 15 (N) OTHER MATERIALS AND USES APPROVED BY THE DEPARTMENT
16 PURSUANT TO SECTION 11553(3). APPROVAL OF OTHER MATERIALS AND
17 USES BY THE DEPARTMENT DOES NOT REQUIRE THE USE OF THOSE
18 MATERIALS BY ANY GOVERNMENTAL ENTITY OR ANY OTHER PERSON.
- 19 (8) ~~(3)~~—"Beverage container" means an airtight metal, glass,
20 paper, or plastic container, or a container composed of a
21 combination of these materials, which, at the time of sale,
22 contains 1 gallon or less of any of the following:
- 23 (a) A soft drink, soda water, carbonated natural or mineral
24 water, or other nonalcoholic carbonated drink.
- 25 (b) A beer, ale, or other malt drink of whatever alcoholic
26 content.
- 27 (c) A mixed wine drink or a mixed spirit drink.

1 (9) ~~(4)~~—"Bond" means a financial instrument executed on a
2 form approved by the department, including a surety bond from a
3 surety company authorized to transact business in this state, a
4 certificate of deposit, a cash bond, an irrevocable letter of
5 credit, insurance, a trust fund, an escrow account, or a
6 combination of any of these instruments in favor of the
7 department. The owner or operator of a disposal area who is
8 required to establish a bond under ~~other~~**ANOTHER** state **STATUTE** or
9 **A** federal statute may petition the department to allow such a
10 bond to meet the requirements of this part. The department shall
11 approve a bond established under ~~other~~**ANOTHER** state **STATUTE** or **A**
12 federal statute if the bond provides equivalent funds and access
13 by the department as other financial instruments allowed by this
14 subsection.

15 (10) **"CEMENT KILN DUST" MEANS PARTICULATE MATTER COLLECTED**
16 **IN AIR EMISSION CONTROL DEVICES SERVING PORTLAND CEMENT KILNS.**

17 (11) ~~(5)~~—"Certificate of deposit" means a negotiable
18 certificate of deposit held by a bank or other financial
19 institution regulated and examined by a state or federal agency,
20 the value of which is fully insured by an agency of the United
21 States government. A certificate of deposit used to fulfill the
22 requirements of this part shall be in the sole name of the
23 department with a maturity date of not less than 1 year and shall
24 be renewed not less than 60 days before the maturity date. An
25 applicant who uses a certificate of deposit as a bond shall
26 receive any accrued interest on that certificate of deposit upon
27 release of the bond by the department.

1 (12) ~~(6)~~—"Certified health department" means a city, county,
2 or district department of health that is specifically delegated
3 authority by the department to perform designated activities as
4 prescribed by this part.

5 (13) ~~(7)~~—"Coal or wood ash" means ~~either or both of the~~
6 ~~following~~. THE MATERIAL RECOVERED FROM SYSTEMS FOR THE CONTROL OF
7 AIR POLLUTION FROM, OR THE NONCOMBUSTED RESIDUE REMAINING AFTER,
8 THE COMBUSTION OF COAL, WOOD, OR BOTH, INCLUDING, BUT NOT LIMITED
9 TO, BOTTOM ASH, FLY ASH, BOILER SLAG, OR FLUIDIZED-BED COMBUSTION
10 ASH. FOR BENEFICIAL USE 2, COAL OR WOOD ASH DOES NOT INCLUDE COAL
11 FLY ASH EXCEPT FOR THE FOLLOWING IF USED AT ELIGIBLE
12 NONRESIDENTIAL PROPERTY:

13 (A) CLASS C FLY ASH UNDER ASTM STANDARD C618-12A.

14 (B) CLASS F FLY ASH UNDER ASTM STANDARD C618-12A IF THAT FLY
15 ASH FORMS A POZZOLANIC-STABILIZED MIXTURE BY BEING BLENDED WITH
16 LIME, PORTLAND CEMENT, OR CEMENT KILN DUST.

17 (C) A COMBINATION OF CLASS C FLY ASH AND CLASS F FLY ASH
18 UNDER ASTM STANDARD C618-12A IF THAT COMBINATION FORMS A
19 POZZOLANIC-STABILIZED MIXTURE BY BEING BLENDED WITH LIME,
20 PORTLAND CEMENT, OR CEMENT KILN DUST AND IS USED AS A ROAD BASE,
21 SOIL STABILIZER, OR ROAD SHOULDER MATERIAL UNDER SUBSECTION
22 (4) (B) OR (C).

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

26 ~~—— (b) The airborne residues from burning coal or wood, or~~
27 ~~both, that are finely divided particles entrained in flue gases~~

1 arising from a combustion chamber, otherwise referred to as fly
2 ash.

3 (14) "COAL BOTTOM OR WOOD ASH" MEANS ASH PARTICLES FROM THE
4 COMBUSTION OF COAL THAT ARE TOO LARGE TO BE CARRIED IN FLUE GASES
5 AND COLLECT ON FURNACE WALLS OR AT THE BOTTOM OF THE FURNACE, OR
6 ANY TYPE OF ASH OR SLAG RESULTING FROM THE BURNING OF WOOD.

7 (15) ~~(8)~~ "Collection center" means a tract of land,
8 building, unit, or appurtenance or combination thereof that is
9 used to collect junk motor vehicles and farm implements under
10 section 11530.

11 (16) ~~(9)~~ "Composting facility" means a facility where
12 composting of yard clippings or other organic materials occurs
13 using mechanical handling techniques such as physical turning,
14 windrowing, or aeration or using other management techniques
15 approved by the director.

16 (17) ~~(10)~~ "Consistency review" means evaluation of the
17 administrative and technical components of an application for a
18 permit or license or evaluation of operating conditions in the
19 course of inspection, for the purpose of determining consistency
20 with the requirements of this part, rules promulgated under this
21 part, and approved plans and specifications.

22 (18) ~~(11)~~ "Corrective action" means the investigation,
23 assessment, cleanup, removal, containment, isolation, treatment,
24 or monitoring of constituents, as defined in a facility's
25 approved hydrogeological monitoring plan, released into the
26 environment from a disposal area, or the taking of other actions
27 related to the release as may be necessary to prevent, minimize,

1 or mitigate injury to the public health, safety, or welfare, the
 2 environment, or natural resources that is consistent with 42 USC
 3 6941 to 6949a and regulations promulgated thereunder.

4 Sec. 11503. (1) "De minimis" refers to a small amount of
 5 material or number of items, as applicable, ~~commingled and~~
 6 **INCIDENTALLY COMMINGLED WITH INERT MATERIAL OR BENEFICIAL USE BY-**
 7 **PRODUCTS, OR** incidentally disposed of with other solid waste.

8 (2) "Department", **SUBJECT TO SECTION 11554**, means the
 9 department of environmental quality .

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

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

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

21 (a) A solid waste transfer facility.

22 (b) ~~Incinerator~~**-AN INCINERATOR.**

23 (c) ~~Sanitary~~**-A SANITARY** landfill.

24 (d) ~~Processing~~**-A PROCESSING** plant.

25 (e) ~~Other~~**-ANY OTHER** solid waste handling or disposal
 26 facility utilized in the disposal of solid waste.

27 (6) **"ELIGIBLE NONRESIDENTIAL PROPERTY" MEANS PROPERTY NOT**

1 USED OR INTENDED TO BE USED FOR ANY OF THE FOLLOWING:

2 (A) A DAY CARE CENTER.

3 (B) A NURSING HOME.

4 (C) A SINGLE-FAMILY OR MULTIFAMILY DWELLING UNLESS THE
5 DWELLING IS PART OF A MIXED-USE DEVELOPMENT AND ALL DWELLING
6 UNITS AND ASSOCIATED OUTDOOR RESIDENTIAL USE AREAS ARE LOCATED
7 ABOVE THE GROUND FLOOR.

8 (7) ~~(6)~~—"Enforceable mechanism" means a legal method whereby
9 the state, a county, a municipality, or another person is
10 authorized to take action to guarantee compliance with an
11 approved county solid waste management plan. Enforceable
12 mechanisms include contracts, intergovernmental agreements, laws,
13 ordinances, rules, and regulations.

14 (8) ~~(7)~~—"Escrow account" means an account **THAT IS** managed by
15 a bank or other financial institution whose account operations
16 are regulated and examined by a federal or state agency and ~~which~~
17 **THAT** complies with section 11523b.

18 (9) ~~(8)~~—"Farm" means that term as defined in section 2 of
19 the Michigan right to farm act, 1981 PA 93, MCL 286.472.

20 (10) ~~(9)~~—"Farm operation" means that term as defined in
21 section 2 of the Michigan right to farm act, 1981 PA 93, MCL
22 286.472.

23 (11) ~~(10)~~—"Financial assurance" means the mechanisms used to
24 demonstrate that the funds necessary to meet the cost of closure,
25 postclosure maintenance and monitoring, and corrective action
26 will be available whenever they are needed.

27 (12) ~~(11)~~—"Financial test" means a corporate or local

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

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

21 (14) ~~(12)~~—"Food processing residuals" means any of the
22 following:

23 (a) Residuals of fruits, vegetables, aquatic plants, or
24 field crops.

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

27 (c) Otherwise unusable food products ~~which~~ **THAT** do not meet

1 size, quality, or other product specifications and ~~which~~ THAT
 2 were intended for human or animal consumption.

3 (15) "FOUNDRY SAND" MEANS SILICA SAND USED IN THE METAL
 4 CASTING PROCESS, INCLUDING BINDING MATERIAL OR CARBONACEOUS
 5 ADDITIVES, FROM FERROUS OR NONFERROUS FOUNDRIES.

6 (16) "GAAMPS" MEANS THE GENERALLY ACCEPTED AGRICULTURAL AND
 7 MANAGEMENT PRACTICES UNDER THE MICHIGAN RIGHT TO FARM ACT, 1981
 8 PA 93, MCL 286.471 TO 286.474.

9 (17) ~~(13)~~ "Garbage" means rejected food wastes including
 10 waste accumulation of animal, fruit, or vegetable matter used or
 11 intended for food or that results from the preparation, use,
 12 cooking, dealing in, or storing of meat, fish, fowl, fruit, or
 13 vegetable matter.

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

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

18 ~~—— (b) Wood or wood product treated with creosote or~~
 19 ~~pentachlorophenol.~~

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

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

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

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

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

27 ~~—— (d) Any other chemical designated in rules promulgated by~~

1 ~~the department.~~

2 ~~—— (16) "Wood" means trees, branches, bark, lumber, pallets,~~
3 ~~wood chips, sawdust, or other wood or wood product but does not~~
4 ~~include scrap wood, treated wood, painted wood or painted wood~~
5 ~~product, or any wood or wood product that has been contaminated~~
6 ~~during manufacture or use.~~

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

10 (2) "Inert material" means ~~a substance that will not~~
11 ~~decompose, dissolve, or in any other way form a contaminated~~
12 ~~leachate upon contact with water, or other liquids determined by~~
13 ~~the department as likely to be found at the disposal area,~~
14 ~~percolating through the substance.~~ **ANY OF THE FOLLOWING:**

15 **(A) ROCK.**

16 **(B) TREES, STUMPS, AND OTHER SIMILAR LAND-CLEARING DEBRIS**
17 **THAT IS BURIED ON THE SITE OF ORIGIN OR ANOTHER SITE, WITH THE**
18 **APPROVAL OF THE OWNER OF THE SITE, IF ALL OF THE FOLLOWING**
19 **CONDITIONS ARE MET:**

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

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

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

25 **(C) UNCONTAMINATED EXCAVATED SOIL OR DREDGED SEDIMENT.**
26 **EXCAVATED SOIL OR DREDGED SEDIMENT IS CONSIDERED UNCONTAMINATED**
27 **IF IT DOES NOT CONTAIN MORE THAN DE MINIMIS AMOUNTS OF SOLID**

1 WASTE AND 1 OF THE FOLLOWING APPLIES:

2 (i) THE SOIL OR SEDIMENT IS NOT CONTAMINATED BY A HAZARDOUS
3 SUBSTANCE AS A RESULT OF HUMAN ACTIVITY. SOIL OR SEDIMENT THAT
4 NATURALLY CONTAINS ELEVATED LEVELS OF HAZARDOUS SUBSTANCES ABOVE
5 UNRESTRICTED RESIDENTIAL OR ANY OTHER PART 201 GENERIC SOIL
6 CLEANUP CRITERIA IS NOT CONSIDERED CONTAMINATED FOR PURPOSES OF
7 THIS SUBDIVISION. A SOIL OR SEDIMENT ANALYSIS IS NOT REQUIRED
8 UNDER THIS SUBPARAGRAPH IF, BASED ON PAST LAND USE, THERE IS NO
9 REASON TO BELIEVE THAT THE SOIL OR SEDIMENT IS CONTAMINATED.

10 (ii) FOR ANY HAZARDOUS SUBSTANCE THAT COULD REASONABLY BE
11 EXPECTED TO BE PRESENT AS A RESULT OF PAST LAND USE AND HUMAN
12 ACTIVITY, THE SOIL OR SEDIMENT DOES NOT EXCEED THE BACKGROUND
13 CONCENTRATION, AS THAT TERM IS DEFINED IN PART 201.

14 (iii) FOR ANY HAZARDOUS SUBSTANCE THAT COULD REASONABLY BE
15 EXPECTED TO BE PRESENT AS A RESULT OF PAST LAND USE AND HUMAN
16 ACTIVITY, THE SOIL OR SEDIMENT FALLS BELOW PART 201 GENERIC
17 RESIDENTIAL SOIL DIRECT CONTACT CLEANUP CRITERIA AND HAZARDOUS
18 SUBSTANCES IN LEACHATE FROM THE SOIL OR SEDIMENT, USING, AT THE
19 OPTION OF THE GENERATOR, EPA METHOD 1311, 1312, OR ANY OTHER
20 LEACHING PROTOCOL APPROVED BY THE DEPARTMENT, FALL BELOW PART 201
21 GENERIC RESIDENTIAL HEALTH BASED GROUNDWATER DRINKING WATER
22 VALUES OR CRITERIA, AND THE SOIL OR SEDIMENT WOULD NOT CAUSE A
23 VIOLATION OF ANY SURFACE WATER QUALITY STANDARD ESTABLISHED UNDER
24 PART 31 AT THE AREA OF PLACEMENT, DISPOSAL, OR USE.

25 (D) EXCAVATED SOIL FROM A SITE OF ENVIRONMENTAL
26 CONTAMINATION, CORRECTIVE ACTION, OR RESPONSE ACTIVITY IF THE
27 SOIL IS NOT A LISTED HAZARDOUS WASTE UNDER PART 111 AND IF

1 HAZARDOUS SUBSTANCES IN THE SOIL DO NOT EXCEED GENERIC SOIL
2 CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE AS DEFINED IN
3 PART 201 OR BACKGROUND CONCENTRATION AS DEFINED IN PART 201, AS
4 APPLICABLE.

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

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

11 (ii) THE MATERIAL IS NOT MATERIALLY CONTAMINATED. TYPICAL
12 SURFACE OIL STAINING ON PAVEMENT AND CONCRETE FROM DRIVEWAYS,
13 ROADWAYS, AND PARKING LOTS IS NOT MATERIAL CONTAMINATION.
14 MATERIAL COVERED IN WHOLE OR IN PART WITH LEAD-BASED PAINT IS
15 MATERIALLY CONTAMINATED.

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

17 (F) PORTLAND CEMENT CLINKER PRODUCED BY A CEMENT KILN USING
18 WOOD, FOSSIL FUELS, OR SOLID WASTE AS A FUEL OR FEEDSTOCK, BUT
19 NOT INCLUDING CEMENT KILN DUST GENERATED IN THE PROCESS.

20 (G) ASPHALT PAVEMENT OR CONCRETE PAVEMENT THAT MEETS ALL OF
21 THE FOLLOWING REQUIREMENTS:

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

23 (ii) HAS BEEN STOCKPILED OR CRUSHED FOR REUSE AS AGGREGATE
24 MATERIAL.

25 (iii) DOES NOT INCLUDE EXPOSED REINFORCEMENT BARS.

26 (H) CUTTINGS, DRILLING MATERIALS, AND FLUIDS USED TO DRILL
27 OR COMPLETE A WELL INSTALLED PURSUANT TO PART 127 OF THE PUBLIC

1 HEALTH CODE, 1978 PA 368, MCL 333.12701 TO 333.12771, AND THAT
2 ARE LEFT ON SITE.

3 (I) FOUNDRY SAND BLENDED WITH OTHER INERT MATERIALS OR WITH
4 COMPOST AND USED TO MANUFACTURE SOIL IF REPRESENTATIVE TESTING OF
5 THE FOUNDRY SAND USING EITHER A TOTALS ANALYSIS, A LEACHATE
6 ANALYSIS (USING EPA METHOD 1311, EPA METHOD 1312, ASTM METHOD
7 3987, OR OTHER LEACHING PROTOCOL APPROVED BY THE DEPARTMENT), OR
8 ANY COMBINATION OF THE 2 TYPES OF ANALYSES DEMONSTRATES THAT NONE
9 OF THE FOLLOWING MAXIMUM CONCENTRATIONS ARE EXCEEDED:

10 CONSTITUENT	TOTALS	LEACHATE
11	ANALYSIS	ANALYSIS
12	MG/KG	MG/L
13 ANTIMONY	4.3	0.006
14 CHROMIUM	1,000,000 (CR+3)	0.1 (CR+3)
15	30 (CR+6)	0.1 (CR+6)
16 COBALT	0.8	0.04
17 COPPER	5,800	1
18 IRON	23,185	2.0
19 LEAD	700	0.004
20 MANGANESE	1,299	0.86
21 MOLYBDENUM	5	0.073
22 NICKEL	100	0.1
23 THALLIUM	2.3	0.002
24 VANADIUM	72	0.0045
25 ZINC	2,400	2.4
26 BENZENE	0.1	0.005
27 FORMALDEHYDE	26	1.3

1	PHENOL	88	4.4
2	TRICHLOROETHYLENE	0.1	0.005

3 (J) ANY OTHER MATERIAL DETERMINED AT ANY TIME BY THE
4 DEPARTMENT IN WRITING TO BE AN INERT MATERIAL, EITHER FOR GENERAL
5 USE OR FOR A PARTICULAR USE PURSUANT TO SECTION 11553(4).

6 (3) "Insurance" means insurance that conforms to the
7 requirements of 40 CFR 258.74(d) provided by an insurer who has a
8 certificate of authority from the director of insurance and
9 financial services to sell this line of coverage. An applicant
10 for an operating license shall submit evidence of the required
11 coverage by submitting both of the following to the department:

12 (a) A certificate of insurance that uses wording approved by
13 the department.

14 (b) A certified true and complete copy of the insurance
15 policy.

16 (4) "Landfill" means a disposal area that is a sanitary
17 landfill.

18 (5) "Letter of credit" means an irrevocable letter of credit
19 that complies with 40 CFR 258.74(c).

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

22 (7) "LOW-HAZARD INDUSTRIAL WASTE" MEANS INDUSTRIAL MATERIAL
23 THAT HAS A LOW POTENTIAL FOR GROUNDWATER CONTAMINATION WHEN
24 MANAGED IN ACCORDANCE WITH THIS PART. THE FOLLOWING MATERIALS ARE
25 LOW-HAZARD INDUSTRIAL WASTES:

26 (A) COAL OR WOOD ASH.

- 1 (B) CEMENT KILN DUST.
- 2 (C) PULP AND PAPER MILL MATERIAL.
- 3 (D) SCRAP WOOD.
- 4 (E) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FOR
5 DOMESTIC USE.
- 6 (F) RESIDUE FROM THE THERMAL TREATMENT OF PETROLEUM
7 CONTAMINATED SOIL, MEDIA, OR DEBRIS.
- 8 (G) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FROM
9 A COMMUNITY WATER SUPPLY.
- 10 (H) FOUNDRY SAND.
- 11 (I) MIXED WOOD ASH, SCRAP WOOD ASH, PULP AND PAPER MILL ASH.
- 12 (J) STREET CLEANINGS.
- 13 (K) ASPHALT SHINGLES.
- 14 (L) NEW CONSTRUCTION OR PRODUCTION SCRAP DRYWALL.
- 15 (M) CHIPPED OR SHREDDED TIRES.
- 16 (N) COPPER SLAG.
- 17 (O) COPPER STAMP SANDS.
- 18 (P) DREDGE MATERIAL FROM NONREMEDIAL ACTIVITIES.
- 19 (Q) FLUE GAS DESULFURIZATION MATERIAL.
- 20 (R) DEWATERED GRINDING SLURRY GENERATED FROM PUBLIC
21 TRANSPORTATION AGENCY ROAD PROJECTS.
- 22 (S) ANY OTHER MATERIAL DETERMINED BY THE DEPARTMENT IN
23 WRITING TO BE A LOW-HAZARD INDUSTRIAL WASTE AS PROVIDED IN
24 SECTION 11553(5).
- 25 (8) ~~(6)~~ "Medical waste" means that term as it is defined in
26 section 13805 of the public health code, 1978 PA 368, MCL
27 333.13805.

1 (9) "MIXED WOOD ASH" MEANS THE MATERIAL RECOVERED FROM AIR
2 POLLUTION CONTROL SYSTEMS FOR, OR THE NONCOMBUSTED RESIDUE
3 REMAINING AFTER, THE COMBUSTION OF ANY COMBINATION OF WOOD, SCRAP
4 WOOD, RAILROAD TIES, OR TIRES, IF RAILROAD TIES COMPOSED LESS
5 THAN 35% BY WEIGHT OF THE TOTAL COMBUSTED MATERIAL AND TIRES
6 COMPOSED LESS THAN 10% BY WEIGHT OF THE TOTAL COMBUSTED MATERIAL.

7 (10) ~~(7)~~—"Municipal solid waste incinerator" means an
8 incinerator that is owned or operated by any person, and meets
9 all of the following requirements:

10 (a) The incinerator receives solid waste from off site and
11 burns only household waste from single and multiple dwellings,
12 hotels, motels, and other residential sources, or this household
13 waste together with solid waste from commercial, institutional,
14 municipal, county, or industrial sources that, if disposed of,
15 would not be required to be placed in a disposal facility
16 licensed under part 111.

17 (b) The incinerator has established contractual requirements
18 or other notification or inspection procedures sufficient to
19 ensure that the incinerator receives and burns only waste
20 referred to in subdivision (a).

21 (c) The incinerator meets the requirements of this part and
22 the rules promulgated under this part.

23 (d) The incinerator is not an industrial furnace as defined
24 in 40 CFR 260.10.

25 (e) The incinerator is not an incinerator that receives and
26 burns only medical waste or only waste produced at 1 or more
27 hospitals.

1 (11) ~~(8)~~—"Municipal solid waste incinerator ash" means the
2 substances remaining after combustion in a municipal solid waste
3 incinerator.

4 (12) ~~(9)~~—"Perpetual care fund" means a trust or escrow
5 account or perpetual care fund bond provided for in section
6 11525.

7 (13) ~~(10)~~—"Perpetual care fund bond" means a surety bond, an
8 irrevocable letter of credit, or a combination of these
9 instruments in favor of and on a form approved by the department
10 by which a perpetual care fund is established.

11 ~~———(11) "Trust fund" means a trust fund held by a trustee which~~
12 ~~has the authority to act as a trustee and whose trust operations~~
13 ~~are regulated and examined by a federal or state agency. A trust~~
14 ~~fund shall comply with section 11523b.~~

15 (14) "PULP AND PAPER MILL ASH" MEANS THE MATERIAL RECOVERED
16 FROM AIR POLLUTION CONTROL SYSTEMS FOR, OR THE NONCOMBUSTED
17 RESIDUE REMAINING AFTER, THE COMBUSTION OF ANY COMBINATION OF
18 COAL, WOOD, PULP AND PAPER MILL MATERIAL, WOOD OR BIOMASS FUEL
19 PELLETS, SCRAP WOOD, RAILROAD TIES, OR TIRES, FROM A BOILER,
20 POWER PLANT, OR FURNACE AT A PULP AND PAPER MILL, IF RAILROAD
21 TIES COMPOSED LESS THAN 35% BY WEIGHT OF THE TOTAL COMBUSTED
22 MATERIAL AND TIRES COMPOSED LESS THAN 10% BY WEIGHT OF THE TOTAL
23 COMBUSTED MATERIAL.

24 (15) "PULP AND PAPER MILL MATERIAL" MEANS ALL OF THE
25 FOLLOWING MATERIALS IF GENERATED AT A FACILITY THAT PRODUCES PULP
26 OR PAPER:

27 (A) WASTEWATER TREATMENT SLUDGE, INCLUDING WOOD FIBERS,

1 MINERALS, AND MICROBIAL BIOMASS.

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

3 (C) BARK, WOOD FIBER, AND CHIPS.

4 (D) SCRAP PAPER.

5 (E) CAUSTICIZING RESIDUES, INCLUDING LIME MUD AND GRIT AND
6 GREEN LIQUOR DREGS.

7 (F) ANY OTHER MATERIAL THAT THE DEPARTMENT DETERMINES HAS
8 CHARACTERISTICS THAT ARE SIMILAR TO ANY OF THE MATERIALS LISTED
9 IN SUBDIVISIONS (A) TO (E).

10 Sec. 11505. (1) "Recyclable materials" means source
11 separated materials, site separated materials, high grade paper,
12 glass, metal, plastic, aluminum, newspaper, corrugated paper,
13 yard clippings, and other materials that may be recycled or
14 composted.

15 (2) "Regional solid waste management planning agency" means
16 the regional solid waste planning agency designated by the
17 governor pursuant to 42 USC 6946.

18 (3) "Resource recovery facility" means machinery, equipment,
19 structures, or any parts or accessories of machinery, equipment,
20 or structures, installed or acquired for the primary purpose of
21 recovering materials or energy from the waste stream.

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

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

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

9 (7) "SCRAP WOOD" MEANS WOOD OR WOOD PRODUCT THAT IS 1 OR
10 MORE OF THE FOLLOWING:

11 (A) PLYWOOD, PARTICLE BOARD, PRESSED BOARD, ORIENTED STRAND
12 BOARD, FIBERBOARD, RESONATED WOOD, OR ANY OTHER WOOD OR WOOD
13 PRODUCT MIXED WITH GLUE, RESINS, OR FILLER.

14 (B) WOOD OR WOOD PRODUCT TREATED WITH CREOSOTE OR
15 PENTACHLOROPHENOL.

16 (C) ANY OTHER WOOD OR WOOD PRODUCT DESIGNATED AS SCRAP WOOD
17 IN RULES PROMULGATED BY THE DEPARTMENT.

18 (8) ~~(7)~~—"Site separated material" means glass, metal, wood,
19 paper products, plastics, rubber, textiles, garbage, or any other
20 material approved by the department that is separated from solid
21 waste for the purpose of **RECYCLING OR** conversion into raw
22 materials or new products. ~~Site separated material does not~~
23 ~~include the residue remaining after glass, metal, wood, paper~~
24 ~~products, plastics, rubber, textiles, or any other material~~
25 ~~approved by the department is separated from solid waste.~~

26 (9) ~~(8)~~—"Slag" means the nonmetallic product resulting from
27 melting or smelting operations for iron or steel.

1 Sec. 11506. (1) "Solid waste" means garbage, rubbish, ashes,
2 incinerator ash, incinerator residue, street cleanings, municipal
3 and industrial sludges, solid commercial ~~and WASTE~~, solid
4 industrial waste, and animal waste. ~~other than organic waste~~
5 ~~generated in the production of livestock and poultry.~~ However,
6 solid waste does not include the following:

7 (a) Human body waste.

8 (b) Medical waste.

9 (c) ~~Organic waste~~ **MANURE AND BEDDING** generated in the
10 production of livestock and poultry.

11 (d) Liquid waste.

12 (e) Ferrous or nonferrous scrap directed to a scrap metal
13 processor or to a reuser of ferrous or nonferrous products.

14 (f) Slag or slag products directed to a slag processor or to
15 a reuser of slag or slag products.

16 (g) Sludges and ashes managed as recycled or nondetrimental
17 materials appropriate for agricultural or silvicultural use
18 pursuant to a plan approved by the department.

19 **(H) THE FOLLOWING MATERIALS THAT ARE USED AS ANIMAL FEED, OR**
20 **ARE APPLIED ON, OR ARE COMPOSTED AND APPLIED ON, FARMLAND OR**
21 **FORESTLAND FOR AN AGRICULTURAL OR SILVICULTURAL PURPOSE AT AN**
22 **AGRONOMIC RATE CONSISTENT WITH GAAMPS:**

23 (i) Food processing residuals. ~~precipitated~~

24 (ii) **PRECIPITATED** calcium carbonate from sugar beet
25 processing. ~~wood~~

26 (iii) **WOOD** ashes resulting solely from a source that burns
27 only wood that is untreated and inert. ~~lime~~

1 (iv) **LIME** from kraft pulping processes generated prior to
2 bleaching. ~~, or aquatic~~

3 (v) **AQUATIC** plants. ~~may be applied on, or composted and~~
4 ~~applied on, farmland or forestland for an agricultural or~~
5 ~~silvicultural purpose, or used as animal feed, as appropriate,~~
6 ~~and such an application or use does not require a plan described~~
7 ~~in this subdivision or a permit or license under this part. In~~
8 ~~addition, source separated materials approved by the department~~
9 ~~for land application for agricultural and silvicultural purposes~~
10 ~~and compost produced from those materials may be applied to the~~
11 ~~land for agricultural and silvicultural purposes and such an~~
12 ~~application does not require a plan described in this subdivision~~
13 ~~or permit or license under this part. Land application authorized~~
14 ~~under this subdivision for an agricultural or silvicultural~~
15 ~~purpose, or use as animal feed as provided for in this~~
16 ~~subdivision shall be performed in a manner that prevents losses~~
17 ~~from runoff and leaching. Land application under this subdivision~~
18 ~~shall be at an agronomic rate consistent with generally accepted~~
19 ~~agricultural and management practices under the Michigan right to~~
20 ~~farm act, 1981 PA 93, MCL 286.471 to 286.474.~~

21 (I) ~~(h)~~ Materials approved for emergency disposal by the
22 department.

23 (J) ~~(i)~~ Source separated materials.

24 (K) ~~(j)~~ Site separated material.

25 (l) ~~(k)~~ Fly ash or any other ash produced from the combustion
26 of coal, **COAL ASH**, when used under any of the following
27 circumstances:

1 (i) As a component of concrete, grout, mortar, or casting
2 molds, if the ~~fly ash has not~~ **COAL ASH DOES NOT HAVE** more than 6%
3 unburned carbon.

4 (ii) As a raw material in asphalt for road construction, if
5 the ~~fly ash has not~~ **COAL ASH DOES NOT HAVE** more than 12% unburned
6 carbon and passes Michigan test method for water asphalt
7 preferential test, MTM 101, as set forth in the state
8 transportation department's manual for the Michigan test methods
9 (MTM's).

10 (iii) As aggregate, road **MATERIAL**, or building material that
11 in ultimate use **IS OR** will be stabilized or bonded by cement,
12 limes, or asphalt, **OR ITSELF ACT AS A BONDING AGENT. TO BE**
13 **CONSIDERED TO ACT AS A BONDING AGENT, THE COAL ASH MUST HAVE AT**
14 **LEAST 10% AVAILABLE LIME.**

15 (iv) As a road base or construction fill that is **PLACED AT**
16 **LEAST 3 FEET ABOVE THE SEASONAL GROUNDWATER TABLE AND** covered
17 with asphalt, concrete, or other material approved by the
18 department. ~~and that is placed at least 4 feet above the seasonal~~
19 ~~groundwater table.~~

20 (v) As the sole material in a depository designed to
21 reclaim, develop, or otherwise enhance land, subject to the
22 approval of the department. In evaluating the site, the
23 department shall consider the physical and chemical properties of
24 the ash, including, but not limited to, leachability, and the
25 engineering of the depository, including, but not limited to, the
26 compaction, control of surface water and groundwater that may
27 threaten to infiltrate the site, and evidence that the depository

1 is designed to prevent water percolation through the material.

2 (M) INERT MATERIAL.

3 (N) ~~(l)~~—Soil that is washed or otherwise removed from sugar
4 beets, has not more than 35% moisture content, and is registered
5 as a soil amendment—CONDITIONER under part 85. Any testing
6 required to become registered under part 85 is the responsibility
7 of the generator.

8 (O) ~~(m)~~—Soil that is relocated under section 20120c.

9 (P) BENEFICIAL USE BY-PRODUCTS.

10 (Q) COAL BOTTOM ASH, IF SUBSTANTIALLY FREE OF FLY ASH OR
11 ECONOMIZER ASH, WHEN USED AS COLD WEATHER ROAD ABRASIVE.

12 (R) STAMP SANDS WHEN USED AS COLD WEATHER ROAD ABRASIVE BY
13 ANY OF THE FOLLOWING:

14 (i) A PUBLIC ROAD AGENCY.

15 (ii) ANY OTHER PERSON PURSUANT TO A PLAN APPROVED BY A PUBLIC
16 ROAD AGENCY.

17 (S) ANY MATERIAL THAT IS RECLAIMED OR REUSED IN THE PROCESS
18 THAT GENERATED IT.

19 (T) ANY SECONDARY MATERIAL THAT, AS SPECIFIED IN OR
20 DETERMINED PURSUANT TO 40 CFR PART 241, IS NOT A SOLID WASTE WHEN
21 COMBUSTED.

22 (U) ANY OTHER MATERIAL APPROVED IN WRITING BY THE DEPARTMENT
23 CONSISTENT WITH THE PURPOSES OF THIS PART. APPROVAL OF OTHER
24 MATERIALS BY THE DEPARTMENT DOES NOT REQUIRE THE USE OF THOSE
25 MATERIALS BY ANY GOVERNMENTAL ENTITY OR ANY OTHER PERSON.

26 (V) ~~(n)~~—Other wastes regulated by statute.

27 (2) "Solid waste hauler" means a person who owns or operates

1 a solid waste transporting unit.

2 (3) "Solid waste processing plant" means a tract of land,
3 building, unit, or appurtenance of a building or unit or a
4 combination of land, buildings, and units that is used or
5 intended for use for the processing of solid waste or the
6 separation of material for salvage or disposal, or both, but does
7 not include a plant engaged primarily in the acquisition,
8 processing, and shipment of ferrous or nonferrous metal scrap, or
9 a plant engaged primarily in the acquisition, processing, and
10 shipment of slag or slag products.

11 (4) "Solid waste transporting unit" means a container, which
12 may be an integral part of a truck or other piece of equipment,
13 used for the transportation of solid waste.

14 (5) "Solid waste transfer facility" means a tract of land, a
15 building and any appurtenances, or a container, or any
16 combination of land, buildings, or containers that is used or
17 intended for use in the rehandling or storage of solid waste
18 incidental to the transportation of the solid waste, but is not
19 located at the site of generation or the site of disposal of the
20 solid waste.

21 (6) "Source separated material" means ~~glass,~~ **ANY OF THE**
22 **FOLLOWING MATERIALS IF SEPARATED AT THE SOURCE OF GENERATION AND**
23 **REUSED FOR THE INDICATED USE:**

24 (A) **GLASS**, metal, wood, paper products, plastics, rubber,
25 textiles, garbage, or any other material approved by the
26 department that is ~~separated at the source of generation for the~~
27 ~~purpose of~~ **USED FOR** conversion into raw materials or new products

1 including, but not limited to, compost OR FUEL.

2 (B) SCRAP WOOD AND RAILROAD TIES USED TO FUEL AN INDUSTRIAL
3 BOILER, KILN, POWER PLANT, OR FURNACE, SUBJECT TO PART 55, FOR
4 PRODUCTION OF NEW WOOD PRODUCTS, OR FOR OTHER USES APPROVED BY
5 THE DEPARTMENT.

6 (C) CHIPPED OR WHOLE TIRES USED TO FUEL AN INDUSTRIAL
7 BOILER, KILN, POWER PLANT, OR FURNACE, SUBJECT TO PART 55, OR FOR
8 OTHER USES APPROVED BY THE DEPARTMENT. AS USED IN THIS
9 SUBDIVISION, "POWER PLANT" DOES NOT INCLUDE A GASIFICATION
10 FACILITY AS DEFINED IN SECTION 7 OF THE CLEAN, RENEWABLE, AND
11 EFFICIENT ENERGY ACT, 2008 PA 295, MCL 460.1007.

12 (D) RECOVERED PAINT SOLIDS USED TO FUEL AN INDUSTRIAL
13 BOILER, KILN, POWER PLANT, OR FURNACE, SUBJECT TO PART 55, OR FOR
14 OTHER USES APPROVED BY THE DEPARTMENT.

15 (E) GYPSUM DRYWALL GENERATED FROM THE PRODUCTION OF
16 WALLBOARD USED FOR STOCK RETURNED TO THE PRODUCTION PROCESS OR
17 FOR OTHER USES APPROVED BY THE DEPARTMENT.

18 (F) FLUE GAS DESULFURIZATION GYPSUM USED FOR PRODUCTION OF
19 CEMENT OR WALLBOARD OR OTHER USES APPROVED BY THE DEPARTMENT.

20 (G) ASPHALT SHINGLES THAT DO NOT CONTAIN ASBESTOS, ROLLED
21 ROOFING, OR TAR PAPER USED AS A COMPONENT IN ASPHALT OR USED TO
22 FUEL AN INDUSTRIAL BOILER, KILN, POWER PLANT, OR FURNACE, SUBJECT
23 TO PART 55, OR FOR OTHER USES APPROVED BY THE DEPARTMENT.

24 (H) MUNICIPAL SOLID WASTE INCINERATOR ASH THAT MEETS
25 CRITERIA SPECIFIED BY THE DEPARTMENT AND THAT IS USED AS DAILY
26 COVER AT A DISPOSAL FACILITY LICENSED PURSUANT TO THIS PART.

27 (I) UTILITY POLES OR POLE SEGMENTS REUSED AS POLES, POSTS,

1 OR SIMILAR USES APPROVED BY THE DEPARTMENT IN WRITING.

2 (J) RAILROAD TIES REUSED IN LANDSCAPING, EMBANKMENTS, OR
3 SIMILAR USES APPROVED BY THE DEPARTMENT IN WRITING.

4 (K) ANY OTHER MATERIALS AND USES APPROVED IN WRITING BY THE
5 DEPARTMENT PURSUANT TO SECTION 11553(6).

6 (L) ANY MATERIAL DETERMINED BY THE DEPARTMENT IN WRITING
7 PRIOR TO THE EFFECTIVE DATE OF THE 2014 AMENDATORY ACT THAT ADDED
8 THIS SUBDIVISION TO BE A SOURCE SEPARATED MATERIAL.

9 (7) "STAMP SANDS" MEANS THE SAND REMAINING AFTER STAMPING
10 AND PROCESSING COPPER-BEARING ORE IN A COPPER STAMP MILL.

11 (8) "TREATED WOOD" MEANS WOOD OR WOOD PRODUCT THAT HAS BEEN
12 TREATED WITH 1 OR MORE OF THE FOLLOWING:

13 (A) CHROMATED COPPER ARSENATE (CCA).

14 (B) AMMONIACAL COPPER QUAT (ACQ).

15 (C) AMMONIACAL COPPER ZINC ARSENATE (ACZA).

16 (D) ANY OTHER CHEMICAL DESIGNATED IN RULES PROMULGATED BY
17 THE DEPARTMENT.

18 (9) "TRUST FUND" MEANS A FUND HELD BY A TRUSTEE WHO HAS THE
19 AUTHORITY TO ACT AS A TRUSTEE AND WHOSE TRUST OPERATIONS ARE
20 REGULATED AND EXAMINED BY A FEDERAL OR STATE AGENCY.

21 (10) ~~(7)~~—"Type I public water supply", "type IIa public
22 water supply", "type IIb public water supply", and "type III
23 public water supply" mean those terms, respectively, as described
24 in R 325.10502 of the Michigan administrative code.

25 (11) "WOOD" MEANS TREES, BRANCHES AND ASSOCIATED LEAVES,
26 BARK, LUMBER, PALLETS, WOOD CHIPS, SAWDUST, OR OTHER WOOD OR WOOD
27 PRODUCT BUT DOES NOT INCLUDE SCRAP WOOD, TREATED WOOD, PAINTED

1 WOOD OR PAINTED WOOD PRODUCT, OR ANY WOOD OR WOOD PRODUCT THAT
2 HAS BEEN CONTAMINATED DURING MANUFACTURE OR USE.

3 (12) ~~(8)~~—"Yard clippings" means leaves, grass clippings,
4 vegetable or other garden debris, shrubbery, or brush or tree
5 trimmings, less than 4 feet in length and 2 inches in diameter,
6 that can be converted to compost humus. Yard clippings do not
7 include stumps, agricultural wastes, animal waste, roots, sewage
8 sludge, or garbage.

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
12 ash 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
15 rules 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
27 or 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
3 rules 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,
18 that will prevent the contaminants from entering the leachate
19 collection system. If the department determines that the source
20 of the contaminants is caused by a design failure of the
21 landfill, the department, notwithstanding an approved
22 construction permit or operating license, may require landfill
23 cells at that landfill that will be used for the disposal of
24 municipal solid waste incinerator ash, which are under
25 construction or will be constructed in the future at the
26 landfill, to be constructed in conformance with improved design
27 standards approved by the department. However, this subparagraph

1 does not require the removal of liners or leak detection and
2 leachate collection systems that are already in place in a
3 landfill cell under construction.

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

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

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

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

13 (A) A leachate collection system.

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

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

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

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

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

1 conditions apply:

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

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

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

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

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

15 (c) An infiltration collection system.

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

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

19 (3) A landfill that receives municipal solid waste
20 incinerator ash under this section may be capped with a design
21 approved by the department that will prevent the migration of any
22 hazardous constituent into the groundwater or surface water at
23 least as effectively as the design requirements of subsection
24 (2).

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

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

1 Michigan administrative code, licensed under this part or may be
2 used in any manner approved by the department. If municipal solid
3 waste incinerator ash is processed as provided in this
4 subsection, but does not satisfy the testing protocol approved by
5 the department as provided by rule, the ash shall be disposed of
6 in accordance with subsection (1).

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

1 emissions from access roads within the landfill to be controlled.
2 With the exception of a landfill that is in existence on June 12,
3 1989 that the department determines is otherwise in compliance
4 with this section, the owner or operator of the landfill shall
5 obtain the operating license amendment prior to initiating
6 construction. Prior to operation, the owner or operator of a
7 landfill shall submit to the department certification from a
8 licensed professional engineer that the landfill has been
9 constructed in accordance with the approved plan and
10 specifications. ~~At the time~~ **WHEN** the copies are submitted to the
11 department, the owner or operator of the landfill shall send a
12 copy of the operating license amendment application to the
13 municipality where the landfill is located. At least 30 days
14 prior to making a final decision on the operating license
15 amendment, the department shall hold at least 1 public meeting in
16 the vicinity of the landfill to receive public comments. Prior to
17 a public meeting, the department shall publish notice of the
18 meeting in a newspaper serving the local area.

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

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

27 **SEC. 11551. (1) TO QUALIFY AS A BENEFICIAL USE BY-PRODUCT, A**

1 MATERIAL OR THE USE OF THE MATERIAL, AS APPLICABLE, SHALL MEET
2 ALL OF THE FOLLOWING REQUIREMENTS:

3 (A) THE MATERIAL IS NOT A PART 111 HAZARDOUS WASTE OR MIXED
4 WITH A HAZARDOUS WASTE.

5 (B) THE MATERIAL IS NOT STORED AT THE SITE OF GENERATION OR
6 USE FOR MORE THAN 3 YEARS, OR THE AMOUNT THAT IS TRANSFERRED OFF
7 SITE FOR USE DURING A 3-YEAR PERIOD EQUALS AT LEAST 75% BY WEIGHT
8 OR VOLUME OF THE AMOUNT OF THAT MATERIAL STORED ON SITE FOR
9 BENEFICIAL USE AT THE BEGINNING OF THE 3-YEAR PERIOD.

10 (C) THE MATERIAL IS STORED IN A MANNER THAT MAINTAINS ITS
11 USEFULNESS, CONTROLS WIND DISPERSAL, AND PREVENTS LOSS OF THE
12 MATERIAL BEYOND THE STORAGE AREA.

13 (D) THE MATERIAL IS STORED IN A MANNER THAT DOES NOT CAUSE
14 GROUNDWATER TO NO LONGER BE FIT FOR 1 OR MORE PROTECTED USES AND
15 DOES NOT VIOLATE A PART 31 SURFACE WATER QUALITY STANDARD AND IS
16 STORED ISOLATED Laterally AT LEAST 200 FEET FROM ANY PUBLIC WATER
17 SYSTEM SUPPLY WELL OR 50 FEET FROM ANY DOMESTIC WELL. STORAGE
18 DOES NOT REQUIRE A PART 31 GROUNDWATER OR SURFACE WATER DISCHARGE
19 PERMIT IF THE STORAGE MEETS THE REQUIREMENTS OF THIS SECTION.

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

22 (F) THE USE OF THE MATERIAL IS FOR A LEGITIMATE BENEFICIAL
23 PURPOSE OTHER THAN A MEANS TO DISCARD THE MATERIAL AND THE
24 MATERIAL IS NOT USED IN QUANTITIES THAT EXCEED GENERALLY ACCEPTED
25 ENGINEERING, INDUSTRIAL, OR COMMERCIAL STANDARDS.

26 (G) FOR BENEFICIAL USE 2, THE MATERIAL, IF SPECIFIED BELOW,
27 MEETS THE FOLLOWING ENVIRONMENTAL STANDARDS USING, AT THE OPTION

1 OF THE GENERATOR OF THE BY-PRODUCT, EPA METHOD 1311, 1312, OR
 2 ASTM TEST METHOD 3987:

3	CONSTITUENT -	COAL	PULP	FOUNDRY	CEMENT	WATER	STAMP	SPENT
4	MAXIMUM	OR	AND	SAND	KILN	SOFTENING	SAND	MEDIA
5	LEACHATE MG/L	WOOD	PAPER		DUST,	LIMES,		FROM
6		ASH	MILL		LIME	DEWATERED		SAND
7			ASH,		KILN	GRINDING		BLASTING
8			MIXED		DUST	SLUDGE		
9			WOOD					
10			ASH					
11	ARSENIC - 0.2	X	X	X	X	X		
12	BORON - 10	X						
13	CADMIUM - 0.1	X	X		X	X		
14	CHROMIUM - 2.0	X						X
15	LEAD - 0.08	X	X	X	X	X		
16	MERCURY - 0.04	X	X		X	X		
17	COPPER - 20		X			X	X	
18	NICKEL - 2.0		X	X		X		X
19	SELENIUM - 1.0	X				X		
20	THALLIUM - 0.04	X			X			
21	ZINC - 48	X	X			X		

22 (H) FOR BENEFICIAL USE 3, THE MATERIAL OR USE OF THE
 23 MATERIAL, AS APPLICABLE, MEETS ALL OF THE FOLLOWING REQUIREMENTS:

24 (i) THE MATERIAL IS COAL BOTTOM OR WOOD ASH, PULP AND PAPER
 25 MILL MATERIAL, PULP AND PAPER MILL ASH, MIXED WOOD ASH, FOUNDRY
 26 SAND, CEMENT KILN DUST, LIME KILN DUST, LIME WATER SOFTENING
 27 RESIDUALS, OR FLUE GAS DESULFURIZATION GYPSUM.

1 (ii) THE AMOUNT OF ANY CONSTITUENT LISTED BELOW APPLIED TO AN
2 AREA OF LAND OVER ANY PERIOD OF TIME DOES NOT EXCEED THE
3 FOLLOWING:

4 CONSTITUENT	CUMULATIVE LOAD
5	POUNDS PER ACRE
6 ARSENIC	37
7 CADMIUM	35
8 COPPER	1,335
9 LEAD	267
10 MERCURY	15
11 NICKEL	374
12 SELENIUM	89
13 ZINC	2,492

14 (iii) IF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT
15 DETERMINES, BASED ON PEER-REVIEWED SCIENTIFIC LITERATURE, THAT
16 ANY OTHER CONSTITUENT IS SUBJECT TO A CUMULATIVE LOADING
17 REQUIREMENT, THE AMOUNT OF THAT CONSTITUENT APPLIED TO AN AREA OF
18 LAND OVER ANY PERIOD OF TIME DOES NOT EXCEED THAT CUMULATIVE
19 LOADING REQUIREMENT. THE CUMULATIVE LOAD FOR THAT CONSTITUENT
20 SHALL BE CALCULATED AS FOLLOWS: CONSTITUENT CONCENTRATION (MG/KG
21 DRY WEIGHT) X CONVERSION FACTOR OF 0.002 (CONCENTRATION TO POUNDS
22 PER DRY TON) X THE MATERIAL APPLICATION RATE IN DRY TONS PER
23 ACRE.

24 (2) THE DETERMINATION WHETHER A MATERIAL MEETS THE
25 REQUIREMENTS OF SUBSECTION (1) (A) OR (G) SHALL BE BASED ON THE
26 ANALYSIS OF A REPRESENTATIVE SAMPLE OF THE MATERIAL BY THE

1 INITIAL GENERATOR. THE INITIAL GENERATOR SHALL MAINTAIN RECORDS
2 OF THE TEST RESULTS FOR NOT LESS THAN 10 YEARS AFTER THE DATE THE
3 MATERIAL WAS SENT OFF SITE AND MAKE THE RECORDS AVAILABLE TO THE
4 DEPARTMENT UPON REQUEST. THE GENERATOR SHALL RESAMPLE AND ANALYZE
5 THE MATERIAL WHEN RAW MATERIALS OR PROCESSES CHANGE IN A WAY THAT
6 COULD REASONABLY BE EXPECTED TO MATERIALLY AFFECT ANALYSIS
7 RESULTS.

8 (3) STORAGE AND USE OF BENEFICIAL USE BY-PRODUCTS SHALL
9 COMPLY WITH ALL OTHER APPLICABLE PROVISIONS OF THIS ACT, EXCEPT
10 AS FOLLOWS:

11 (A) IF STORAGE OF A MATERIAL USED AS A BENEFICIAL USE BY-
12 PRODUCT FOR BENEFICIAL USE 3 IS SUBJECT TO REGULATION NO. 641,
13 COMMERCIAL FERTILIZER BULK STORAGE, R 285.641.1 TO R 285.641.18
14 OF THE MICHIGAN ADMINISTRATIVE CODE, THE STORAGE MAY COMPLY WITH
15 EITHER THAT REGULATION OR THE STORAGE REQUIREMENTS OF THIS PART.

16 (B) AS OTHERWISE PROVIDED IN THIS ACT.

17 (4) A PERSON THAT ACTIVELY MANAGES AND REUSES A BENEFICIAL
18 USE BY-PRODUCT THAT HAS ALREADY BEEN USED IN COMPLIANCE WITH THIS
19 PART MAY RELY ON ANALYTICAL DATA FROM THE PRIOR USE.

20 (5) ALL OF THE FOLLOWING APPLY TO BENEFICIAL USES 1 AND 2 AT
21 AND ALONG ROADWAYS:

22 (A) ROUTINE REPAIR AND REPLACEMENT OF ROADWAYS CONSTRUCTED
23 USING BENEFICIAL USE MATERIALS DOES NOT CONSTITUTE GENERATION OF
24 BENEFICIAL USE BY-PRODUCTS TRIGGERING THE REQUIREMENTS OF THIS
25 SECTION IF THE BENEFICIAL USE BY-PRODUCTS REMAIN OR ARE REUSED AT
26 THE SAME ROADWAY AND ARE USED IN A MANNER THAT MEETS THE
27 DEFINITION OF BENEFICIAL USE 1 OR BENEFICIAL USE 2, AS

1 APPROPRIATE. IF THE BENEFICIAL USE BY-PRODUCTS WILL BE REUSED AT
2 SOME PLACE OTHER THAN THE SAME ROADWAY, THEN THE REQUIREMENTS
3 APPLICABLE TO GENERATORS OF BENEFICIAL USE BY-PRODUCTS MUST BE
4 MET, EXCEPT AS FOLLOWS:

5 (i) AS SET FORTH IN SUBSECTION (4).

6 (ii) THE REQUIREMENTS OF SECTION 11552 APPLY ONLY IF THE
7 CATEGORY OF BENEFICIAL USE WILL CHANGE.

8 (B) FOR BENEFICIAL USE 2, THE REQUIREMENT THAT BENEFICIAL
9 USE MATERIALS BE COVERED BY CONCRETE, ASPHALT, OR 6 INCHES OF
10 GRAVEL APPLIES AT THE TIME OF PLACEMENT AND USE. THE DEVELOPMENT
11 OF POTHOLES, SHOULDER EROSION, OR SIMILAR DETERIORATION DOES NOT
12 RESULT IN A VIOLATION OF THIS PART.

13 (C) IF ROAD MATERIALS CONTAINING BENEFICIAL USE BY-PRODUCTS
14 ARE GROUND, REHEATED, OR MELTED FOR REUSE, THE REQUIREMENTS OF
15 PART 55 MUST BE MET.

16 (D) THIS PART DOES NOT PROHIBIT THE STATE TRANSPORTATION
17 DEPARTMENT FROM SEEKING ADDITIONAL DATA OR INFORMATION FOR ROAD
18 BUILDING MATERIALS OR FROM REQUIRING THAT ROAD BUILDING MATERIALS
19 MEET STATE TRANSPORTATION DEPARTMENT SPECIFICATIONS AND
20 STANDARDS.

21 (6) FOR BENEFICIAL USE 3, THE MATERIAL THAT IS OFFERED FOR
22 SALE OR USE IS ANNUALLY REGISTERED OR LICENSED UNDER PART 85 OR
23 1955 PA 162, MCL 290.531 TO 290.538.

24 (7) THIS PART DOES NOT AUTHORIZE OPEN DUMPING PROHIBITED BY
25 THE SOLID WASTE DISPOSAL ACT, 42 USC 6901 TO 6992K.

26 (8) IF AN OWNER OF PROPERTY HAS KNOWLEDGE THAT A MATERIAL
27 HAS BEEN USED ON THE PROPERTY FOR BENEFICIAL USE 2, BEFORE

1 SELLING THE PROPERTY THE OWNER SHALL PROVIDE NOTICE TO A
2 PROSPECTIVE PURCHASER THAT THE MATERIAL WAS USED FOR BENEFICIAL
3 USE 2, INCLUDING THE DATE AND LOCATION OF THE USE, IF KNOWN.

4 SEC. 11551A. THIS PART DOES NOT REQUIRE THE USE OF ANY
5 BENEFICIAL USE BY-PRODUCT, INCLUDING, BUT NOT LIMITED TO, THE
6 USES AND BENEFICIAL USE BY-PRODUCTS IDENTIFIED IN SECTIONS 11502
7 TO 11506, BY ANY GOVERNMENTAL ENTITY OR ANY OTHER PERSON.

8 SEC. 11552. (1) WRITTEN NOTICE SHALL BE SUBMITTED TO THE
9 DEPARTMENT BEFORE A BENEFICIAL USE BY-PRODUCT IS USED FOR
10 BENEFICIAL USE 2 AS CONSTRUCTION FILL AT A PARTICULAR SITE FOR
11 THE FIRST TIME, IF THE AMOUNT USED WILL EXCEED 5,000 CUBIC YARDS.
12 THE GENERATOR OF THE BENEFICIAL USE BY-PRODUCT SHALL SUBMIT THE
13 NOTICE UNLESS THE GENERATOR TRANSFERS MATERIAL TO A BROKER, IN
14 WHICH CASE THE BROKER SHALL SUBMIT THE NOTICE.

15 (2) BY OCTOBER 30 OF EACH YEAR, ANY GENERATOR OR BROKER OF
16 MORE THAN 1,000 CUBIC YARDS OF MATERIAL USED AS BENEFICIAL USE
17 BY-PRODUCTS FOR BENEFICIAL USE 1, 2, OR 4 IN THE IMMEDIATELY
18 PRECEDING PERIOD OF OCTOBER 1 TO SEPTEMBER 30 SHALL SUBMIT A
19 REPORT TO THE DEPARTMENT CONTAINING ALL OF THE FOLLOWING
20 INFORMATION:

21 (A) BUSINESS NAME, ADDRESS, TELEPHONE NUMBER, AND NAME OF A
22 CONTACT PERSON.

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

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

1 (3) A GENERATOR OR BROKER MAY DESIGNATE THE INFORMATION
2 REQUIRED IN THE REPORT UNDER SUBSECTION (2) (B) AND (C) AS
3 CONFIDENTIAL BUSINESS INFORMATION. IF THE SCOPE OF A REQUEST FOR
4 PUBLIC RECORDS UNDER SECTION 5 OF THE FREEDOM OF INFORMATION ACT,
5 1976 PA 442, MCL 15.235, INCLUDES INFORMATION DESIGNATED BY THE
6 GENERATOR OR BROKER AS CONFIDENTIAL, THE DEPARTMENT SHALL
7 PROMPTLY NOTIFY THE GENERATOR OR BROKER OF THE REQUEST, INCLUDING
8 THE DATE THE REQUEST WAS RECEIVED BY THE DEPARTMENT AND, PURSUANT
9 TO THAT SECTION, SHALL ISSUE A NOTICE EXTENDING FOR 10 BUSINESS
10 DAYS THE PERIOD DURING WHICH THE DEPARTMENT SHALL RESPOND TO THE
11 REQUEST. THE DEPARTMENT SHALL GRANT THE REQUEST FOR THE
12 INFORMATION UNLESS, WITHIN 12 BUSINESS DAYS AFTER THE DATE THE
13 REQUEST WAS RECEIVED BY THE DEPARTMENT, THE GENERATOR OR BROKER
14 DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT THE
15 INFORMATION DESIGNATED AS CONFIDENTIAL SHOULD NOT BE DISCLOSED
16 BECAUSE THE INFORMATION CONSTITUTES A TRADE SECRET OR SECRET
17 PROCESS OR IS PRODUCTION OR COMMERCIAL INFORMATION THE DISCLOSURE
18 OF WHICH WOULD JEOPARDIZE THE COMPETITIVE POSITION OF THE
19 GENERATOR OR BROKER. IF THERE IS A DISPUTE OVER THE RELEASE OF
20 INFORMATION BETWEEN THE GENERATOR OR BROKER AND THE PERSON
21 REQUESTING THE INFORMATION, THE DIRECTOR SHALL GRANT OR DENY THE
22 REQUEST. THE INFORMATION REQUESTED SHALL NOT BE RELEASED UNTIL 2
23 DAYS HAVE ELAPSED AFTER THE DEPARTMENT NOTIFIES THE GENERATOR OR
24 BROKER OF A DECISION TO GRANT THE REQUEST.

25 SEC. 11553. (1) CONSISTENT WITH THE REQUIREMENTS OF THIS
26 PART, THE DEPARTMENT SHALL APPLY THIS SECTION SO AS TO PROMOTE
27 AND FOSTER THE USE OF WASTES AND BY-PRODUCTS FOR RECYCLING OR

1 BENEFICIAL PURPOSES.

2 (2) ANY PERSON MAY REQUEST THE DEPARTMENT, CONSISTENT WITH
3 THE DEFINITIONS AND OTHER TERMS OF THIS PART, TO APPROVE A
4 MATERIAL, A USE, OR A MATERIAL AND USE AS A SOURCE SEPARATED
5 MATERIAL; A BENEFICIAL USE BY-PRODUCT; AN INERT MATERIAL; A LOW-
6 HAZARD INDUSTRIAL WASTE; OR ANOTHER MATERIAL, USE, OR MATERIAL
7 AND USE THAT CAN BE APPROVED UNDER THIS PART. AMONG OTHER THINGS,
8 A PERSON MAY REQUEST THE DEPARTMENT TO APPROVE A USE THAT DOES
9 NOT QUALIFY AS BENEFICIAL USE 2 UNDER SECTION 11502(4)(A) BECAUSE
10 THE PROPERTY IS NOT ELIGIBLE NONRESIDENTIAL PROPERTY OR UNDER
11 SECTION 11502(4)(A), (B), OR (C) BECAUSE THE MATERIAL EXCEEDS 4
12 FEET IN THICKNESS. THE REQUEST SHALL CONTAIN A DESCRIPTION OF THE
13 MATERIAL INCLUDING THE PROCESS GENERATING IT; RESULTS OF ANALYSES
14 OF REPRESENTATIVE SAMPLES OF THE MATERIAL FOR ANY HAZARDOUS
15 SUBSTANCES THAT THE PERSON HAS KNOWLEDGE OR REASON TO BELIEVE
16 COULD BE PRESENT IN THE MATERIAL, BASED ON ITS SOURCE, ITS
17 COMPOSITION, OR THE PROCESS THAT GENERATED IT; AND, IF
18 APPLICABLE, A DESCRIPTION OF THE PROPOSED USE. THE DEPARTMENT
19 SHALL APPROVE OR DENY THE REQUEST WITHIN 150 DAYS AFTER THE
20 REQUEST IS RECEIVED, UNLESS THE PARTIES AGREE TO AN EXTENSION. IF
21 THE DEPARTMENT DETERMINES THAT THE REQUEST DOES NOT INCLUDE
22 SUFFICIENT INFORMATION, THE DEPARTMENT SHALL, NOT MORE THAN 60
23 DAYS AFTER RECEIPT OF THE REQUEST, NOTIFY THE REQUESTER. THE
24 NOTICE SHALL SPECIFY THE ADDITIONAL INFORMATION THAT IS REQUIRED.
25 THE 150-DAY PERIOD IS TOLLED UNTIL THE REQUESTOR SUBMITS THE
26 INFORMATION SPECIFIED IN THE NOTICE. IF THE DEPARTMENT APPROVES A
27 REQUEST UNDER THIS SUBSECTION, THE APPROVAL SHALL INCLUDE THE

1 FOLLOWING STATEMENT: "THIS APPROVAL DOES NOT REQUIRE ANY USE OF
2 ANY BENEFICIAL USE BY-PRODUCT BY A GOVERNMENTAL ENTITY OR ANY
3 OTHER PERSON.". IF A REQUEST IS APPROVED WITH CONDITIONS, THE
4 APPROVAL SHALL SPECIFICALLY STATE THE CONDITIONS. IF THE REQUEST
5 IS DENIED, THE DEPARTMENT'S DENIAL SHALL, TO THE EXTENT
6 PRACTICAL, STATE WITH SPECIFICITY ALL OF THE REASONS FOR DENIAL.
7 IF THE DEPARTMENT FAILS TO APPROVE OR DENY THE REQUEST WITHIN THE
8 150-DAY PERIOD, THE REQUEST IS CONSIDERED APPROVED. A PERSON
9 REQUESTING APPROVAL UNDER THIS SUBSECTION MAY SEEK REVIEW OF ANY
10 FINAL DEPARTMENT DECISION PURSUANT TO SECTION 631 OF THE REVISED
11 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.631.

12 (3) THE DEPARTMENT SHALL APPROVE A MATERIAL FOR A SPECIFIED
13 USE AS A BENEFICIAL USE BY-PRODUCT IF ALL OF THE FOLLOWING
14 REQUIREMENTS ARE MET:

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

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

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

22 (D) THE MATERIAL AND USE MEET ALL FEDERAL AND STATE CONSUMER
23 PROTECTION AND PRODUCT SAFETY LAWS AND REGULATIONS.

24 (E) SUBJECT TO SUBDIVISION (F), THE MATERIAL MEETS ALL OF
25 THE FOLLOWING REQUIREMENTS:

26 (i) HAZARDOUS SUBSTANCES IN THE MATERIAL DO NOT POSE A DIRECT
27 CONTACT HEALTH HAZARD TO HUMANS.

1 (ii) THE MATERIAL DOES NOT LEACH, DECOMPOSE, OR DISSOLVE IN A
2 WAY THAT FORMS AN UNACCEPTABLY CONTAMINATED LEACHATE. AN
3 UNACCEPTABLY CONTAMINATED LEACHATE IS ONE THAT EXCEEDS EITHER
4 PART 201 GENERIC RESIDENTIAL GROUNDWATER DRINKING WATER CRITERIA
5 OR SURFACE WATER QUALITY STANDARDS ESTABLISHED UNDER PART 31.

6 (iii) THE MATERIAL DOES NOT PRODUCE EMISSIONS THAT VIOLATE
7 PART 55 OR THAT CREATE A NUISANCE.

8 (F) IF A MATERIAL FAILS TO SATISFY THE REQUIREMENTS OF
9 SUBDIVISION (E), THE DEPARTMENT MAY DETERMINE THAT THE MATERIAL
10 AND USE ARE PROTECTIVE OF THE PUBLIC HEALTH AND ENVIRONMENT AND
11 APPROVE THE MATERIAL. IN MAKING THE DETERMINATION, THE DEPARTMENT
12 SHALL CONSIDER THE POTENTIAL FOR EXPOSURE AND RISK TO HUMAN
13 HEALTH AND THE ENVIRONMENT GIVEN THE NATURE OF THE MATERIAL, ITS
14 PROPOSED USE, AND THE ENVIRONMENTAL FATE AND TRANSPORT OF ANY
15 HAZARDOUS SUBSTANCES IN THE MATERIAL IN SOIL, GROUNDWATER, OR
16 OTHER RELEVANT MEDIA.

17 (4) THE DEPARTMENT SHALL APPROVE A MATERIAL AS INERT IF ALL
18 OF THE FOLLOWING REQUIREMENTS ARE MET:

19 (A) HAZARDOUS SUBSTANCES IN THE MATERIAL DO NOT POSE A
20 DIRECT CONTACT HEALTH HAZARD TO HUMANS.

21 (B) THE MATERIAL DOES NOT LEACH, DECOMPOSE, OR DISSOLVE IN A
22 WAY THAT FORMS AN UNACCEPTABLY CONTAMINATED LEACHATE UPON CONTACT
23 WITH WATER OR OTHER LIQUIDS LIKELY TO BE FOUND AT THE AREA OF
24 PLACEMENT, DISPOSAL, OR USE. AN UNACCEPTABLY CONTAMINATED
25 LEACHATE IS LEACHATE THAT EXCEEDS PART 201 GENERIC RESIDENTIAL
26 GROUNDWATER DRINKING WATER CRITERIA OR SURFACE WATER QUALITY
27 STANDARDS ESTABLISHED UNDER PART 31.

1 (C) THE MATERIAL DOES NOT PRODUCE EMISSIONS THAT VIOLATE
2 PART 55 OR THAT CREATE A NUISANCE.

3 (5) THE DEPARTMENT SHALL APPROVE A MATERIAL AS A LOW-HAZARD
4 INDUSTRIAL WASTE IF HAZARDOUS SUBSTANCES IN REPRESENTATIVE
5 SAMPLES OF THE MATERIAL DO NOT LEACH, USING, AT THE OPTION OF THE
6 GENERATOR, EPA METHOD 1311, 1312, OR ANY OTHER METHOD APPROVED BY
7 THE DEPARTMENT THAT MORE ACCURATELY SIMULATES MOBILITY, ABOVE THE
8 HIGHER OF THE FOLLOWING:

9 (A) ONE-TENTH THE HAZARDOUS WASTE TOXICITY CHARACTERISTIC
10 THRESHOLD AS SET FORTH IN RULES PROMULGATED UNDER PART 111.

11 (B) TEN TIMES THE GENERIC RESIDENTIAL GROUNDWATER DRINKING
12 WATER CLEANUP CRITERIA AS SET FORTH IN RULES PROMULGATED UNDER
13 PART 201.

14 (6) THE DEPARTMENT SHALL APPROVE A MATERIAL AS A SOURCE
15 SEPARATED MATERIAL IF THE PERSON WHO SEEKS THE DESIGNATION
16 DEMONSTRATES THAT THE MATERIAL CAN BE RECYCLED OR CONVERTED INTO
17 RAW MATERIALS OR NEW PRODUCTS BY BEING RETURNED TO THE ORIGINAL
18 PROCESS FROM WHICH IT WAS GENERATED, BY USE OR REUSE AS AN
19 INGREDIENT IN AN INDUSTRIAL PROCESS TO MAKE A PRODUCT, OR BY USE
20 OR REUSE AS AN EFFECTIVE SUBSTITUTE FOR A COMMERCIAL PRODUCT. TO
21 QUALIFY AS A SOURCE SEPARATED MATERIAL, THE MATERIAL, PRODUCT, OR
22 REUSE MUST MEET ALL FEDERAL AND STATE CONSUMER PROTECTION AND
23 PRODUCT SAFETY LAWS AND REGULATIONS AND MUST NOT CREATE A
24 NUISANCE. IF A MATERIAL WILL BE APPLIED TO OR PLACED ON THE LAND,
25 OR WILL BE USED TO PRODUCE PRODUCTS THAT ARE APPLIED TO OR PLACED
26 ON THE LAND, THE MATERIAL MUST QUALIFY AS AN INERT MATERIAL OR
27 BENEFICIAL USE BY-PRODUCT.

1 (7) ANY WRITTEN DETERMINATION BY THE DEPARTMENT MADE PRIOR
2 TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
3 SECTION DESIGNATING A MATERIAL AS AN INERT MATERIAL, SOURCE
4 SEPARATED MATERIAL, SITE SEPARATED MATERIAL, LOW-HAZARD
5 INDUSTRIAL WASTE, OR NON-SOLID-WASTE MATERIAL SHALL REMAIN IN
6 EFFECT ACCORDING TO ITS TERMS, OR UNTIL FORFEITED IN WRITING BY
7 THE PERSON WHO RECEIVED THE DETERMINATION. UPON TERMINATION,
8 EXPIRATION, OR FORFEITURE OF THE WRITTEN DETERMINATION, THE
9 CURRENT REQUIREMENTS OF THIS PART CONTROL. THE AMENDMENTS MADE TO
10 THIS PART BY THE AMENDATORY ACT THAT ADDED THIS SECTION DO NOT
11 RESCIND, INVALIDATE, LIMIT, OR MODIFY ANY SUCH PRIOR
12 DETERMINATION IN ANY WAY.

13 SEC. 11554. THE DEPARTMENT OF AGRICULTURE AND RURAL
14 DEVELOPMENT, AND NOT THE DEPARTMENT OF ENVIRONMENTAL QUALITY,
15 SHALL ADMINISTER AND ENFORCE THIS PART IN CONNECTION WITH ANY
16 MATERIAL THAT IS USED, PLACED, OR STORED FOR BENEFICIAL USE 3.

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

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

23 (b) "Agricultural property" means real property used for
24 farming in any of its branches, including cultivating of soil;
25 growing and harvesting of any agricultural, horticultural, or
26 floricultural commodity; dairying; raising of livestock, bees,
27 fish, fur-bearing animals, or poultry; turf and tree farming; and

1 performing any practices on a farm as an incident to, or in
2 conjunction with, these farming operations. Agricultural property
3 does not include property used for commercial storage,
4 processing, distribution, marketing, or shipping operations.

5 (c) "All appropriate inquiry" means an evaluation of
6 environmental conditions at a property at the time of purchase,
7 occupancy, or foreclosure that reasonably defines the existing
8 conditions and circumstances at the property in conformance with
9 40 CFR 312.

10 (d) "Attorney general" means the department of the attorney
11 general.

12 (e) "Background concentration" means the concentration or
13 level of a hazardous substance that exists in the environment at
14 or regionally proximate to a facility that is not attributable to
15 any release at or regionally proximate to the facility. A person
16 may demonstrate ~~a~~**THAT A HAZARDOUS SUBSTANCE IS NOT PRESENT AT A**
17 **LEVEL THAT EXCEEDS** background concentration ~~for a hazardous~~
18 ~~substance~~ by any of the following methods:

19 (i) The hazardous substance complies with the statewide
20 default background levels under R 299.5746 of the Michigan
21 administrative code.

22 (ii) The hazardous substance is listed in the department's
23 2005 Michigan background soil survey and falls within the typical
24 ranges published in that document.

25 (iii) The hazardous substance is listed in any other study or
26 survey conducted or approved by the department and is within the
27 concentrations or falls within the typical ranges published in

1 that study or survey.

2 (iv) A site-specific demonstration.

3 (f) "Baseline environmental assessment" means a written
4 document that describes the results of an all appropriate inquiry
5 and the sampling and analysis that confirm that the property is a
6 facility. However, for purposes of a baseline environmental
7 assessment, the all appropriate inquiry under 40 CFR 312.20(a)
8 may be conducted within 45 days after the date of acquisition of
9 a property and the components of an all appropriate inquiry under
10 40 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or
11 updated within 45 days after the date of acquisition of a
12 property.

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

15 (h) "Certificate of completion" means a written response
16 provided by the department confirming that a response activity
17 has been completed in accordance with the applicable requirements
18 of this part and is approved by the department.

19 (i) "Cleanup criteria for unrestricted residential use"
20 means either of the following:

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

23 (ii) Cleanup criteria for unrestricted residential use under
24 part 213.

25 (j) "Department" means the director ~~of the department of~~
26 ~~environmental quality~~ or his or her designee to whom the director
27 delegates a power or duty by written instrument.

1 (k) "Director" means the director of the department of
2 environmental quality.

3 (l) "Directors" means the directors or their designees of the
4 departments of environmental quality, community health,
5 agriculture and rural development, and state police.

6 (m) "Disposal" means the discharge, deposit, injection,
7 dumping, spilling, leaking, or placing of any hazardous substance
8 into or on any land or water so that the hazardous substance or
9 any constituent of the hazardous substance may enter the
10 environment or be emitted into the air or discharged into any
11 groundwater or surface water.

12 (n) "Enforcement costs" means court expenses, reasonable
13 attorney fees of the attorney general, and other reasonable
14 expenses of an executive department that are incurred in relation
15 to enforcement under this part.

16 (o) "Environment" or "natural resources" means land, surface
17 water, groundwater, subsurface strata, air, fish, wildlife, or
18 biota within the state.

19 (p) "Environmental contamination" means the release of a
20 hazardous substance, or the potential release of a discarded
21 hazardous substance, in a quantity which is or may become
22 injurious to the environment or to the public health, safety, or
23 welfare.

24 (q) "Evaluation" means those activities including, but not
25 limited to, investigation, studies, sampling, analysis,
26 development of feasibility studies, and administrative efforts
27 that are needed to determine the nature, extent, and impact of a

1 release or threat of release and necessary response activities.

2 (r) "Exacerbation" means the occurrence of either of the
3 following caused by an activity undertaken by the person who owns
4 or operates the property, with respect to contamination for which
5 the person is not liable:

6 (i) ~~Contamination that has migrated~~ **MIGRATION OF**
7 **CONTAMINATION** beyond the boundaries of the property ~~which~~ **THAT** is
8 the source of the release at levels above cleanup criteria for
9 unrestricted residential use unless a criterion is not relevant
10 because exposure is reliably restricted as otherwise provided in
11 this part.

12 (ii) A change in facility conditions that increases response
13 activity costs.

14 (s) "Facility" means any area, place, or property where a
15 hazardous substance in excess of the concentrations that satisfy
16 the cleanup criteria for unrestricted residential use has been
17 released, deposited, disposed of, or otherwise comes to be
18 located. Facility does not include any area, place, or property
19 where any of the following conditions are satisfied:

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

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

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

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

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

7 (iv) **HAZARDOUS SUBSTANCES IN CONCENTRATIONS ABOVE**
8 **UNRESTRICTED RESIDENTIAL CLEANUP CRITERIA ARE PRESENT DUE ONLY TO**
9 **THE PLACEMENT, STORAGE, OR USE OF BENEFICIAL USE BY-PRODUCTS OR**
10 **INERT MATERIALS AT THE AREA, PLACE, OR PROPERTY IN COMPLIANCE**
11 **WITH PART 115.**

12 (t) "Feasibility study" means a process for developing,
13 evaluating, and selecting appropriate response activities.

14 (u) "Financial assurance" means a performance bond, escrow,
15 cash, certificate of deposit, irrevocable letter of credit,
16 corporate guarantee, or other equivalent security, or any
17 combination thereof.

18 (v) "Foreclosure" means possession of a property by a lender
19 on which it has foreclosed on a security interest or the
20 expiration of a lawful redemption period, whichever occurs first.

21 (w) "Free product" means a hazardous substance in a liquid
22 phase equal to or greater than 1/8 inch of measurable thickness
23 that is not dissolved in water and that has been released into
24 the environment.

25 (x) "Fund" means the cleanup and redevelopment fund
26 established in section 20108.

27 (y) "Hazardous substance" means 1 or more of the following,

1 but does not include fruit, vegetable, or field crop residuals or
2 processing by-products, or aquatic plants, that are applied to
3 the land for an agricultural use or for use as an animal feed, if
4 the use is consistent with generally accepted agricultural
5 management practices developed pursuant to the Michigan right to
6 farm act, 1981 PA 93, MCL 286.471 to 286.474:

7 (i) Any substance that the department demonstrates, on a case
8 by case basis, poses an unacceptable risk to the public health,
9 safety, or welfare, or the environment, considering the fate of
10 the material, dose-response, toxicity, or adverse impact on
11 natural resources.

12 (ii) Hazardous substance as defined in the comprehensive
13 environmental response, compensation, and liability act, 42 USC
14 9601 to 9675.

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

16 (iv) Petroleum as described **AS A REGULATED SUBSTANCE** in part
17 ~~213-~~**SECTION 21303**.

18 (z) "Interim response activity" means the cleanup or removal
19 of a released hazardous substance or the taking of other actions,
20 prior to the implementation of a remedial action, as may be
21 necessary to prevent, minimize, or mitigate injury to the public
22 health, safety, or welfare, or to the environment. Interim
23 response activity also includes, but is not limited to, measures
24 to limit access, replacement of water supplies, and temporary
25 relocation of people as determined to be necessary by the
26 department. In addition, interim response activity means the
27 taking of other actions as may be necessary to prevent, minimize,

1 or mitigate a threatened release.

2 (aa) "Lender" means any of the following:

3 (i) A state or nationally chartered bank.

4 (ii) A state or federally chartered savings and loan
5 association or savings bank.

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

7 (iv) Any other state or federally chartered lending
8 institution. ~~or~~

9 (v) **ANY STATE OR FEDERALLY** regulated affiliate or regulated
10 subsidiary of any entity listed in ~~this subparagraph or~~
11 subparagraphs (i) to ~~(iii)~~ **(iv)** .

12 (vi) ~~(v)~~—An insurance company authorized to do business in
13 this state pursuant to the insurance code of 1956, 1956 PA 218,
14 MCL 500.100 to 500.8302.

15 (vii) ~~(vi)~~—A motor vehicle **SALES** finance company subject to
16 the motor vehicle finance act, 1950 (Ex Sess) PA 27, MCL 492.101
17 to 492.141, with net assets in excess of \$50,000,000.00.

18 (viii) ~~(vii)~~—A foreign bank.

19 (ix) ~~(viii)~~—A retirement fund regulated pursuant to state law
20 or a pension fund regulated pursuant to federal law with net
21 assets in excess of \$50,000,000.00.

22 (x) ~~(ix)~~—A state or federal agency authorized by law to hold
23 a security interest in real property or a local unit of
24 government holding a reversionary interest in real property.

25 (xi) ~~(x)~~—A nonprofit tax exempt organization created to
26 promote economic development in which a majority of the
27 organization's assets are held by a local unit of government.

1 (xii) ~~(xi)~~ Any other person who loans money for the purchase
2 of or improvement of real property.

3 (xiii) ~~(xii)~~ Any person who retains or receives a security
4 interest to service a debt or to secure a performance obligation.

5 (bb) "Local health department" means that term as defined in
6 section 1105 of the public health code, 1978 PA 368, MCL
7 333.1105.

8 (cc) "Local unit of government" means a county, city,
9 township, or village, an agency of a local unit of government, an
10 authority or any other public body or entity created by or
11 pursuant to state law. Local unit of government does not include
12 ~~the~~ **THIS** state, ~~or~~ **THE** federal government, or a state or federal
13 agency.

14 (dd) "Method detection limit" means the minimum
15 concentration of a hazardous substance ~~which~~ **THAT** can be measured
16 and reported with 99% confidence that the analyte concentration
17 is greater than zero and is determined from analysis of a sample
18 in a given matrix that contains the analyte.

19 (ee) "No further action letter" means a written response
20 provided by the department under section 20114d confirming that a
21 no further action report has been approved after review by the
22 department.

23 (ff) "No further action report" means a report under section
24 20114d detailing the completion of remedial actions and including
25 a postclosure plan and a postclosure agreement, if appropriate.

26 (gg) "Operator" means a person who is in control of or
27 responsible for the operation of a facility. Operator does not

1 include either of the following:

2 (i) A person who holds indicia of ownership primarily to
3 protect the person's security interest in the facility, unless
4 that person participates in the management of the facility as
5 described in section 20101a.

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

8 (hh) "Owner" means a person who owns a facility. Owner does
9 not include either of the following:

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

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

17 (ii) "Panel" means the response activity review panel
18 created in section 20114e.

19 (jj) "Permitted release" means 1 or more of the following:

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

22 (ii) A lawful and authorized discharge into a permitted waste
23 treatment facility.

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

27 (kk) "Postclosure agreement" means an agreement between the

1 department and a person who has submitted a no further action
2 report that prescribes, as appropriate, activities required to be
3 undertaken upon completion of remedial actions as provided for in
4 section 20114d.

5 (ll) "Postclosure plan" means a plan for land use or resource
6 use restrictions or permanent markers at a facility upon
7 completion of remedial actions as ~~required under~~ **PROVIDED FOR IN**
8 section 20114c.

9 (mm) "Release" includes, but is not limited to, any
10 spilling, leaking, pumping, pouring, emitting, emptying,
11 discharging, injecting, escaping, leaching, dumping, or disposing
12 of a hazardous substance into the environment, or the abandonment
13 or discarding of barrels, containers, and other closed
14 receptacles containing a hazardous substance. Release does not
15 include any of the following:

16 (i) A release that results in exposure to persons solely
17 within a workplace, with respect to a claim that these persons
18 may assert against their employers.

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

21 (iii) A release of source, by-product, or special nuclear
22 material from a nuclear incident, as those terms are defined in
23 the atomic energy act of 1954, 42 USC 2011 to ~~2297h-13,~~ **2286I**, if
24 the release is subject to requirements with respect to financial
25 protection established by the nuclear regulatory commission under
26 42 USC 2210, or any release of source by-product or special
27 nuclear material from any processing site designated under 42 USC

1 7912(a)(1) or 42 USC 7942(a).

2 (iv) If applied according to label directions and according
3 to generally accepted agricultural and management practices
4 developed pursuant to the Michigan right to farm act, 1981 PA 93,
5 MCL 286.471 to 286.474, the application of a fertilizer, soil
6 conditioner, agronomically applied manure, or pesticide, or
7 fruit, vegetable, or field crop residuals or processing by-
8 products, aquatic plants, or a combination of these substances.
9 As used in this subparagraph, fertilizer and soil conditioner
10 have the meaning given to these terms in part 85, and pesticide
11 has the meaning given to that term in part 83.

12 (v) ~~A release does not include~~ **APPLICATION OF** fruits,
13 vegetables, field crop processing by-products, or aquatic plants,
14 ~~that are applied~~ to the land for an agricultural use or for use
15 as an animal feed, if the use is consistent with generally
16 accepted agricultural and management practices developed pursuant
17 to the Michigan right to farm act, 1981 PA 93, MCL 286.471 to
18 286.474.

19 (vi) The relocation of soil under section 20120c.

20 (vii) **THE PLACEMENT, STORAGE, OR USE OF BENEFICIAL USE BY-**
21 **PRODUCTS OR INERT MATERIALS AT THE SITE OF STORAGE OR USE IF IN**
22 **COMPLIANCE WITH PART 115.**

23 (nn) "Remedial action" includes, but is not limited to,
24 cleanup, removal, containment, isolation, destruction, or
25 treatment of a hazardous substance released or threatened to be
26 released into the environment, monitoring, maintenance, or the
27 taking of other actions that may be necessary to prevent,

1 minimize, or mitigate injury to the public health, safety, or
2 welfare, or to the environment.

3 (oo) "Remedial action plan" means a work plan for performing
4 remedial action under this part.

5 (pp) "Residential closure" means a property at which the
6 contamination has been addressed in a no further action report
7 that satisfies the limited residential cleanup criteria under
8 section 20120a(1)(c) or the site-specific residential cleanup
9 criteria under sections 20120a(2) and 20120b, that contains land
10 use or resource use restrictions, and that is approved by the
11 department or is considered approved by the department under
12 section 20120d.

13 (qq) "Response activity" means evaluation, interim response
14 activity, remedial action, demolition, providing an alternative
15 water supply, or the taking of other actions necessary to protect
16 the public health, safety, or welfare, or the environment or the
17 natural resources. Response activity also includes health
18 assessments or health effect studies carried out under the
19 supervision, or with the approval of, the department of community
20 health and enforcement actions related to any response activity.

21 (rr) "Response activity costs" or "costs of response
22 activity" means all costs incurred in taking or conducting a
23 response activity, including enforcement costs.

24 (ss) "Response activity plan" means a plan for undertaking
25 response activities. A response activity plan may include 1 or
26 more of the following:

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

1 (ii) A plan for evaluation activities.

2 (iii) A feasibility study.

3 (iv) A remedial action plan.

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

17 (uu) "Target detection limit" means the detection limit for
18 a hazardous substance in a given environmental medium that is
19 specified by the department on a list that it publishes not more
20 than once a year. The department shall identify 1 or more
21 analytical methods, when a method is available, that are judged
22 to be capable of achieving the target detection limit for a
23 hazardous substance in a given environmental medium. The target
24 detection limit for a given hazardous substance is greater than
25 or equal to the method detection limit for that hazardous
26 substance. In establishing a target detection limit, the
27 department shall consider the following factors:

- 1 (i) The low level capabilities of methods published by
2 government agencies.
- 3 (ii) Reported method detection limits published by state
4 laboratories.
- 5 (iii) Reported method detection limits published by commercial
6 laboratories.
- 7 (iv) The need to be able to measure a hazardous substance at
8 concentrations at or below cleanup criteria.
- 9 (vv) "Threatened release" or "threat of release" means any
10 circumstance that may reasonably be anticipated to cause a
11 release.
- 12 (wv) "Venting groundwater" means groundwater that is
13 entering a surface water of ~~the~~**THIS** state from a facility.
- 14 (2) As used in this part:
- 15 (a) The phrase "a person who is liable" includes a person
16 who is described as being subject to liability in section 20126.
17 The phrase "a person who is liable" does not presume that
18 liability has been adjudicated.
- 19 (b) The phrase "this part" includes "rules promulgated under
20 this part".
- 21 Sec. 20114e. (1) The director shall establish a response
22 activity review panel to advise him or her on technical or
23 scientific disputes, including disputes regarding assessment of
24 risk, response activity plans, no further action reports,
25 certificates of completion, and documentations of due care
26 compliance under this part, and initial assessment reports, final
27 assessment reports, closure reports, and documentations of due

1 care compliance under part 213.

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

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

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

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

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

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

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

21 (a) The individual is a current employee of any office,
22 department, or agency of ~~the~~**THIS** state.

23 (b) The individual is a party to 1 or more contracts with
24 the department and the compensation paid under those contracts
25 represented more than 5% of the individual's annual gross revenue
26 in any of the preceding 3 years.

27 (c) The individual is employed by an entity that is a party

1 to 1 or more contracts with the department and the compensation
2 paid to the individual's employer under these contracts
3 represented more than 5% of the employer's annual gross revenue
4 in any of the preceding 3 years.

5 (d) The individual was employed by the department within the
6 preceding 3 years.

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

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

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

23 (7) A person who submitted a response activity plan; ~~—~~a no
24 further action report; ~~—~~a request for certificate of completion
25 ~~—~~or documentation of due care compliance under this part; or an
26 initial assessment report, final assessment report, closure
27 report, or documentation of due care compliance under part 213

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

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

1 described in part 213. A member selected for the dispute
2 resolution process shall agree not to accept employment by the
3 person bringing the dispute before the panel, or to undertake any
4 employment concerning the facility in question for a period of 1
5 year after the decision has been rendered on the matter if that
6 employment would represent more than 5% of the member's gross
7 revenue in any of the preceding 3 years. The director shall
8 provide a copy of all supporting documentation to members of the
9 panel who will hear the dispute. An alternative member may be
10 selected by the director to replace a member who is unable to
11 participate in the dispute resolution process. Any action by the
12 members selected to hear the dispute shall require a majority of
13 the votes cast. The members selected for the dispute resolution
14 process shall elect a chairperson of the dispute resolution
15 process. At a meeting scheduled to hear the dispute,
16 representatives of the petitioner and the department shall each
17 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
20 into 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
3 of the petition. If the panel does not make its recommendation
4 within this 45-day time period, the decision of the department is
5 the 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
8 decision, in writing, regarding the petition. However, this time
9 period may be extended by written agreement between the director
10 and the petitioner. If the director agrees with the
11 recommendation of the panel, the department shall incorporate the
12 recommendation into its response to the response activity plan,
13 no further action report, request for certificate of completion,
14 initial assessment report, final assessment report, closure
15 report, or documentation of due care compliance. If the director
16 rejects the recommendation of the panel, the director shall issue
17 a written decision to the petitioner with a specific rationale
18 for rejecting the recommendation of the panel. If the director
19 fails to issue a final decision within the time period provided
20 for in this subsection, the recommendation of the panel shall be
21 considered the final decision of the director. The final decision
22 of the director under this subsection is subject to review
23 pursuant to section 631 of the revised judicature act of 1961,
24 1961 PA 236, MCL 600.631.

25 (11) Upon request of the director, the panel shall make a
26 recommendation to the department on whether a member should be
27 removed from the panel. Prior to making this recommendation, the

1 panel may convene a peer review panel to evaluate the conduct of
2 the member with regard to compliance with this part.

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

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

20 Sec. 20115. (1) The department, upon confirmation of a
21 release or threat of release of a substance that is regulated by
22 the department of agriculture **AND RURAL DEVELOPMENT**, shall notify
23 the department of agriculture **AND RURAL DEVELOPMENT**. The
24 department of agriculture **AND RURAL DEVELOPMENT** shall undertake
25 or ensure the initiation of the necessary response activity to
26 immediately stop or prevent further releases at the site. The
27 department of agriculture **AND RURAL DEVELOPMENT** shall consult

1 with the department in the development of response activities if
2 a release or threat of a release of a substance regulated by the
3 department of agriculture **AND RURAL DEVELOPMENT** occurs. The
4 department of agriculture **AND RURAL DEVELOPMENT** shall provide to
5 the department information necessary to identify substances
6 regulated by the department of agriculture **AND RURAL DEVELOPMENT**.
7 This information shall include but is not limited to the list of
8 state registered pesticides.

9 (2) As used in this section, "substance regulated by the
10 department of agriculture **AND RURAL DEVELOPMENT**" means a
11 ~~fertilizer or soil conditioner as defined in part 85, or a~~ **ANY OF**
12 **THE FOLLOWING:**

13 (A) A pesticide as defined in ~~part 83.~~ **SECTION 8305.**

14 (B) **A FERTILIZER AS DEFINED IN SECTION 8501.**

15 (C) **A SOIL CONDITIONER AS DEFINED IN SECTION 8501A.**

16 (D) **A LIMING MATERIAL AS DEFINED IN SECTION 1 OF 1955 PA**
17 **162, MCL 290.531.**

18 (3) Response activities conducted under this section shall
19 be consistent with the requirements of section 8714(2).

20 Enacting section 1. (1) R 299.4114 to R 299.4117, R
21 299.4119, and R 299.4122 to R 299.4127 of the Michigan
22 administrative code are rescinded.

23 (2) R 299.4101 to R 299.4104, R 299.4106a, R 299.4110, R
24 299.4113, and R 299.4118 of the Michigan administrative code are
25 rescinded effective June 30, 2014.

26 Enacting section 2. This amendatory act does not take effect
27 unless Senate Bill No. _____ or House Bill No. 5401 (request no.

1 01165'13 **) of the 97th Legislature is enacted into law.