

## LOW-LEVEL RADIOACTIVE WASTE AUTHORITY ACT

### Act 204 of 1987

AN ACT to provide for matters pertaining to a low-level radioactive waste disposal site in this state; to create a low-level radioactive waste authority and prescribe its powers and duties; to create certain boards, committees, and institutes and prescribe their powers and duties; to prescribe the powers and duties of certain persons, municipalities, and counties and state departments and agencies; to provide for certain methods of dispute resolution; to create certain funds; and to provide for an appropriation and the expenditure of certain funds.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For abolition of the Department of Natural Resources and transfer of its powers, duties, and functions of the Director of the Department of Natural Resources, the Natural Resources Commission, and agencies, boards and commissions contained in the department, including the functions of budget, procurement, and management-related functions to the new Department of Natural Resources, with the exception that the power to designate a member of the commission is vested in the Governor, see E.R.O. No. 1991-22 compiled at MCL 299.13 of the Michigan Compiled Laws.

For transfer of powers and duties of the Low-Level Radioactive Waste Authority from the Department of Management and Budget to the Director of the Department of Commerce, see E.R.O. No. 1991-23, compiled MCL 332.26251 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

#### **333.26201 Short title.**

Sec. 1. This act shall be known and may be cited as the "low-level radioactive waste authority act".

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For abolition of the Department of Natural Resources and transfer of its powers, duties, and functions of the Director of the Department of Natural Resources, the Natural Resources Commission, and agencies, boards and commissions contained in the department, including the functions of budget, procurement, and management-related functions to the new Department of Natural Resources, with the exception that the power to designate a member of the commission is vested in the Governor, see E.R.O. No. 1991-22 compiled at MCL 299.13 of the Michigan Compiled Laws.

For transfer of powers and duties of the Low-Level Radioactive Waste Authority from the Department of Management and Budget to the Director of the Department of Commerce, see E.R.O. No. 1991-23, compiled MCL 332.26251 of the Michigan Compiled Laws.

For transfer of powers and duties of the low-level radioactive waste authority from the department of commerce to the Michigan department of environmental quality, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

#### **333.26202 Definitions.**

Sec. 2. As used in this act:

- (a) "Authority" means the low-level radioactive waste authority established in section 3.
- (b) "Candidate site" means a site designated by the authority as a possible host site pursuant to section 11.
- (c) "Carrier" means a person authorized pursuant to part 137 who is engaged in the transportation of waste by air, rail, highway, or water.
- (d) "Commissioner" means the head of the authority.
- (e) "Compact" means a contractual, cooperative agreement among 2 or more states to provide for the disposal of low-level radioactive waste that is reflected by the passage of statutes by the participating states.
- (f) "Department" means the department of public health.
- (g) "Director" means the director of public health.
- (h) "Disposal" means the isolation of waste from the biosphere by emplacement in the disposal site or as otherwise authorized in section 13709(3) of part 137.
- (i) "Disposal site" means a geographic location in this state upon which the disposal unit and any other structures and appurtenances are located, the property upon which any monitoring equipment is located, and the isolation distance from the disposal unit to adjacent property lines.
- (j) "Disposal unit" means the portion of the disposal site into which waste is placed for disposal.
- (k) "Generator" means any person licensed as a generator by the nuclear regulatory commission and authorized pursuant to part 137 whose act or process results in the production of waste or whose act first causes waste to become subject to regulation under part 137 or federal law.
- (l) "Groundwater" means water below the land surface in a zone of saturation.
- (m) "Host site" means the candidate site that is designated by the commissioner as the location for the disposal site in this state.
- (n) "Host site community" means the municipality that is designated by the commissioner as the host site.
- (o) "Institute" means the international low-level radioactive waste research and education institute.
- (p) "Institutional control" means the continued surveillance, monitoring, and care of the disposal site after site closure and stabilization to insure the protection of the public health, safety, and welfare, and the

environment until the contents of the disposal site no longer have a radioactive content that is greater than the natural background radiation of the host site as determined during its site characterization.

(q) "Local monitoring committee" means a committee established pursuant to section 14 to represent a candidate site.

(r) "Low-level radioactive waste" or "waste" means radioactive material that consists of or contains class A, B, or C radioactive waste as defined by 10 C.F.R. 61.55, as in effect on January 26, 1983, but does not include waste or material that is any of the following:

(i) Owned or generated by the department of energy.

(ii) Generated by or resulting from the operation or closure of a superconducting super collider.

(iii) Owned or generated by the United States navy as a result of the decommissioning of vessels of the United States navy.

(iv) Owned or generated as a result of any research, development, testing, or production of an atomic weapon.

(v) Identified under the formerly utilized sites remedial action program.

(vi) High-level radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11(e)(2) of the atomic energy act of 1954, chapter 1073, 68 Stat. 922, 42 U.S.C. 2014.

(vii) Contains greater than or equal to 100 nanocuries per gram of transuranic elements.

(viii) Contains concentrations of radionuclides that exceed the limits established by the nuclear regulatory commission for class C radioactive waste as defined by 10 C.F.R. 61.55, as in effect January 26, 1983.

(ix) Classified as naturally occurring or accelerator-produced radioactive materials known as N.A.R.M. waste.

(x) Waste that after December 22, 1987 is determined by the nuclear regulatory commission to be waste that is beneath regulatory concern, or B.R.C. waste as defined by the nuclear regulatory commission, unless the department and the authority concur with this designation.

(s) "Low-level radioactive waste management fund" or "fund" means the fund created in section 20.

(t) "Manifest" means a form provided or approved by the department that is used for identifying the quantity; composition, including the class, curie count, and radioactive nuclides; origin; routing; and destination of waste from the point of generation to the point of processing, collection, or disposal.

(u) "Municipality" means a city, village, township, or Indian tribe.

(v) "Operation" means the control, supervision, or implementation of the actual physical activities involved in the acceptance, storage, disposal, and monitoring of waste at the disposal site, the maintenance of the disposal site, and any other responsibility pertaining to the disposal unit and the disposal site.

(w) "Part 137" means part 137 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13701 to 333.13741 of the Michigan Compiled Laws.

(x) "Performance assessment" means an analysis of the potential pathways for release of waste to the environment and the potential impacts of a release during the transportation of radioactive waste to the disposal site and during the handling and disposal of waste at the disposal site, including, but not limited to:

(i) A description of the potential pathways for radioactive nuclide migration beyond the boundaries of the disposal site during the operation of the site and if there is a release.

(ii) A description of the potential pathways for radioactive nuclide migration beyond the packaging boundaries if a release occurs during transportation.

(iii) An analysis of safety factors pertaining to the transportation of waste.

(iv) The identification of the potential impacts to air, surface water, and groundwater quality, and vegetation, animals, and humans, or any other living thing beyond the boundaries of the disposal site.

(v) A description of potential mechanisms for radioactive release, including, but not limited to, mechanical failure, structural failure, and human error.

(y) "Person" means an individual, partnership, cooperative, association, corporation, receiver, trustee, or assignee.

(z) "Postclosure observation and maintenance" means the surveillance, monitoring, and maintenance of the disposal site after it has been closed and continuing through site closure and stabilization and institutional control.

(aa) "Release" means any intentional or unintentional spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, or placing of waste into the environment, except in compliance with all of the following:

(i) Part 137.

(ii) The rules promulgated under part 135 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13501 to 333.13536 of the Michigan Compiled Laws.

(iii) A permit or license issued pursuant to federal law, if the person who is responsible for the release

holds such a permit or license.

(iv) A permit or license issued pursuant to part 137, if the person who is responsible for the release holds such a permit or license.

(v) The rules promulgated under this part.

(bb) "Remedial actions" means those actions taken in the event of a radioactive release or threatened release into the environment to prevent or minimize the radioactive release so that it does not migrate and cause significant danger to the present or future public health, safety, or welfare, or to the environment. Remedial action includes, but is not limited to, actions at the location of the release such as storage, confinement, perimeter protection which may include using dikes, trenches, and ditches, clay cover, neutralization, dredging or excavation, repair or replacement of leaking containers, collection of leachate and runoff, efforts to minimize the social and economic harm of processing, provision of alternative water supplies, and any required monitoring to assure that the actions taken are sufficient to protect the public health, safety, and welfare, and the environment.

(cc) "Site characterization" means the site specific investigation of a candidate site undertaken pursuant to section 12.

(dd) "Site closure and stabilization" means the actions taken at the disposal site during the time period after the closure of the disposal unit during which on-site low-level radioactive waste is disposed in accordance with part 137, equipment is dismantled, decontaminated, removed for reuse or disposed of, and radioactive residues are removed from, or properly isolated on, the disposal site in preparation for transfer of ownership of the disposal site to the federal government.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

**Administrative rules:** R 325.5001 et seq., R 325.5801 et seq., and R 325.5901 et seq. of the Michigan Administrative Code.

### **333.26203 Low-level radioactive waste authority; creation; autonomous entity; commissioner as head of authority; appointment, qualifications, and term of commissioner; vacancy; salary; exemption from civil service; employment of personnel.**

Sec. 3. (1) An authority is created to be known as the low-level radioactive waste authority. The authority is an autonomous entity within the department of commerce. The authority shall exercise its powers and duties independently of the department of commerce, including the budgeting, procurement, contracting for, and actual purchase of all equipment, supplies, and services of whatever kind necessary to implement this act.

(2) The head of the authority is the commissioner who shall be qualified by training and experience to direct the work of the authority. The commissioner shall be appointed by the governor, by and with the advice and consent of the senate, and shall serve a 2-year term at the pleasure of the governor. A vacancy occurring in the office of the commissioner shall be filled in the same manner as the original appointment. The commissioner shall receive a salary as provided by annual appropriation by the legislature from the low-level radioactive waste management fund.

(3) The commissioner is exempt from civil service. The commissioner is responsible directly to the governor to ensure the accountability and integrity of the authority and accordingly should be a position within the department of commerce that is exempt from the classified state civil service. The department of commerce shall request that the civil service commission establish the commissioner's position as a position that is exempt from the classified state civil service.

(4) The commissioner shall employ personnel as necessary to implement this act.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of low-level radioactive waste authority from department of environmental quality to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

For transfer of powers and duties of commissioner of low-level radioactive waste authority to department of natural resources and environment by type III transfer, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

For transfer of low-level radioactive waste authority from department of natural resources and environment to department of environmental quality, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

### **333.26204 Powers of authority generally.**

Sec. 4. In addition to the powers provided in this act and part 137, subject to other applicable requirements of law, the powers of the authority include all of the following:

(a) Hold public meetings in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(b) Accept assistance from public agencies, colleges and universities, private foundations, individuals, corporations, or associations.

(c) Accept and utilize a donation, loan, grant, or reimbursement of money to obtain equipment, supplies,

materials, or services from any state or the United States or an agency or a political subdivision of the state or the United States, or from any person. The nature, amount, and conditions, if any, attached to a donation, loan, or grant accepted pursuant to this subdivision, together with the identity of the donor, grantor, or lender, is public information. A donor, lender, or grantor shall not derive any advantage in any matter under this act, part 137, rules promulgated under part 137, or federal law by reason of a donation, loan, or grant. The authority shall forward money obtained under this subdivision to the state treasurer for deposit in the low-level radioactive waste management fund.

(d) Form 1 or more advisory committees as considered appropriate to make recommendations to the authority regarding the performance of 1 or more of the responsibilities of the authority.

(e) Exercise the power of eminent domain under the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws.

(f) Perform other functions considered necessary to implement this act.

(g) Establish and use a computer system to maintain, receive, or transmit any of the following:

(i) A manifest, report, or other record required by this act, or part 137, or the rules promulgated under part 137.

(ii) A disposal shipment certificate.

(iii) The application, or a portion of the application, for a construction and operating license for the disposal site.

(iv) Information the authority is required to provide to the public under this act.

(h) Issue revenue bonds pursuant to section 20a.

(i) Negotiate, create legal mechanisms for the state or private waste generators, or both, or enter into relationships with out-of-state entities for the out-of-state disposal of low-level radioactive waste generated in this state. However, prior to entering into a contractual relationship obligating the state, the authority in addition to other requirements of law shall first submit the proposed contract to the attorney general for review.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

### **333.26205 Duties of authority generally.**

Sec. 5. (1) In addition to the duties provided in this act and in part 137, subject to other applicable requirements of law, the duties of the authority include all of the following:

(a) Select the host site.

(b) Submit an application to the department for a construction and operating license for the disposal site that meets the requirements of part 137.

(c) Acquire, purchase, hold, lease, or manage real property, easements, and rights-of-way to implement this act.

(d) Make available and negotiate on behalf of the state monetary and nonmonetary incentives and benefits for the state, the host site community, the county in which the host site community is located, and the municipalities that have a common border with the host site community.

(e) Make available to local monitoring committees sufficient funding to enable the local monitoring committees to fulfill their responsibilities under section 14.

(f) Establish just and reasonable waste disposal fees and surcharges subject to the requirements of section 19.

(g) Negotiate and arbitrate with the local monitoring committee for the host site as provided in section 16.

(h) Establish and implement a disposal shipment registration system.

(i) Make a continuous study and investigation of the disposal site in order to ascertain and provide remedies for any defects in the disposal site through institutional control.

(j) If this state does not enter a compact, refuse to accept waste that is not generated in this state.

(k) If this state does enter into a compact, refuse to accept waste generated in any state that is not a member of the compact in which this state is a member. In addition, the authority shall refuse to accept waste for disposal in the disposal site from any member of the compact who does either of the following:

(i) Is delinquent in paying dues or fees payable under the compact.

(ii) Fails to establish or maintain a permitting and regulatory system, including penalties and remedies, that equals or exceeds the laws and rules of this state as they apply to generators, carriers, processors, and collectors of waste.

(l) Inspect the construction of the disposal site until construction is completed on a weekly basis and submit to the department the results of the inspection and the date on which the inspection occurred.

(m) Hold public hearings every other month during the process for selecting a site for the disposal site and every 6 months after the site for the disposal site is selected through the period of institutional control.



(n) Assist generators in sharing policies to facilitate waste minimization and volume reduction, including, but not limited to, switching from long-lived radioactive materials to short-lived radioactive materials, switching to nonradioactive materials and processes, waste stream screening and separation, and curtailment of waste producing operations.

(2) In addition to the duties provided in this act and in part 137 and the rules promulgated under part 137, the authority shall do all of the following or enter into contracts to assure that all of the following are accomplished:

- (a) Site characterization.
- (b) Performance assessment.
- (c) Development of siting criteria.
- (d) Disposal site monitoring.
- (e) Disposal site design, construction, engineering, and inspection.
- (f) Selection of disposal technology.
- (g) Prepare an application for a construction and operating license for the disposal site.
- (h) Disposal site operation.
- (i) Site closure and stabilization.
- (j) Postclosure observation and maintenance.
- (k) Institutional control.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

### **333.26206 Application for construction and operating license; agreements or contracts with person to perform responsibility of authority; notice; public comment; forwarding copy of contract.**

Sec. 6. (1) The authority shall submit an application to the department for a construction and operating license pursuant to the requirements of part 137. If this state is not a full agreement state, the authority shall also apply to the nuclear regulatory commission for a construction and operating license.

(2) If the authority elects to enter into agreements or contracts with a person to perform a responsibility of the authority, the authority shall do all of the following:

- (a) Establish minimum qualifications for the person.
- (b) Establish the responsibilities of the person and specify the responsibilities that the authority retains.
- (c) Determine whether the person is required to obtain a surety bond, a secured trust fund, or other suitable security instrument or mechanism.
- (d) Comply with all the requirements in part 137 and the rules promulgated under part 137.

(3) If the authority elects to enter into a contract to prepare an application for a construction and operating license for the disposal site or for the operation of the disposal site, in addition to the requirements under subsection (2), the authority shall provide public notice and an opportunity for public comment on the minimum qualifications required of the person. The authority shall forward a copy of each contract entered into by the authority to perform a responsibility of the authority to the department, the department of natural resources, and the attorney general.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

### **333.26207 Establishment of process permitting municipality to volunteer as host site; minimum requirement; notice; powers and duties of authority; construction of section.**

Sec. 7. (1) Within 60 days of the effective date of this act, the authority shall establish a process by which a municipality may volunteer to be the host site. At a minimum, the process shall require that in order for a municipality to be considered a volunteer host site community there shall be a majority vote of the governing body of the municipality requesting such consideration.

(2) If the authority receives notice that a governing body of a municipality volunteers as a host site community, the authority shall do both of the following:

- (a) Provide the municipality with information about the siting process, including relevant federal and state laws pertaining to the generation, transportation, storage, collection, processing, and disposal of waste.
- (b) Provide the municipality with specific criteria and information that the authority must consider with regard to candidate site and host site selection.

(3) If the authority receives notice that a governing body of a municipality volunteers as a host site community, the authority may do 1 or both of the following:

- (a) Upon the request of that municipality, provide funding to the municipality in an amount determined by the authority to cover the expense of preparing data that the municipality may wish to submit for the consideration of the authority regarding the selection of the municipality as the host site community.

(b) Provide the municipality with other services or information considered appropriate by the authority.

(4) This section shall not be construed as eliminating or reducing any of the requirements for site selection provided for in this act.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

**333.26208 Siting criteria advisory committee; establishment; independent entity; appointment, qualifications, and terms of members; powers of committee; vacancy; quorum; action by committee; staff and services; assistance to committee; meetings; notice; reimbursement for expenses.**

Sec. 8. (1) Within 30 days of the effective date of this act, the authority shall organize the establishment of a siting criteria advisory committee. The siting criteria advisory committee shall be formulated as an independent entity within the department of management and budget and shall consist of 5 individuals who shall be appointed by the authority. The members of the committee may be employed by a university or college in this state and shall by education and experience be knowledgeable in a technical specialty related to the siting of a low-level radioactive waste disposal site. The members may include a hydrogeologist, health physicist, radiological engineer, or other specialist meeting the requirements of this subsection.

(2) The members of the siting criteria advisory committee shall be appointed for a term determined by the authority that shall at a minimum enable the committee to have sufficient opportunity to formulate recommendations to the authority regarding the development of siting criteria for the disposal site and to fulfill the other responsibilities of the committee under this section.

(3) The siting criteria advisory committee may do any or all of the following:

(a) Recommend to the authority proposed siting criteria.

(b) Review existing and proposed federal and state laws and rules pertaining to site criteria.

(c) Review all of the technical information available to the committee and make recommendations regarding siting criteria.

(d) Attend any public hearing that may be scheduled by the authority that pertains to proposed siting criteria.

(e) Assist the authority in drafting responses to the comments of the department or any person regarding the final siting criteria adopted by the authority.

(f) Fulfill the responsibilities provided in this subsection in accordance with target dates established by the authority.

(4) If a vacancy occurs on the siting criteria advisory committee, an appointment shall be made for the unexpired term in the same manner as the original appointment.

(5) A majority of the members of the siting criteria advisory committee shall constitute a quorum for the transaction of business at a meeting of the committee. Action by the committee shall be by a majority of the votes cast.

(6) The department of management and budget shall provide staff and services to the siting criteria advisory committee as are necessary to implement this act.

(7) The directors of the departments of natural resources, attorney general, management and budget, state police, and public health shall provide assistance to the siting criteria advisory committee upon the request of the committee.

(8) A meeting of the siting criteria advisory committee shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(9) The siting criteria advisory committee shall meet immediately upon complete formation and then shall meet each month or more frequently as considered necessary by the members of the committee.

(10) A member of the siting criteria advisory committee shall not receive compensation for his or her service, but shall be reimbursed for expenses that are necessarily incurred in the performance of duties as a member of the committee.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

**333.26209 Final siting criteria; establishment; review and consideration of proposed siting criteria; draft version; public hearing.**

Sec. 9. (1) The authority shall establish final siting criteria.

(2) In establishing final siting criteria, the authority shall review and consider the proposed siting criteria that may be presented by the siting criteria advisory committee established pursuant to section 8. Thirty days before establishing final siting criteria, the authority shall prepare a draft version of the final siting criteria and shall make this draft siting criteria available for public comment. During that 30-day period, the authority

shall hold a public hearing.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

### **333.26210 Final siting criteria; establishment; minimum requirement.**

Sec. 10. The authority shall establish final siting criteria that at a minimum excludes a candidate site that is any of the following:

- (a) Located in a 500-year floodplain.
- (b) Located over a sole source aquifer.
- (c) Located 1 mile or less from a fault where tectonic movement has occurred within the 10,000 years preceding the effective date of this act.
- (d) Not sufficiently large to assure that an isolation distance of 3,000 feet or more from the disposal unit and adjacent property lines is available.
- (e) Has wetlands within the boundaries of the candidate site as defined in part 303 (wetland protection) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.30301 to 324.30323 of the Michigan Compiled Laws.
- (f) An environmental area or a high risk area as defined in part 323 (shorelands protection and management) of Act No. 451 of the Public Acts of 1994, being sections 324.32301 to 324.32315 of the Michigan Compiled Laws.
- (g) A floodway designated under part 31 (water resources protection) of Act No. 451 of the Public Acts of 1994, being sections 324.3101 to 324.3119 of the Michigan Compiled Laws.
- (h) Located where the hydrogeology beneath the site discharges groundwater to the land surface within 3,000 feet of the boundaries of the candidate site.
- (i) Located within 10 miles of Lake Michigan, Lake Superior, Lake Huron, Lake Erie, Saint Marys river, Detroit river, St. Clair river, or lake St. Clair. This subdivision shall not apply to a site that is located at or adjacent to a nuclear power generating facility.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1996, Act 68, Imd. Eff. Feb. 26, 1996.

### **333.26211 Designation of 3 qualified candidate sites; exclusion of certain sites; preference to be given certain sites; waiver of criteria; notice; public hearing.**

Sec. 11. (1) The authority shall utilize the powers and exercise the duties provided in this act to designate 3 qualified and available candidate sites in this state.

(2) In designating 3 candidate sites, the authority shall exclude any site that is not all of the following:

- (a) Suitable for providing a stable foundation for engineered containment structures that comprise the disposal unit.
  - (b) Located where the groundwater travel time along any 100-foot flow path from the edge of the disposal unit is greater than approximately 100 years.
  - (c) Located where there is 6 or more meters of soil with a maximum permeability of 1.0 times 10 to the minus 6 cm/sec at all points below and lateral to the bottommost portions of the leak detection system of the disposal unit or an area that provides equivalent environmental protection to the public health, safety, and welfare, and the environment.
  - (d) Located where the unconfined water table which is not the potentiometric surface, is sufficiently low to prevent the intrusion of groundwater into the disposal unit, except as outlined under 10 C.F.R. 61.50 (a)(7).
  - (e) Located in an area that is not above an aquifer that is the primary source of water for a municipality or county or for persons residing or doing business in the municipality or county where a candidate site is located.
  - (f) Free of ponding or capable of being drained in a manner that insures the integrity of the disposal unit.
  - (g) Suitable to insure the isolation of the waste.
- (3) In designating 3 candidate sites, the authority shall give preference to sites that are all of the following:
- (a) Able to meet the long-term performance objectives of subpart C of 10 C.F.R. part 61.
  - (b) Able to be characterized, modeled, analyzed, and monitored.
  - (c) Located where natural resources do not exist on or significantly near to the candidate site that, if exploited, would result in failure to meet the performance objectives in subpart C of 10 C.F.R. part 61.
  - (d) Located where projected population growth and future developments within the municipality and county where the candidate site is located are not likely to affect the ability of the disposal site to meet the performance objectives in subpart C of 10 C.F.R. part 61 or could not significantly interfere with an environmental monitoring program.
  - (e) Consistent with the requirements of federal laws, including all of the following:
    - (i) Atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(ii) Federal water pollution control act, chapter 758, 86 Stat.816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1271, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387.

(iii) Coastal zone management act of 1972, title III of the marine resources and engineering development act of 1966, Public Law 89-454, 16 U.S.C. 1451 to 1455a, 1456 to 1463, and 1464.

(iv) Endangered species act of 1973, Public Law 93-205, 87 Stat. 884.

(v) Wild and scenic rivers act, Public Law 90-542, 16 U.S.C. 1271 to 1287.

(vi) Wilderness act, Public Law 88-577, 16 U.S.C. 1131 to 1136.

(vii) National wildlife refuge system administration act of 1966, sections 4 and 5 of Public Law 89-669, 16 U.S.C. 668dd and 668ee.

(viii) Chapter 593, 49 Stat. 666, 16 U.S.C. 461 to 467.

(ix) National historic preservation act, Public Law 89-665, 16 U.S.C. 470 to 470a, 470b, and 470c to 470x-6.

(h) Located so that the upstream drainage area is minimized to decrease runoff that could erode or inundate waste placed in the disposal unit.

(i) Located where geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering do not occur to the extent and with such frequency that the ability of the disposal site to meet the performance objectives in subpart C, 10 C.F.R. 61.40 to 61.44, is significantly affected or may preclude defensible modeling and prediction of the long-term impact of such occurrences.

(4) The authority may waive 1 or more of the criteria in subsection (3) if the authority obtains written approval for the waiver from the director and the authority and the director determine that the waiver will not compromise the public health, safety, or welfare, or the environment and that a site for which a waiver is sought is an appropriate candidate site despite the site's inability to meet 1 or more of the criteria in subsection (3). In addition, prior to waiving 1 or more of the criteria in subsection (3), the authority shall provide public notice of a proposed waiver of 1 or more of the criteria in subsection (3) and shall conduct a public hearing to provide for public comment regarding the waiver.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

### **333.26212 Site characterization; comprehensive baseline environmental monitoring program; data; access to candidate site.**

Sec. 12. (1) Immediately following designation of the candidate sites by the authority, the authority, after consultation with the department and the department of natural resources, shall begin site characterization at each candidate site. The site characterization shall establish a comprehensive baseline environmental monitoring program at each of the candidate sites.

(2) The monitoring program at each candidate site shall provide, to the maximum extent feasible, for the participation of the local monitoring committee for each candidate site and the training of the members to facilitate their participation. The program shall be designed to establish baseline environmental data for at least 1 year at each candidate site, to determine compliance with the applicable final siting criteria provided for in section 10, to provide early warning of the magnitude and extent of any release, and to provide reliable environmental data to be utilized in preparing the construction and operating license submitted to the department by the authority and to be utilized in the design, construction, operation, site closure and stabilization, postclosure observation and maintenance, and institutional control of the disposal site. The monitoring program for each candidate site shall include collected and analyzed data concerning standing and running surface water and drainage; groundwater samples off-site and at the candidate site boundary; soil, vegetation, animal, and insect samples; atmospheric samples; and radiological measurements off-site, at the candidate site boundary, and within the candidate site. Each local monitoring committee shall be entitled to obtain portions of all samples collected pursuant to the monitoring program for the candidate site which that local monitoring committee represents for analysis by an independent laboratory. Each local monitoring committee is entitled to receive a copy of the results of each test prepared as a part of site characterization by any state department or agency.

(3) The authority shall provide the review board established pursuant to section 13 with 12 months of site characterization data as soon as 12 months of data for each site are available.

(4) The authority and authorized representatives of the authority and the authorized representatives of the department, the department of natural resources, and the department of agriculture shall have access to each candidate site for the purpose of conducting site characterization and performing any of the authority's responsibilities or duties provided in this act.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.



**333.26213 Review board; establishment; purpose; public hearings; recommendations; appointment and qualifications of members; chairperson; quorum; meetings; notice; reimbursement for expenses.**

Sec. 13. (1) Not more than 90 days following the designation of each candidate site, a review board shall be established to provide recommendations to the authority regarding provisions and stipulations that would mitigate the concerns of the municipality in which each candidate site is located if that municipality is selected as the host site. The review board shall hold public hearings to provide for the participation of each local monitoring committee and to provide the opportunity for public participation. The review board shall make its recommendations to the authority no later than 30 days after 12 months of site characterization data are available. The recommendations of the review board shall also be made available to each local monitoring committee. The review board may recommend to the authority 1 of the 3 candidate sites as the proposed host site.

(2) The review board shall consist of the following 7 voting members and 1 nonvoting chairperson:

(a) Four members shall be members appointed by the governor with the advice and consent of the senate. The 4 members shall include:

(i) One representative of county governments at large.

(ii) Two individuals who by education and experience are knowledgeable in a technical specialty that is pertinent to issues related to a disposal site, such as a hydrogeologist, health physicist, radiation engineer, or a biologist.

(iii) One individual who by education and experience is knowledgeable in a specialty that is pertinent to issues concerning the assessment of social, economic, and community impacts related to a disposal site.

(b) Three members shall be representatives for the municipalities in which the 3 candidate sites are located. The governing body of each of the municipalities where the 3 candidate sites are located shall appoint 1 member to serve on the review board.

(c) An attorney shall be appointed by the governor, with the advice and consent of the senate, to serve as the nonvoting chairperson of the review board. The chairperson shall have experience in conducting public meetings.

(3) Four of the 7 voting members of the board constitutes a quorum for the transaction of the business of the board and the concurrence of 4 members shall constitute a legal action of the board. A meeting of the board shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(4) A member of the board shall not receive compensation for his or her services, but shall be reimbursed for expenses that are necessarily incurred in the performance of duties as a member of the board.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

**333.26214 Local monitoring committee; establishment; purpose; powers and duties; disbandment; duration.**

Sec. 14. (1) Within 30 days of the designation by the authority of the candidate sites, the governing body of a municipality in which a candidate site is located shall establish a local monitoring committee to represent the interests of the citizens of the municipality in which the candidate site is located. Each governing body shall determine the size and membership of its local monitoring committee. The local monitoring committees shall assure the protection of the public health, safety, and welfare and the protection of the environment in the municipality in which the candidate site is located. Each of the local monitoring committees may do all of the following:

(a) Represent the interests of the municipality in which the candidate site is located in proceedings regarding the selection of the host site.

(b) Independently review site characterization data.

(c) Prepare for the possible designation of the candidate site as the host site.

(d) Seek funding from the authority to fulfill the responsibilities of the local monitoring committee.

(e) Provide for independent technical assistance to fulfill the responsibilities of the local monitoring committee.

(f) Present recommendations to the authority and the review board established pursuant to section 13 regarding provisions and stipulations that would mitigate the concerns of the municipality that is represented by the local monitoring committee if it is selected as the host site.

(2) The local monitoring committees for the municipalities that are not selected as the host site community shall disband upon the designation by the commissioner of the host site community.

(3) The local monitoring committee of the host site shall continue in existence through the period of institutional control. The local monitoring committee for the host site community may do all of the following:

(a) Evaluate and submit comments to the department, department of natural resources, and the authority regarding the application for a construction and operating license submitted by the authority.

(b) Select a representative for the local monitoring committee or a technical advisor, or both, to inspect and monitor at reasonable times and in a reasonable manner the construction of the disposal site and the monitoring and operation of the completed disposal site, site closure and stabilization, postclosure operation and maintenance and institutional control, with due regard as determined by the authority to the safety of the representative of the committee and the technical advisor.

(c) Engage in any other activities that are mutually agreed upon between the local monitoring committee and the authority or the department, or both.

(d) Negotiate and enter arbitration with the authority as provided in section 16.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

**333.26215 Preliminary designation of host site; transmittal and availability of information; rejection of site; terms of agreement; design and construction of disposal site; “legislative working day” defined.**

Sec. 15. (1) The commissioner shall make a preliminary designation of the host site. Immediately following the preliminary designation of the host site, the authority shall transmit to the secretary of the senate and the clerk of the house of representatives the name and location of that site and any other information that the authority has regarding that site and the 2 remaining candidate sites. Upon request, the authority shall also make any information that the authority has regarding the preliminarily designated host site and the 2 remaining candidate sites available to members of the legislature. Upon the expiration of 30 days after transmittal, that 30 days to commence on the first legislative working day after the designation is transmitted, the preliminary host site designated by the commissioner shall be the host site unless within that time period the legislature either rejects the designated host site, or rejects the designated host site and designates 1 of the 2 remaining candidate sites. If the legislature rejects the preliminarily designated host site but does not designate 1 of the 2 remaining candidate sites as the host site, the commissioner shall designate 1 of the 2 remaining candidate sites as the host site. Once the host site is designated by the commissioner, the terms of the final complete agreement reached with the authority pursuant to section 16 for the host site community shall commence.

(2) The authority shall assure that the design and construction of the disposal site is completed in accord with the minimum criteria established by the department in part 137.

(3) As used in this section, “legislative working day” means a day on which both the senate and the house of representatives are called to order and a quorum of both the senate and the house of representatives is present.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

**333.26216 Negotiations; final report; final summary; appointment of arbitration committee; arbitration and resolution of issues; written final agreement; copies; meetings of arbitration committee; cessation of arbitration; decision by chairperson; final arbitration report; costs of chairperson; statement; incorporation of final determinations into final complete agreement.**

Sec. 16. (1) The local monitoring committee for the host site community may negotiate with the authority regarding any of the following:

(a) Monetary and nonmonetary forms of compensation.

(b) Matters pertaining to disposal site access and transportation issues resulting from the siting of the disposal site.

(c) The landscaping and appearance of the disposal site.

(d) Technical assistance available to the municipality and the local monitoring committee of the candidate site and the host site community.

(e) Matters pertaining to host site community utility and natural resource utilization.

(2) Negotiations between the local monitoring committee for the host site and the authority may commence no later than 30 days after the designation of the host site. The time and place of negotiating sessions shall be determined by agreement between the local monitoring committee and the authority.

(3) If negotiations are conducted between the local monitoring committee for the host site and the authority, the local monitoring committee and the authority shall prepare a final report summarizing the

agreements reached during negotiation. The final report shall be signed by the authority and by a member of the local monitoring committee who is designated by that local monitoring committee. The final report shall be a public document which shall be the subject of a public meeting conducted by the authority.

(4) If the local monitoring committee and the authority cannot resolve an issue considered during negotiation, the local monitoring committee and the authority shall each prepare a final summary of each issue on which there is disagreement. That final summary shall include both of the following:

(a) A statement of the party to negotiation's final best offer on each issue on which there is disagreement.

(b) Information and documentation that supports the party to negotiation's final best offer on each issue on which there is disagreement.

(5) If the local monitoring committee and the authority cannot reach agreement on an issue that has been raised during negotiations, the local monitoring committee or the authority may require the appointment of an arbitration committee for the purpose of the arbitration of each issue that was considered but unresolved during negotiations. Arbitration as provided for under this subsection shall not occur unless the local monitoring committee or the authority requires the appointment of an arbitration committee. Arbitration shall pertain to only an unresolved issue included in the summary prepared pursuant to subsection (4). The arbitration committee shall consist of 3 members and shall include a representative designated by the local monitoring committee, a representative designated by the authority, and a chairperson who shall be an arbitrator and shall be selected pursuant to the rules and procedures of the American arbitration association.

(6) All issues resolved during arbitration to the satisfaction of both the representative of the local monitoring committee and the representative of the authority shall be incorporated into a written final agreement to be signed by each member of the arbitration committee. A copy of the agreement shall be made available to each member of the arbitration committee, the local monitoring committee, and the authority, and shall be considered a public document.

(7) The arbitration committee shall meet on a schedule and at a time and place that shall be established by agreement between the members of the arbitration committee. If the arbitration committee cannot agree on the schedule, time, and place of the arbitration meetings, the chairperson shall determine the schedule, time, and place for the meetings.

(8) If there is 1 or more issues that are not resolved to the satisfaction of both the representative of the local monitoring committee and the representative of the authority within 45 days of the commencement of arbitration, arbitration shall cease and each unresolved issue shall be decided by the chairperson. The decision of the chairperson as to each unresolved issue shall be limited to the chairperson's choice of either the final best offer of the local monitoring committee on an unresolved issue prepared pursuant to subsection (4) or the final best offer of the authority on an unresolved issue prepared pursuant to subsection (4). The decision of the chairperson is final and binding and shall be incorporated into a final arbitration report issued within 30 days of the date on which arbitration ceased. The final arbitration report shall include a final report prepared pursuant to subsection (3), a final summary prepared pursuant to subsection (4), a final agreement prepared pursuant to subsection (6), and a final decision made by the chairperson pursuant to this subsection. To be valid the final arbitration report shall be signed by the chairperson. A copy of the final arbitration report shall be made available immediately to each member of the arbitration committee, the local monitoring committee, and the authority, and shall be considered a public document.

(9) The chairperson shall submit a statement of his or her costs to the authority. The costs of the chairperson shall be paid by the authority.

(10) Each final determination of an issue negotiated or arbitrated under this section shall be incorporated into a final complete agreement between the authority and the local monitoring committee for the host site.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

**333.26217 International low-level radioactive waste research and education institute; establishment; agreements; independent entity; board of governors; appointment, qualifications, and terms of governors; powers and duties of institute; vacancy; quorum; action of board; meetings; general operating expenses; compensation of governor; formation of private nonprofit corporation; reports; availability of writings.**

Sec. 17. (1) No later than October 1, 1988, the authority shall organize the establishment of an international low-level radioactive waste research and education institute. The authority may enter into agreements with a state university or college or a consortium of universities or colleges as may be necessary to establish the institute in accordance with this section. The authority shall establish a process by which a state university or college or a consortium of universities or colleges may indicate an interest in accepting the institute as an independent entity. The institute shall be governed by a board of governors who are jointly

selected and appointed by the authority and the designated representative of the university, college, or consortium. The governors shall be as follows:

(a) One individual from a public utility that produces low-level radioactive waste as a result of the generation of electrical power.

(b) One individual from a business that is not a public utility but produces low-level radioactive waste.

(c) One individual from a medical facility that generates radioactive waste.

(d) Two individuals from environmental or public interest organizations.

(e) Three college or university faculty or staff members who have expertise in nuclear physics or nuclear chemistry and in the handling, processing, or reduction of low-level radioactive waste.

(f) One individual representing the general public.

(g) The director of public health or his or her authorized representative.

(h) The attorney general or his or her authorized representative.

(2) In addition to the governors appointed under subsection (1), if this state is a member of a compact, the governing body of the compact may appoint 1 representative to the board of governors who shall serve as an ex officio nonvoting member.

(3) The powers and duties of the institute shall include all of the following:

(a) To develop contracts with universities and other research institutions to conduct research on waste issues, including, but not limited to, all of the following:

(i) The method by which a determination can be made regarding the amounts of wastes specified by radionuclide that are generated within this state, and within compact member states as long as this state remains a member of a compact, to be disposed of in the disposal site in order to provide an inventory and guide disposal options and risk assessments.

(ii) The construction media, waste forms, and other engineering features necessary to assure containment of wastes, to reduce the potential for a release of waste.

(iii) The development of features to detect and control a release of waste.

(iv) The cost versus risk analysis of available waste treatment methods, with an emphasis on waste treatment methods that could adversely or positively affect the long-term performance of the disposal site.

(v) Transportation management systems that prevent public radiation exposure and facilitate incident response planning.

(vi) The use of mediation and human resource methods to facilitate positive interaction between the operators of the disposal site and the public.

(vii) The basic frameworks to provide for institutional control and the accumulation and use of economic resources necessary for institutional control.

(viii) Development of new materials and methods to reduce or eliminate the generation of waste.

(ix) Development of methods for state-of-the-art environmental monitoring of the disposal site.

(x) Economic implications of different waste management and treatment options.

(b) To develop and operate a technical resource program to provide information and assistance to persons involved with public policy issues surrounding the management of the disposal of waste.

(c) To develop and implement education programs that assist the public in understanding issues surrounding the generation, possession, transportation, processing, collecting, and disposal of waste and the site closure and stabilization, post closure observation and maintenance, and institutional control of the disposal site.

(4) The governors appointed as provided in subsections (1) and (2) shall serve for terms of 4 years, or until a successor is appointed, whichever is later, except that of the members first appointed, 3 shall serve for 2 years and 3 shall serve for 3 years.

(5) If a vacancy occurs on the board of governors, an appointment shall be made for the unexpired term in the same manner as the original appointment.

(6) A majority of the governors of the institute shall constitute a quorum for the transaction of business at a meeting of the board. Action by the board of governors shall be by a majority of the votes cast.

(7) A meeting of the board of governors shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(8) In addition to research grant awards, not more than \$250,000.00 annually shall be available for appropriation from the low-level radioactive waste management fund to meet the general operating expenses of the institute.

(9) A governor of the institute may receive compensation for his or her service, and shall be reimbursed for expenses that are necessarily incurred in the performance of duties as a member of the institute.

(10) The board of governors shall meet at least quarterly.



(11) The institute may form a private nonprofit corporation, if the board of governors determines that doing so will assist in fulfilling its functions under this section.

(12) The board of governors shall annually prepare a report that details the sources of funds, amount of funds received from each source, and the use of all funds that are received by the institute or a nonprofit corporation formed by the board of governors during the reporting year. Any report prepared by or on behalf of the board of governors shall include a list of all of the sources that contribute funds for the operation of the institute.

(13) Within 180 days after the effective date of the amendatory act that added this subsection, the board of governors shall prepare the following reports and provide these reports to the appropriate standing committees of the senate and house of representatives that primarily address issues pertaining to the environment and natural resources.

(a) A report on waste management options available to this state. The report shall also list and evaluate feasible options to encourage a reduction in the amount of waste generated in this state. The board of governors shall identify and evaluate options and make recommendations to the authority regarding interim waste storage and provision of final disposal capacity.

(b) A volunteer host community program plan which, at a minimum, incorporates the provisions of section 7. The authority shall obtain public comment in the preparation of this plan.

(14) A writing prepared, owned, used, in possession of, or retained by the board of governors in the performance of an official function is subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

### **333.26218 Report and recommendations; preparation and submission.**

Sec. 18. (1) The authority shall each month prepare and submit to the department a report that sets forth all of the following information:

(a) The character, volume, class, and curie count of waste received by the authority.

(b) The number of manifests and shipments of waste received by the authority during the reporting period.

(c) The number of manifests received by the authority that properly and improperly reflected the waste received.

(d) The response of the authority to any discrepancies in the manifest.

(e) The recommendation of the authority to the department for follow-up action regarding a discrepancy in a manifest or other impropriety.

(2) The authority shall prepare and submit to the department and the attorney general recommendations regarding sanctions against a generator, carrier, collector, or processor who the authority suspects has violated part 137 or a rule promulgated under that part or a permit issued under part 137.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

### **333.26218a Report by generator; contents; preparation and presentation of summary.**

Sec. 18a. (1) By October 1 of each year, or as otherwise required by the authority, a generator shall report to the authority the following information about the waste it generates:

(a) Volume of waste.

(b) Curie content and principal radionuclides present.

(c) Form of waste.

(d) Methods used to store waste.

(e) Any other information about the waste that the authority considers necessary or helpful in implementing its duties under this act.

(2) A summary of information reported under subsection (1) shall be prepared by the authority and presented to the appropriate standing committees of the senate and house of representatives of the legislature that primarily address issues pertaining to the environment and natural resources.

**History:** Add. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

### **333.26219 Establishment of fee system for disposal site; assurance of sufficient funding; creation of remedial action fund, long-term liability fund, long-term care fund, and tax contingency fund; administration; disposition of income and earnings; expenditure of funds; surcharges; increase of fees; basis of fee system; disposition of revenues.**

Sec. 19. (1) The authority shall establish a fee system that is reasonable and equitable and that provides the authority with sufficient revenue to cover any and all costs associated with the disposal site, including, but not limited to, the planning, siting, licensure, operation, regulation, monitoring, site closure and stabilization, post

closure monitoring and maintenance, institutional control, and liability pertaining to the disposal site. In addition, the authority shall assure that sufficient funds will be available in the low-level radioactive waste fund for all of the following:

(a) The authority and all of the expenses the authority incurs in meeting the requirements of this act, part 137, and the rules promulgated under part 137.

(b) The expenses of the department that pertain to the department's regulatory responsibility under part 137.

(c) If this state is a member of a compact, the expenses related to compact membership.

(d) The international low-level radioactive waste research and education institute established pursuant to section 17.

(e) The review board established pursuant to section 13.

(f) Local monitoring committees.

(g) The siting criteria advisory committee established pursuant to section 8.

(h) If this state is a member of a compact, the expenses of compact member states that are incurred to obtain privileges in this state to enable waste generated in the compact member states to be disposed of in the disposal site.

(i) If this state is a member of a compact, the funds required to be paid to the commission by the compact member states.

(j) Compensation to the host site community and any county or municipality in this state for the reasonable direct costs related to the disposal site including, but not limited to, necessary road and other capital improvements, emergency response training, and other specialized personnel training.

(k) Benefits to the candidate sites and host site community including incentives available to candidate sites and the host site community, pursuant to agreements reached by the commission and with the authority.

(l) Provide funds sufficient to fulfill the provisions of sections 13714 and 13715 of part 137.

(m) Annually to this state for unrestricted purposes, \$500,000.00.

(n) Annually to the host site community for unrestricted purposes, \$800,000.00.

(o) Costs incurred by a municipality or county as a result of externalities associated with the disposal site.

(p) Revenue for the funds created in subsection (2).

(q) Paying debt service on revenue bonds issued pursuant to section 20a.

(2) The remedial action fund, the long-term liability fund, the long-term care fund, and the tax contingency fund are created as separate funds in the department of treasury. The funds created in this subsection shall be administered by the authority. The income and earnings of the funds created in this subsection shall be added to the assets of the fund which generated the income. The funds created in this subsection shall be funded and expended as follows:

(a) Not less than \$10,000,000.00 during the period the disposal site accepts waste for disposal, for deposit in the remedial action fund which is available only to pay for remedial action taken by the authority in the event of a release or threatened release from the disposal site that presents a danger to the public health, safety, or welfare, or the environment.

(b) Not less than \$500,000.00 annually for deposit in the long-term liability fund which shall be available only to pay judgments or judicially approved settlements of claims against the authority or, if this state is a member of a compact any compact member state for death, personal injury, illness, or property damage resulting from the disposal of low-level radioactive waste at the disposal site. The long-term liability fund shall be used only after funds available pursuant to sections 13714 and 13715 of part 137 have been exhausted.

(c) Not less than \$600,000.00 annually for deposit in the long-term care fund which is available only to pay for the expenses of site closure and stabilization and institutional control.

(d) Not more than \$100,000.00 annually for deposit in the tax contingency fund which is available for reasonable payments in lieu of real property taxes which, but for ownership of the disposal site by the authority, would be payable with respect to the disposal site, for as long as the disposal site is not subject to pay property taxes.

(3) The authority shall impose a 20% surcharge to be added to the disposal fees established under subsection (1). The surcharge shall be sufficient to cover the following expenses and shall be distributed by the authority according to the following:

(a) The host site community shall receive 35% of the surcharge or \$400,000.00, whichever is greater.

(b) One or more municipalities that share a boundary with the host site community shall receive 20% of the surcharge or \$400,000.00, whichever is greater. If there is more than 1 municipality that is eligible for funding under this subdivision, the eligible municipalities shall split equally that funding.

(c) The county in which the host site is located shall receive 15% of the surcharge or \$300,000.00,

whichever is greater.

(d) The environmental response fund created in part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.20101 to 324.20142 of the Michigan Compiled Laws, shall receive 15% of the surcharge or \$400,000.00, whichever is greater.

(e) The clean Michigan fund created in part 191 (clean Michigan fund) of Act No. 451 of the Public Acts of 1994, being sections 324.19101 to 324.19121 of the Michigan Compiled Laws, shall receive 15% of the surcharge or \$200,000.00, whichever is greater.

(4) The authority may impose a just and reasonable surcharge on any generator, carrier, processor, or collector who does not comply with part 137 or the rules promulgated under part 137.

(5) In the second and each subsequent year of the operation of the disposal site, the amount of each fee established in subsection (1) shall be increased in proportion to each annual increase for the preceding year in the annual consumer price index for all urban consumers as defined and officially reported by the bureau of labor statistics of the United States department of labor for the north central region of the United States. If the disposal site does not operate for the entire year during the second or last year the disposal site accepts waste, the proportional increase provided for in this subsection shall be prorated according to the number of months of operation.

(6) The fee system created by the authority under subsection (1) for the disposal of waste in the disposal site shall not be dependent on revenues received for the disposal of class C waste and shall be based on both of the following:

(a) The volume, radioactivity, and half-life of the waste deposited in the disposal site. The fee shall be proportionately higher for waste that has higher levels of radioactivity as measured in curies, and for waste that has longer half-lives.

(b) A realistic model of the projected cost of the disposal of each classification of waste.

(7) All revenues in the fee system created under subsection (1) that result from the disposal of class C waste in the disposal site shall be deposited in the clean Michigan fund created in part 191 of Act No. 451 of the Public Acts of 1994.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995;—Am. 1996, Act 68, Imd. Eff. Feb. 26, 1996.

### **333.26219a Michigan as host state; agreement to include provision providing penalty for default.**

Sec. 19a. If this state enters into a compact and, pursuant to agreements entered into by the compact members, Michigan is selected as the host state for the disposal site and fulfills its obligations to serve as the host state, the contractual agreement among the compact members shall include a provision that provides a penalty if any other compact member state subsequently defaults in any respect on its obligation to serve as the host state for the disposal site. This penalty shall include at least all of the following:

(a) Exemplary damages.

(b) The costs estimated to be incurred by this state due to the default.

(c) The costs estimated to be incurred by this state due to the lost opportunity to join another compact or to have proceeded as an independent state.

(d) Other expenses and costs that this state will incur as a result of the default as determined by the authority.

**History:** Add. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

### **333.26220 Low-level radioactive waste management fund; creation; administration; appropriations; expenditures; sources of revenue; exemption of assets from taxation; preservation and use of assets.**

Sec. 20. (1) There is hereby created in the state treasury a low-level radioactive waste management fund that shall be administered by the authority. The legislature shall make appropriations from the fund as provided in part 137 and as necessary to assure that the authority is able to fully implement its powers and responsibilities.

(2) The authority may expend appropriations by the legislature from the low-level radioactive waste fund for purposes listed in section 19 and as are otherwise reasonably related to the full implementation of the powers and duties of the authority.

(3) The source of the revenue of the fund shall include revenue from the following sources:

(a) Funds provided by other states, if this state is a member of a compact and this state is the host state for the compact, including export fees, funds to be allocated to candidate site communities, and any other

revenue.

(b) Rebates received from the United States department of energy.

(c) Funds received pursuant to section 4(c).

(d) Disposal fees and surcharges established by the authority under section 19.

(4) The assets of the low-level radioactive waste management fund shall be exempt from all taxation by this state or any of its political subdivisions.

(5) The assets of the low-level radioactive waste management fund shall be preserved, invested, and expended solely pursuant to and for the purposes set forth in this act and in part 137 and shall not be loaned or otherwise transferred or used by the state for any other purpose.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

### **333.26220a Bonds.**

Sec. 20a. (1) For the purpose of financing the project costs associated with the disposal site, the authority may borrow money and issue its revenue bonds payable solely from the disposal site revenues, except to the extent paid from the proceeds of sale of revenue bonds or from any other security provided for and pledged as provided by this act. The bonds shall be serial bonds or term bonds, or a combination of serial bonds and term bonds, and shall be payable as provided in the resolution authorizing the bonds. The last annual principal installment shall not be longer than the estimated period of usefulness of the disposal site for which the bonds were issued as determined by the authority. The resolution of the authority authorizing the issuance of the bonds may provide for sinking fund payments; for the bonds to bear interest at a fixed or variable rate or rates of interest per annum or at no interest; for the establishment of a reserve and the method of funding the reserve; for the investment of bond proceeds and other money held in funds and accounts created by the resolution; for the denomination or denominations of the bonds; for the form, either coupon or registered, of the bonds; for the conversion or registration privileges; for the manner of execution; for the sources, medium of payment, and place or places within or without the state of payment; and that the bond be subject to redemption at the option of the holder or the authority with the terms and redemption premiums as the resolution provides.

(2) Bonds issued may be sold at a discount but may not be sold at a price that would make the interest cost on the money borrowed after deducting any premium or adding any discount exceed 10% per annum or the maximum rate permitted by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, whichever is greater. Bonds of the authority may be sold at public or private sale. Bonds issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) Bonds of the authority shall not be in any way a debt or liability of the state and shall not create or constitute an indebtedness, liability, or obligation of the state or constitute a pledge of the faith and credit of the state, but all bonds issued by the authority, unless funded or refunded by bonds issued by the authority, shall be payable solely from revenues or funds pledged or available for their payment from disposal site revenues, or as otherwise provided by this act. The authority shall not be personally liable for an indebtedness, liability, or obligation under this section. Each bond issued under this section shall contain on its face a statement to the effect that the bond is not in any way a debt or liability of the state, that the state is not obligated to pay principal or interest on the bond, that neither the faith and credit nor the taxing power of the state is pledged for the payment of principal of or interest on the bond, and that the authority is obligated to pay the principal of and interest on the bond only from the disposal site revenues.

(4) The authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase bonds, an agreement to remarket bonds or not to call for prior redemption of bonds, swaps, or interest protection agreements including interest rates, hedges, or similar agreements, and any other transaction to provide security to assure timely payment of the bond. The authority may authorize payment from the proceeds of the bond or from other funds available, of the costs of issuance including, but not limited to, fees for placement, charges for replacement, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of the bonds.

(5) A pledge of the disposal site revenues and the funds and accounts pledged by the resolution is valid and binding from the time when the pledge is made. The disposal site revenues pledged and thereafter received by the authority shall be subject to a statutory lien of the pledge without physical delivery of the revenues or money or further act, until payment in full of the principal of and interest upon the bonds, unless the authorizing resolution provides for an earlier discharge of the lien. The lien of a pledge of the disposal site revenue is valid and binding against a party having a claim of any kind in tort, contract, or otherwise against the authority, irrespective of whether that party has notice of the pledge. Neither the resolution authorizing the issuance of the bonds, the trust indenture, nor any other instrument by which a pledge is created need be filed



or recorded in order to establish and perfect a lien or security interest in the property pledged.

(6) In the resolution authorizing the issuance of the bonds, the authority may authorize the state treasurer, as agent for the authority, to do 1 or more of the following:

- (a) Sell and deliver, and receive payment for, bonds.
- (b) Refund bonds by the delivery of new bonds, whether or not the bonds to be refunded have matured or are subject to redemption.
- (c) Deliver bonds, partly to refund bonds, and partly for any other authorized purpose.
- (d) Buy bonds that have been issued and resell those bonds.
- (e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(7) The authority may provide in the resolution authorizing the issuance of the bonds for 1 or more of the following:

- (a) A provision that the disposal site revenues shall be pledged for the payment of the bonds.
- (b) To covenant that the fees and surcharges provided for by section 19 shall be revised from time to time within the limits permitted by law and under the compact when necessary to insure that the revenues to be derived shall be sufficient to pay the principal of and interest on the bonds issued pursuant to this section and other obligations incurred in connection with the issuance of the bonds.
- (c) To establish, make provision for, and make regulation regarding and disposition of reserves or sinking funds.
- (d) To covenant with respect to or against limitations on the right to sell or otherwise dispose of property of any kind.
- (e) A provision for deposit and expenditure of the proceeds of sale of the bonds and for investment of the proceeds and of other funds relating to the bonds.
- (f) To covenant as to the issuance of additional bonds or notes, or as to limitations on the issuance of additional bonds, and on incurring other debts of the authority.
- (g) To covenant as to the payment of principal and interest on the bonds, as to the sources and methods of that payment, as to the rank and priority of the bonds with respect to a lien or security, or as to the acceleration of the maturity of the bonds.
- (h) To covenant as to the redemption of the bonds, and privileges for exchange of other bonds of the authority.
- (i) To covenant as to create or authorize the creation of special funds or money to be held or pledged or otherwise for operating expenses, payment or redemption of bonds, reserves, or other purposes, and as the use and disposition of the money held in these special funds.
- (j) To establish the procedure by which the terms of a contract or covenant with or for the benefit of the holders of the bonds may be amended or abrogated, the amount of bonds the holders of which must consent to the amendment or abrogation, and to the manner in which the consent may be given.
- (k) To provide for the rights and liabilities, powers, and duties arising upon the breach of a covenant, condition, or obligation, and to prescribe the events of default and the terms and conditions upon which any or all the bonds shall become or may be declared due and payable before maturity, and the terms and conditions upon which such declarations and its consequences may be waived.
- (l) Provide for the appointment of a trustee, to vest in a trustee property, rights, powers, and duties in trust as the authority determines, which may include all or any of the rights, powers, or duties of a trustee appointed by the holders of bonds or notes, and to limit or abrogate the right of holders of bonds of the authority to appoint a trustee under this section or to limit the rights, powers, and duties of such trustee.
- (m) To limit the rights of holders of bonds to enforce a pledge or covenant securing the bonds.
- (n) Any other matters of like or different character, which in any way affects the security or protection of the bonds.

(8) Notwithstanding any other restriction contained in any other law, the state and the public officer, governmental unit, or agencies of the state or governmental unit; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or any other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest a sinking fund, money, or any other fund belonging to them or within their control in bonds or notes issued under this section, and authority bonds shall be authorized security for public deposits. If the interest of the bonds is excluded from gross income for federal income tax purposes, bonds and interest on those bonds shall be exempt from all taxation by the state or a subdivision of the state.

(9) The authority may provide for the issuance of bonds in the amount the authority considers necessary for the purpose of refunding bonds of the authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds. The proceeds of these refunding bonds may be applied to the purchase or retirement at maturity or redemption of outstanding bonds either on the earliest or subsequent redemption date, and pending the application, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on a date or dates determined by the authority. Pending the application and subject to agreements with the bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the time or times as appropriate to assure prompt payment of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner. In the resolution authorizing bonds, the authority may provide that the bonds that have been refunded shall be considered paid when there has been deposited in trust money or direct obligations of the United States, or other obligations secured by the foregoing that will provide payments of principal and interest adequate to pay the principal and interest on the refunded bonds as that principal and interest becomes due whether by maturity or prior redemption and that, upon the deposit of the money or obligations, the obligations of the authority to the holders of the refunded bonds are terminated except as to the rights to the money or obligations deposited in trust.

(10) As used in this section:

(a) "Annual principal installment" means a maturity of serial bonds, an amount of term bonds required to be redeemed in that year, or a maturity of term bonds less amounts previously required to be redeemed.

(b) "Bonds" means any note, bond, or other obligation or evidence of indebtedness of the authority.

(c) "Disposal site revenues" means fees and surcharges established by the authority under section 19; other revenues generated by the operation of the disposal site; and other revenues received by the bond holders pursuant to the resolution authorizing the bond, after deduction of reasonable expenses of administration, operation, and maintenance of the disposal site.

(d) "Project costs" means the costs of assurance of title, construction, insurance during construction, acquisition, improvement, enlargement, extension, or repair of the disposal site unit including any engineering, architectural, legal, accounting, financial, surveying, and other expenses incidental to the disposal site. Project costs shall also include interest on the bonds and other obligations of the borrower issued to pay project costs or to secure the timely payment of the bonds, a reserve or an addition to a reserve for payment of principal and interest on the bonds, the amount determined by the authority required for the operation of maintenance of the disposal site until sufficient revenues have developed, and all costs associated with the issuance of the bonds.

(11) The issuance of bonds under this act is subject to the agency financing reporting act.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987;—Am. 2002, Act 414, Imd. Eff. June 3, 2002.

### **333.26221 Repealed. 1994, Act 434, Imd. Eff. Jan. 6, 1995.**

**Compiler's note:** The repealed section pertained to report to governor and legislature.

### **333.26222 Noncompliance.**

Sec. 22. The failure of the authority to comply with a requirement of this act that pertains to specified dates by which certain acts are to occur shall not invalidate an action taken by the authority after the specified date, if that action is otherwise in compliance with this act.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

### **333.26223 Annual report.**

Sec. 23. The authority shall make an annual report to the governor and to the legislature. The annual report shall include a full account of the activities of the authority.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

### **333.26224 Assistance from other department or agencies; reimbursement for costs.**

Sec. 24. Upon the request of the authority, any department or agency of this state shall assist the authority in fulfilling its responsibilities under this act and that department or agency shall be reimbursed for costs associated with that assistance.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

### **333.26225 Annual appropriation.**

Rendered Thursday, October 22, 2015

Page 18

Michigan Compiled Laws Complete Through PA 143 of 2015

Sec. 25. The legislature shall annually appropriate to the authority sufficient funding from the low-level radioactive waste management fund to ensure the effective implementation of this act.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

**333.26226 Conditional effective date.**

Sec. 26. This act shall not take effect unless all of the following bills of the 84th Legislature are enacted into law:

(a) Senate Bill No. 65.

(b) Senate Bill No. 66.

**History:** 1987, Act 204, Imd. Eff. Dec. 22, 1987.

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