

**SUBSTITUTE FOR  
HOUSE BILL NO. 5400**

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 8504, 8505, 8513, 11502, 11503, 11504,  
11505, 11506, 11507, 11542, 20101, 20114e, and 20115 (MCL  
324.8504, 324.8505, 324.8513, 324.11502, 324.11503, 324.11504,  
324.11505, 324.11506, 324.11507, 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, section 8513  
as added by 1995 PA 60, section 11502 as amended by 2007 PA 212,  
sections 11503, 11505, and 11506 as amended by 2014 PA 24,  
section 11504 as amended by 2013 PA 250, section 20101 as amended  
by 2013 PA 141, section 20114e as amended by 2012 PA 446, 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  
3 IN COMPLIANCE WITH PART 115 AS BENEFICIAL USE 3.

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

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

14           (a) Each fixed location at which fertilizer is manufactured  
15 in this state.

16           (b) Each mobile unit used to manufacture fertilizer in this  
17 state.

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

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

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

24           (b) The name and address of each bulk distribution point in  
25 the state not licensed for fertilizer manufacture or  
26 distribution. The name and address shown on the license shall be

1 shown on all labels, pertinent invoices, and bulk storage for  
2 fertilizers distributed by the licensee in this state.

3           **(3) IF THE FERTILIZER IS A BENEFICIAL USE BY-PRODUCT**  
4 **INTENDED FOR BENEFICIAL USE 3 UNDER PART 115, THE APPLICATION**  
5 **SHALL ALSO INCLUDE THE INFORMATION IDENTIFIED IN SECTION**  
6 **11551(7).**

7           **(4) ~~(3)~~**—The licensee shall inform the director in writing of  
8 additional distribution points established during the period of  
9 the license.

10           **(5) ~~(4)~~**—A distributor is not required to obtain a license if  
11 the distributor is selling fertilizer of a distributor or a  
12 manufacturer licensed under this part.

13           **(6) ~~(5)~~**—All licenses to manufacture or distribute fertilizer  
14 expire on December 31 of each year.

15           Sec. 8505. (1) A person shall not distribute a specialty  
16 fertilizer or soil conditioner unless it is registered with the  
17 department. An application **FOR REGISTRATION** listing each brand  
18 and product name of each grade of specialty fertilizer or soil  
19 conditioner shall be made on a form furnished by the director.  
20 ~~and~~ **AN APPLICATION** shall be accompanied with the fees described  
21 in subsection (2) for each brand and product name of each grade.  
22 Labels for each brand and product name of each grade shall  
23 accompany the application.

24           **(2) IF THE SPECIALTY FERTILIZER OR SOIL CONDITIONER IS A**  
25 **BENEFICIAL USE BY-PRODUCT INTENDED FOR BENEFICIAL USE 3 UNDER**  
26 **PART 115, THE APPLICATION SHALL ALSO INCLUDE THE INFORMATION**  
27 **IDENTIFIED IN SECTION 11551(7).**

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

4           (4) ~~(2)~~—A person applying for a registration under  
5 subsection (1) shall pay the following annual fees for each brand  
6 and product name of each grade:

7           (a) Registration fee of \$25.00.

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

10          (5) ~~(3)~~—A distributor is not required to register a brand of  
11 fertilizer that is registered under this part by another person,  
12 if the label does not differ in any respect.

13          (6) ~~(4)~~—A manufacturer or distributor of custom blend  
14 specialty fertilizers for home lawns, golf courses, recreational  
15 areas, or other nonfarm areas ~~shall~~**IS** not ~~be~~ required to  
16 register each grade distributed but shall license their firm on  
17 an application furnished by the director for an annual fee of  
18 \$100.00 and shall label the fertilizer as provided in section  
19 8502. The label of each fertilizer distributed under this  
20 subsection shall be maintained by the manufacturer or distributor  
21 for 1 year for inspection by the director.

22          (7) ~~(5)~~—A manufacturer or distributor of soil conditioners  
23 blended according to specifications provided to a blender or  
24 blended as specifically requested by the consumer prior to  
25 blending shall either register each brand or blend distributed or  
26 license its firm on an application furnished by the director for  
27 an annual fee of \$100.00 and shall label the soil conditioner as

1 provided in section 8502. The label of each soil conditioner  
2 distributed under this subsection shall be maintained by the  
3 manufacturer or distributor for 1 year for inspection by the  
4 director.

5       Sec. 8513. (1) The department may promulgate rules regarding  
6 the bulk storage of fertilizers.

7       (2) IF STORAGE OF A MATERIAL USED AS A BENEFICIAL USE BY-  
8 PRODUCT FOR BENEFICIAL USE 3 UNDER PART 115 MEETS THE GENERAL  
9 STORAGE REQUIREMENTS OF THAT PART, THEN THE STORAGE IS EXEMPT  
10 FROM REGULATION NO. 641, COMMERCIAL FERTILIZER BULK STORAGE, R  
11 285.641.1 TO R 285.641.18 OF THE MICHIGAN ADMINISTRATIVE CODE.

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

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

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

24       (2) "Ashes" means the residue from the burning of wood,  
25 ~~coal, coke, refuse,~~ SCRAP WOOD, TIRES, BIOMASS, wastewater  
26 sludge, FOSSIL FUELS INCLUDING COAL OR COKE, or other combustible  
27 materials.

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

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

5           (A) CONSTRUCTION FILL AT NONRESIDENTIAL PROPERTY THAT MEETS  
6 ALL OF THE FOLLOWING REQUIREMENTS:

7           (i) IS PLACED AT LEAST 4 FEET ABOVE THE SEASONAL GROUNDWATER  
8 TABLE.

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

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

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

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

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

1 APPROVED BY THE DEPARTMENT.

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

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

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

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

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

14 (iii) CAUSE A VIOLATION OF A PART 31 SURFACE WATER QUALITY  
15 STANDARD.

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

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

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

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

1 ACT OF 1980, 42 USC 9601 TO 9657, OR A CORRECTIVE ACTION IN  
2 COMPLIANCE WITH PART 111 OR THE SOLID WASTE DISPOSAL ACT, 42 USC  
3 6901 TO 6992K.

4 (D) AS CONSTRUCTION MATERIAL AT A LANDFILL LICENSED UNDER  
5 THIS PART.

6 (7) "BENEFICIAL USE 5" MEANS BLENDED WITH INERT MATERIALS OR  
7 WITH COMPOST AND USED TO MANUFACTURE SOIL.

8 (8) "BENEFICIAL USE BY-PRODUCT" MEANS THE FOLLOWING  
9 MATERIALS IF THE MATERIALS ARE STORED FOR BENEFICIAL USE OR ARE  
10 USED BENEFICIALLY AS SPECIFIED AND THE REQUIREMENTS OF SECTION  
11 11551(1) ARE MET:

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

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

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

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

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

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

23 (G) FOUNDRY SAND FROM FERROUS OR ALUMINUM FOUNDRIES USED FOR  
24 BENEFICIAL USE 1, 2, 3, 4, OR 5.

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

27 (i) REJECTS, FROM SCREENS, CLEANERS, AND MILLS DISPERSION



1 EQUIPMENT, CONTAINING MORE THAN DE MINIMIS AMOUNTS OF PLASTIC.

2 (ii) SCRAP PAPER.

3 (I) SPENT MEDIA FROM SANDBLASTING, WITH UNCONTAMINATED SAND,  
4 NEWLY MANUFACTURED, UNPAINTED STEEL USED FOR BENEFICIAL USE 1 OR  
5 2.

6 (J) DEWATERED CONCRETE GRINDING SLURRY FROM PUBLIC  
7 TRANSPORTATION AGENCY ROAD PROJECTS USED FOR BENEFICIAL USE 1, 2,  
8 3, OR 4.

9 (K) LIME SOFTENING RESIDUALS FROM THE TREATMENT AND  
10 CONDITIONING OF WATER FOR DOMESTIC USE OR FROM A COMMUNITY WATER  
11 SUPPLY USED FOR BENEFICIAL USE 3 OR 4.

12 (L) SOIL WASHED OR OTHERWISE REMOVED FROM SUGAR BEETS THAT IS  
13 USED FOR BENEFICIAL USE 3.

14 (M) SEGREGATED FLUE GAS DESULFURIZATION MATERIAL USED FOR  
15 BENEFICIAL USE 1 OR 3.

16 (N) MATERIALS AND USES APPROVED BY THE DEPARTMENT PURSUANT  
17 TO SECTION 11553(3). APPROVAL OF MATERIALS AND USES BY THE  
18 DEPARTMENT PURSUANT TO SECTION 11553(3) DOES NOT REQUIRE THE USE  
19 OF THOSE MATERIALS BY ANY GOVERNMENTAL ENTITY OR ANY OTHER  
20 PERSON.

21 (9) ~~(3)~~—"Beverage container" means an airtight metal, glass,  
22 paper, or plastic container, or a container composed of a  
23 combination of these materials, which, at the time of sale,  
24 contains 1 gallon or less of any of the following:

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

27 (b) A beer, ale, or other malt drink of whatever alcoholic

1 content.

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

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

17 (11) **"CEMENT KILN DUST" MEANS PARTICULATE MATTER COLLECTED**  
18 **IN AIR EMISSION CONTROL DEVICES SERVING PORTLAND CEMENT KILNS.**

19 (12) ~~(5)~~—"Certificate of deposit" means a negotiable  
20 certificate of deposit held by a bank or other financial  
21 institution regulated and examined by a state or federal agency,  
22 the value of which is fully insured by an agency of the United  
23 States government. A certificate of deposit used to fulfill the  
24 requirements of this part shall be in the sole name of the  
25 department with a maturity date of not less than 1 year and shall  
26 be renewed not less than 60 days before the maturity date. An  
27 applicant who uses a certificate of deposit as a bond shall

1 receive any accrued interest on that certificate of deposit upon  
2 release of the bond by the department.

3 (13) ~~(6)~~—"Certified health department" means a city, county,  
4 or district department of health that is specifically delegated  
5 authority by the department to perform designated activities as  
6 prescribed by this part.

7 (14) ~~(7)~~—"Coal or wood ash" means ~~either or both of the~~  
8 ~~following~~—THE MATERIAL RECOVERED FROM SYSTEMS FOR THE CONTROL OF  
9 AIR POLLUTION FROM, OR THE NONCOMBUSTED RESIDUE REMAINING AFTER,  
10 THE COMBUSTION OF COAL, INCLUDING, BUT NOT LIMITED TO, BOTTOM  
11 ASH, FLY ASH, BOILER SLAG, OR FLUIDIZED-BED COMBUSTION ASH. FOR  
12 BENEFICIAL USE 2, COAL ASH DOES NOT INCLUDE COAL FLY ASH EXCEPT  
13 FOR THE FOLLOWING IF USED AT NONRESIDENTIAL PROPERTY:

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

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

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

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

27 ~~—(b) The airborne residues from burning coal or wood, or~~

1 ~~both, that are finely divided particles entrained in flue gases~~  
2 ~~arising from a combustion chamber, otherwise referred to as fly~~  
3 ~~ash.~~

4 (15) "COAL BOTTOM ASH" MEANS ASH PARTICLES FROM THE  
5 COMBUSTION OF COAL THAT ARE TOO LARGE TO BE CARRIED IN FLUE GASES  
6 AND COLLECT ON FURNACE WALLS OR AT THE BOTTOM OF THE FURNACE.

7 (16) ~~(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 (17) ~~(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 (18) ~~(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 (19) ~~(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 FOR BENEFICIAL USE**  
 7 **BY-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. However, a  
 27 waste diversion center is not a disposal area.

1           (6) "Diverted waste" means waste that meets all of the  
2 following requirements:

3           (a) Is generated by households, businesses, or governmental  
4 entities.

5           (b) Can lawfully be disposed of at a licensed sanitary  
6 landfill or municipal solid waste incinerator.

7           (c) Is separated from other waste.

8           (d) Is 1 or more of the following:

9           (i) Hazardous material.

10          (ii) Liquid waste.

11          (iii) Pharmaceuticals.

12          (iv) Electronics.

13          (v) Batteries.

14          (vi) Light bulbs.

15          (vii) Pesticides.

16          (viii) Thermostats, switches, thermometers, or other devices  
17 that contain elemental mercury.

18          (ix) Sharps.

19          (x) Other wastes approved by the department that can be  
20 readily separated from solid waste for diversion to preferred  
21 methods of management and disposal.

22           (7) "Enforceable mechanism" means a legal method whereby the  
23 state, a county, a municipality, or another person is authorized  
24 to take action to guarantee compliance with an approved county  
25 solid waste management plan. Enforceable mechanisms include  
26 contracts, intergovernmental agreements, laws, ordinances, rules,  
27 and regulations.

1 (8) "Escrow account" means an account **THAT IS** managed by a  
2 bank or other financial institution whose account operations are  
3 regulated and examined by a federal or state agency and ~~which~~  
4 **THAT** complies with section 11523b.

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

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

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

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

26 (13) **"FLUE GAS DESULFURIZATION MATERIAL" MEANS THE MATERIAL**  
27 **RECOVERED FROM AIR POLLUTION CONTROL SYSTEMS THAT CAPTURE SULFUR**

1 DIOXIDE FROM THE COMBUSTION OF WOOD, COAL, OR FOSSIL FUELS, OR  
2 OTHER COMBUSTIBLE MATERIALS IF THE OTHER COMBUSTIBLE MATERIALS  
3 CONSTITUTE LESS THAN 50% BY WEIGHT OF THE TOTAL MATERIAL  
4 COMBUSTED AND THE DEPARTMENT DETERMINES IN WRITING THAT THE OTHER  
5 COMBUSTIBLE MATERIALS DO NOT MATERIALLY AFFECT THE CHARACTER OF  
6 THE RESIDUE. FLUE GAS DESULFURIZATION MATERIAL INCLUDES SYNTHETIC  
7 GYPSUM.

8 (14) ~~(13)~~—"Food processing residuals" means any of the  
9 following:

10 (a) Residuals of fruits, vegetables, aquatic plants, or  
11 field crops.

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

14 (c) Otherwise unusable food products ~~which~~ **THAT** do not meet  
15 size, quality, or other product specifications and ~~which~~ **THAT**  
16 were intended for human or animal consumption.

17 (15) **"FOUNDRY SAND" MEANS SILICA SAND USED IN THE METAL**  
18 **CASTING PROCESS, INCLUDING BINDING MATERIAL OR CARBONACEOUS**  
19 **ADDITIVES, FROM FERROUS OR NONFERROUS FOUNDRIES.**

20 (16) **"GAAMPS" MEANS THE GENERALLY ACCEPTED AGRICULTURAL AND**  
21 **MANAGEMENT PRACTICES UNDER THE MICHIGAN RIGHT TO FARM ACT, 1981**  
22 **PA 93, MCL 286.471 TO 286.474.**

23 (17) ~~(14)~~—"Garbage" means rejected food wastes including  
24 waste accumulation of animal, fruit, or vegetable matter used or  
25 intended for food or that results from the preparation, use,  
26 cooking, dealing in, or storing of meat, fish, fowl, fruit, or  
27 vegetable matter.



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

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

5 ~~———— (b) Wood or wood product treated with creosote or~~  
 6 ~~pentachlorophenol.~~

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

9 ~~———— (16) "Treated wood" means wood or wood product that has been~~  
 10 ~~treated with 1 or more of the following:~~

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

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

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

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

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

21       Sec. 11504. (1) "Health officer" means a full-time  
 22 administrative officer of a certified city, county, or district  
 23 department of health **DEPARTMENT.**

24       (2) "Inert material" means a substance that will not  
 25 decompose, dissolve, or in any other way form a contaminated  
 26 leachate upon contact with water, or other liquids determined by  
 27 the department as likely to be found at the disposal area,

1 ~~percolating through the substance.~~ ANY OF THE FOLLOWING:

2 (A) ROCK.

3 (B) TREES, STUMPS, AND OTHER SIMILAR LAND-CLEARING DEBRIS  
4 THAT IS BURIED ON THE SITE OF ORIGIN OR ANOTHER SITE, WITH THE  
5 APPROVAL OF THE OWNER OF THE SITE, IF ALL OF THE FOLLOWING  
6 CONDITIONS ARE MET:

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

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

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

12 (C) UNCONTAMINATED EXCAVATED SOIL OR DREDGED SEDIMENT.  
13 EXCAVATED SOIL OR DREDGED SEDIMENT IS CONSIDERED UNCONTAMINATED  
14 IF IT DOES NOT CONTAIN MORE THAN DE MINIMIS AMOUNTS OF SOLID  
15 WASTE AND 1 OF THE FOLLOWING APPLIES:

16 (i) THE SOIL OR SEDIMENT IS NOT CONTAMINATED BY A HAZARDOUS  
17 SUBSTANCE AS A RESULT OF HUMAN ACTIVITY. SOIL OR SEDIMENT THAT  
18 NATURALLY CONTAINS ELEVATED LEVELS OF HAZARDOUS SUBSTANCES ABOVE  
19 UNRESTRICTED RESIDENTIAL OR ANY OTHER PART 201 GENERIC SOIL  
20 CLEANUP CRITERIA IS NOT CONSIDERED CONTAMINATED FOR PURPOSES OF  
21 THIS SUBDIVISION. A SOIL OR SEDIMENT ANALYSIS IS NOT REQUIRED  
22 UNDER THIS SUBPARAGRAPH IF, BASED ON PAST LAND USE, THERE IS NO  
23 REASON TO BELIEVE THAT THE SOIL OR SEDIMENT IS CONTAMINATED.

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

1           (iii) FOR ANY HAZARDOUS SUBSTANCE THAT COULD REASONABLY BE  
2 EXPECTED TO BE PRESENT AS A RESULT OF PAST LAND USE AND HUMAN  
3 ACTIVITY, THE SOIL OR SEDIMENT FALLS BELOW PART 201 GENERIC  
4 RESIDENTIAL SOIL DIRECT CONTACT CLEANUP CRITERIA AND HAZARDOUS  
5 SUBSTANCES IN LEACHATE FROM THE SOIL OR SEDIMENT, USING, AT THE  
6 OPTION OF THE GENERATOR, EPA METHOD 1311, 1312, OR ANY OTHER  
7 LEACHING PROTOCOL APPROVED BY THE DEPARTMENT, FALL BELOW PART 201  
8 GENERIC RESIDENTIAL HEALTH BASED GROUNDWATER DRINKING WATER  
9 VALUES OR CRITERIA, AND THE SOIL OR SEDIMENT WOULD NOT CAUSE A  
10 VIOLATION OF ANY SURFACE WATER QUALITY STANDARD ESTABLISHED UNDER  
11 PART 31 AT THE AREA OF PLACEMENT, DISPOSAL, OR USE.

12           (D) EXCAVATED SOIL FROM A SITE OF ENVIRONMENTAL  
13 CONTAMINATION, CORRECTIVE ACTION, OR RESPONSE ACTIVITY IF THE  
14 SOIL IS NOT A LISTED HAZARDOUS WASTE UNDER PART 111 AND IF  
15 HAZARDOUS SUBSTANCES IN THE SOIL DO NOT EXCEED GENERIC SOIL  
16 CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE AS DEFINED IN  
17 PART 201 OR BACKGROUND CONCENTRATION AS DEFINED IN PART 201, AS  
18 APPLICABLE.

19           (E) CONSTRUCTION BRICK, MASONRY, PAVEMENT, OR BROKEN  
20 CONCRETE THAT IS REUSED FOR FILL, RIP RAP, SLOPE STABILIZATION,  
21 OR OTHER CONSTRUCTION, IF ALL OF THE FOLLOWING CONDITIONS ARE  
22 MET:

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

25           (ii) THE MATERIAL IS NOT MATERIALLY CONTAMINATED. TYPICAL  
26 SURFACE OIL STAINING ON PAVEMENT AND CONCRETE FROM DRIVEWAYS,  
27 ROADWAYS, AND PARKING LOTS IS NOT MATERIAL CONTAMINATION.

1 MATERIAL COVERED IN WHOLE OR IN PART WITH LEAD-BASED PAINT IS  
2 MATERIALLY CONTAMINATED.

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

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

7 (G) ASPHALT PAVEMENT OR CONCRETE PAVEMENT THAT MEETS ALL OF  
8 THE FOLLOWING REQUIREMENTS:

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

10 (ii) HAS BEEN STOCKPILED OR CRUSHED FOR REUSE AS AGGREGATE  
11 MATERIAL.

12 (iii) DOES NOT INCLUDE EXPOSED REINFORCEMENT BARS.

13 (H) CUTTINGS, DRILLING MATERIALS, AND FLUIDS USED TO DRILL  
14 OR COMPLETE A WELL INSTALLED PURSUANT TO PART 127 OF THE PUBLIC  
15 HEALTH CODE, 1978 PA 368, MCL 333.12701 TO 333.12771, IF THE  
16 LOCATION OF THE WELL IS NOT A FACILITY UNDER PART 201.

17 (I) ANY MATERIAL AT ANY TIME DETERMINED BY THE DEPARTMENT IN  
18 WRITING PURSUANT TO SECTION 11553(4) TO BE AN INERT MATERIAL,  
19 EITHER FOR GENERAL USE OR FOR A PARTICULAR USE.

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

26 (a) A certificate of insurance that uses wording approved by  
27 the department.

1 (b) A certified true and complete copy of the insurance  
2 policy.

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

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

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

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

13 (A) COAL ASH OR WOOD ASH.

14 (B) CEMENT KILN DUST.

15 (C) PULP AND PAPER MILL MATERIAL.

16 (D) SCRAP WOOD.

17 (E) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FOR  
18 DOMESTIC USE.

19 (F) RESIDUE FROM THE THERMAL TREATMENT OF PETROLEUM  
20 CONTAMINATED SOIL, MEDIA, OR DEBRIS.

21 (G) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FROM  
22 A COMMUNITY WATER SUPPLY.

23 (H) FOUNDRY SAND.

24 (I) MIXED WOOD ASH, SCRAP WOOD ASH, PULP AND PAPER MILL ASH.

25 (J) STREET CLEANINGS.

26 (K) ASPHALT SHINGLES.

27 (L) NEW CONSTRUCTION OR PRODUCTION SCRAP DRYWALL.

1 (M) CHIPPED OR SHREDDED TIRES.

2 (N) COPPER SLAG.

3 (O) COPPER STAMP SANDS.

4 (P) DREDGE MATERIAL FROM NONREMEDIAL ACTIVITIES.

5 (Q) FLUE GAS DESULFURIZATION MATERIAL.

6 (R) DEWATERED GRINDING SLURRY GENERATED FROM PUBLIC  
7 TRANSPORTATION AGENCY ROAD PROJECTS.

8 (S) ANY MATERIAL DETERMINED BY THE DEPARTMENT IN WRITING TO  
9 BE A LOW-HAZARD INDUSTRIAL WASTE AS PROVIDED IN SECTION 11553(6).

10 (8) ~~(6)~~—"Medical waste" means that term as it is defined in  
11 section 13805 of the public health code, 1978 PA 368, MCL  
12 333.13805.

13 (9) "MIXED WOOD ASH" MEANS THE MATERIAL RECOVERED FROM AIR  
14 POLLUTION CONTROL SYSTEMS FOR, OR THE NONCOMBUSTED RESIDUE  
15 REMAINING AFTER, THE COMBUSTION OF ANY COMBINATION OF WOOD, SCRAP  
16 WOOD, RAILROAD TIES, OR TIRES, IF RAILROAD TIES COMPOSED LESS  
17 THAN 35% BY WEIGHT OF THE TOTAL COMBUSTED MATERIAL AND TIRES  
18 COMPOSED LESS THAN 10% BY WEIGHT OF THE TOTAL COMBUSTED MATERIAL.

19 (10) ~~(7)~~—"Municipal solid waste incinerator" means an  
20 incinerator that is owned or operated by any person, and meets  
21 all of the following requirements:

22 (a) The incinerator receives solid waste from off site and  
23 burns only household waste from single and multiple dwellings,  
24 hotels, motels, and other residential sources, or this household  
25 waste together with solid waste from commercial, institutional,  
26 municipal, county, or industrial sources that, if disposed of,  
27 would not be required to be placed in a disposal facility

1 licensed under part 111.

2 (b) The incinerator has established contractual requirements  
3 or other notification or inspection procedures sufficient to  
4 ensure that the incinerator receives and burns only waste  
5 referred to in subdivision (a).

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

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

10 (e) The incinerator is not an incinerator that receives and  
11 burns only medical waste or only waste produced at 1 or more  
12 hospitals.

13 (11) ~~(8)~~—"Municipal solid waste incinerator ash" means the  
14 substances remaining after combustion in a municipal solid waste  
15 incinerator.

16 (12) "NONRESIDENTIAL PROPERTY" MEANS PROPERTY NOT USED OR  
17 INTENDED TO BE USED FOR ANY OF THE FOLLOWING:

18 (A) A CHILD DAY CARE CENTER.

19 (B) AN ELEMENTARY SCHOOL.

20 (C) AN ELDER CARE AND ASSISTED LIVING CENTER.

21 (D) A NURSING HOME.

22 (E) A SINGLE-FAMILY OR MULTIFAMILY DWELLING UNLESS THE  
23 DWELLING IS PART OF A MIXED USE DEVELOPMENT AND ALL DWELLING  
24 UNITS AND ASSOCIATED OUTDOOR RESIDENTIAL USE AREAS ARE LOCATED  
25 ABOVE THE GROUND FLOOR.

26 (13) ~~(9)~~—"Perpetual care fund" means a trust or escrow  
27 account or perpetual care fund bond provided for in section

1 11525.

2 (14) ~~(10)~~—"Perpetual care fund bond" means a surety bond, an  
3 irrevocable letter of credit, or a combination of these  
4 instruments in favor of and on a form approved by the department  
5 by which a perpetual care fund is established.

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

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

19 (16) "PULP AND PAPER MILL MATERIAL" MEANS ALL OF THE  
20 FOLLOWING MATERIALS IF GENERATED AT A FACILITY THAT PRODUCES PULP  
21 OR PAPER:

22 (A) WASTEWATER TREATMENT SLUDGE, INCLUDING WOOD FIBERS,  
23 MINERALS, AND MICROBIAL BIOMASS.

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

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

26 (D) SCRAP PAPER.

27 (E) CAUSTICIZING RESIDUES, INCLUDING LIME MUD AND GRIT AND



1 GREEN LIQUOR DREGS.

2 (F) ANY MATERIAL THAT THE DEPARTMENT DETERMINES HAS  
3 CHARACTERISTICS THAT ARE SIMILAR TO ANY OF THE MATERIALS LISTED  
4 IN SUBDIVISIONS (A) TO (E).

5 Sec. 11505. (1) "Recyclable materials" means source  
6 separated materials, site separated materials, high grade paper,  
7 glass, metal, plastic, aluminum, newspaper, corrugated paper,  
8 yard clippings, and other materials that may be recycled or  
9 composted.

10 (2) "Regional solid waste management planning agency" means  
11 the regional solid waste planning agency designated by the  
12 governor pursuant to 42 USC 6946.

13 (3) "Resource recovery facility" means machinery, equipment,  
14 structures, or any parts or accessories of machinery, equipment,  
15 or structures, installed or acquired for the primary purpose of  
16 recovering materials or energy from the waste stream.

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

23 (5) "Rubbish" means nonputrescible solid waste, excluding  
24 ashes, consisting of both combustible and noncombustible waste,  
25 including paper, cardboard, metal containers, yard clippings,  
26 wood, glass, bedding, crockery, demolished building materials, or  
27 litter of any kind that may be a detriment to the public health

1 and safety.

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

4 (7) "Sharps" means that term as defined in section 13807 of  
5 the public health code, 1978 PA 368, MCL 333.13807.

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

8 (A) PLYWOOD, PARTICLE BOARD, PRESSED BOARD, ORIENTED STRAND  
9 BOARD, FIBERBOARD, RESONATED WOOD, OR ANY OTHER WOOD OR WOOD  
10 PRODUCT MIXED WITH GLUE, RESINS, OR FILLER.

11 (B) WOOD OR WOOD PRODUCT TREATED WITH CREOSOTE OR  
12 PENTACHLOROPHENOL.

13 (C) ANY WOOD OR WOOD PRODUCT DESIGNATED AS SCRAP WOOD IN  
14 RULES PROMULGATED BY THE DEPARTMENT.

15 (9) ~~(8)~~—"Site separated material" means glass, metal, wood,  
16 paper products, plastics, rubber, textiles, garbage, or any other  
17 material approved by the department that is separated from solid  
18 waste for the purpose of **RECYCLING OR** conversion into raw  
19 materials or new products. ~~Site separated material does not~~  
20 ~~include the residue remaining after glass, metal, wood, paper~~  
21 ~~products, plastics, rubber, textiles, or any other material~~  
22 ~~approved by the department is separated from solid waste.~~

23 (10) ~~(9)~~—"Slag" means the nonmetallic product resulting from  
24 melting or smelting operations for iron or steel.

25 Sec. 11506. (1) "Solid waste" means garbage, rubbish, ashes,  
26 incinerator ash, incinerator residue, street cleanings, municipal  
27 and industrial sludges, solid commercial ~~and~~ **WASTE**, solid

1 industrial waste, and animal waste. However, solid waste does not  
2 include the following:

3 (a) Human body waste.

4 (b) Medical waste.

5 (c) Organic waste generated in the production of livestock  
6 and poultry.

7 (d) Liquid waste.

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

10 (f) Slag or slag products directed to a slag processor or to  
11 a reuser of slag or slag products.

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

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

19 (i) Food processing residuals ~~AND~~ garbage. ~~precipitated~~

20 (ii) **PRECIPITATED** calcium carbonate from sugar beet  
21 processing. ~~wood~~

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

24 (iv) **LIME** from kraft pulping processes generated prior to  
25 bleaching. ~~or aquatic~~

26 (v) **AQUATIC** plants. ~~may be applied on, or composted and~~  
27 ~~applied on, farmland or forestland for an agricultural or~~

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

17 (I) ~~(h)~~ Materials approved for emergency disposal by the  
 18 department.

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

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

21 (L) ~~(k)~~ Fly ash or any other ash produced from the combustion  
 22 of coal, **COAL ASH**, when used in **UNDER ANY OF** the following  
 23 instances: **CIRCUMSTANCES:**

24 (i) ~~With a maximum of 6% of unburned carbon, if used as~~ **AS** a  
 25 component of concrete, grout, mortar, or casting molds, **IF THE**  
 26 **COAL ASH DOES NOT HAVE MORE THAN 6% UNBURNED CARBON.**

27 (ii) ~~With a maximum of 12% unburned carbon passing M.D.O.T.~~

1 ~~test method MTM 101, if used as~~ **AS** a raw material in asphalt for  
 2 road construction, **IF THE COAL ASH DOES NOT HAVE MORE THAN 12%**  
 3 **UNBURNED CARBON AND PASSES MICHIGAN TEST METHOD FOR WATER ASPHALT**  
 4 **PREFERENTIAL TEST, MTM 101, AS SET FORTH IN THE STATE**  
 5 **TRANSPORTATION DEPARTMENT'S MANUAL FOR THE MICHIGAN TEST METHODS**  
 6 **(MTM) .**

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

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

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

26 **(M) INERT MATERIAL.**

27 **(N) ~~(l)~~** Soil that is washed or otherwise removed from sugar

1 beets, has not more than 35% moisture content, and is registered  
2 as a soil conditioner under part 85. Any testing required to  
3 become registered under part 85 is the responsibility of the  
4 generator.

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

6 (P) ~~(n)~~—Diverted waste that is managed through a waste  
7 diversion center.

8 (Q) **BENEFICIAL USE BY-PRODUCTS.**

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

11 (S) **STAMP SANDS WHEN USED AS COLD WEATHER ROAD ABRASIVE IN  
12 THE UPPER PENINSULA BY ANY OF THE FOLLOWING:**

13 (i) **A PUBLIC ROAD AGENCY.**

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

16 (T) **ANY MATERIAL THAT IS RECLAIMED OR REUSED IN THE PROCESS  
17 THAT GENERATED IT.**

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

21 (V) ~~(e)~~—Other wastes regulated by statute.

22 (2) "Solid waste hauler" means a person who owns or operates  
23 a solid waste transporting unit.

24 (3) "Solid waste processing plant" means a tract of land,  
25 building, unit, or appurtenance of a building or unit or a  
26 combination of land, buildings, and units that is used or  
27 intended for use for the processing of solid waste or the

1 separation of material for salvage or disposal, or both, but does  
2 not include a plant engaged primarily in the acquisition,  
3 processing, and shipment of ferrous or nonferrous metal scrap, or  
4 a plant engaged primarily in the acquisition, processing, and  
5 shipment of slag or slag products.

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

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

16 (6) "Source separated material" means ~~glass,~~ **ANY OF THE**  
17 **FOLLOWING MATERIALS IF SEPARATED AT THE SOURCE OF GENERATION,**  
18 **REUSED FOR THE INDICATED USE, NOT SPECULATIVELY ACCUMULATED, AND**  
19 **INCLUDED IN AN ANNUAL REPORT TO THE DEPARTMENT THAT INCLUDES THE**  
20 **VOLUME OF THE MATERIAL COLLECTED AND RECYCLED:**

21 (A) **GLASS,** metal, wood, paper products, plastics, rubber,  
22 textiles, garbage, or any other material approved by the  
23 department that is ~~separated at the source of generation for the~~  
24 ~~purpose of~~ **USED FOR** conversion into raw materials or new  
25 products. ~~including, but~~ **FOR THE PURPOSES OF THIS SUBDIVISION,**  
26 **RAW MATERIALS OR NEW PRODUCTS INCLUDE, BUT ARE** not limited to,  
27 compost, biogas from anaerobic digestion, ~~or~~ synthetic gas from

1 gasification or pyrolysis, OR OTHER 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 MATERIALS AND USES APPROVED IN WRITING BY THE  
5 DEPARTMENT PURSUANT TO SECTION 11553(7).

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 FINELY GRAINED CRUSHED ROCK  
10 RESULTING FROM MINING, MILLING, OR SMELTING OF COPPER ORE AND  
11 INCLUDES NATIVE SUBSTANCES CONTAINED WITHIN THE CRUSHED ROCK AND  
12 ANY ANCILLARY MATERIAL ASSOCIATED WITH THE CRUSHED ROCK.

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

15 (A) CHROMATED COPPER ARSENATE (CCA).

16 (B) AMMONIACAL COPPER QUAT (ACQ).

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

18 (D) ANY OTHER CHEMICAL DESIGNATED IN RULES PROMULGATED BY  
19 THE DEPARTMENT.

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

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

27 (11) ~~(8)~~ "Waste diversion center" means property or a

1 building, or a portion of property or a building, designated for  
2 the purpose of receiving or collecting diverted wastes and not  
3 used for residential purposes.

4 (12) "WOOD" MEANS TREES, BRANCHES AND ASSOCIATED LEAVES,  
5 BARK, LUMBER, PALLETS, WOOD CHIPS, SAWDUST, OR OTHER WOOD OR WOOD  
6 PRODUCT BUT DOES NOT INCLUDE SCRAP WOOD, TREATED WOOD, PAINTED  
7 WOOD OR PAINTED WOOD PRODUCT, OR ANY WOOD OR WOOD PRODUCT THAT  
8 HAS BEEN CONTAMINATED DURING MANUFACTURE OR USE.

9 (13) "WOOD ASH" MEANS ANY TYPE OF ASH OR SLAG RESULTING FROM  
10 THE BURNING OF WOOD.

11 (14) ~~(9)~~ "Yard clippings" means leaves, grass clippings,  
12 vegetable or other garden debris, shrubbery, or brush or tree  
13 trimmings, less than 4 feet in length and 2 inches in diameter,  
14 that can be converted to compost humus. Yard clippings ~~does~~ DO  
15 not include stumps, agricultural wastes, animal waste, roots,  
16 sewage sludge, or garbage.

17 Sec. 11507. (1) The department and a health officer shall  
18 assist in developing and encouraging methods for the disposal of  
19 solid waste that are environmentally sound, that maximize the  
20 utilization of valuable resources, and that encourage resource  
21 conservation including source reduction and source separation.

22 (2) This part shall be construed and administered to  
23 encourage and facilitate the effort of all persons to engage in  
24 source separation and site separation of material from solid  
25 waste, and other environmentally sound measures to prevent  
26 materials from entering the waste stream or which encourage the  
27 removal of materials from the waste stream. **A PERSON THAT REUSES**

1 SOURCE SEPARATED MATERIAL SHALL ANNUALLY REPORT TO THE DEPARTMENT  
2 THE VOLUME OF THE MATERIAL REUSED.

3 (3) The department may exempt from regulation under this  
4 part solid waste that is determined by the department to be inert  
5 material for uses and in a manner approved by the department.

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

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

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

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

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

17 (A) A leachate collection system.

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

19 (C) A compacted clay liner of 5 feet or more with a maximum  
20 hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second.

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

22 (E) A compacted clay liner at least 3 feet thick with a  
23 maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second  
24 or a synthetic liner at least 40 mils thick.

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

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

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

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

5           (A) A leachate collection system.

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

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

9           (D) A second composite liner.

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

1 (c) A landfill that is a monitorable unit, as defined in R  
2 299.4104 of the Michigan administrative code, and that meets all  
3 of the following requirements:

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

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

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

10 (A) A leachate collection system.

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

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

16 (D) At least 10 feet of either natural or compacted clay  
17 with a maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per  
18 second, or equivalent.

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

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

26 (i) The ash was generated by a municipal solid waste  
27 incinerator that is designed to burn at a temperature in excess

1 of 2500 degrees Fahrenheit.

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

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

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

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

12 (c) An infiltration collection system.

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

14 (e) Two feet of compacted clay with a maximum hydraulic  
15 conductivity of  $1 \times 10^{-7}$  centimeters per second.

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

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

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

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

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

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



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

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

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

24 **SEC. 11551. (1) EXCEPT FOR A MATERIAL THAT THE DEPARTMENT**  
25 **APPROVES AS A BENEFICIAL USE BY-PRODUCT UNDER SECTION 11553(3),**  
26 **TO QUALIFY AS A BENEFICIAL USE BY-PRODUCT, A MATERIAL OR THE USE**  
27 **OF THE MATERIAL, AS APPLICABLE, SHALL MEET ALL OF THE FOLLOWING**

## 1 REQUIREMENTS:

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

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

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

12 (D) THE MATERIAL IS STORED IN A MANNER THAT DOES NOT CAUSE  
13 GROUNDWATER TO NO LONGER BE FIT FOR 1 OR MORE PROTECTED USES,  
14 DOES NOT CAUSE A VIOLATION OF A PART 31 SURFACE WATER QUALITY  
15 STANDARD, AND OTHERWISE DOES NOT VIOLATE PART 31.

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

18 (F) THE USE OF THE MATERIAL IS FOR A LEGITIMATE BENEFICIAL  
19 PURPOSE OTHER THAN A MEANS TO DISCARD THE MATERIAL AND THE  
20 MATERIAL IS USED ACCORDING TO GENERALLY ACCEPTED ENGINEERING,  
21 INDUSTRIAL, OR COMMERCIAL STANDARDS FOR THAT USE.

22 (G) FOR BENEFICIAL USE 2, THE MATERIAL, IF SPECIFIED BELOW,  
23 MEETS THE FOLLOWING ENVIRONMENTAL STANDARDS USING, AT THE OPTION  
24 OF THE GENERATOR OF THE BY-PRODUCT, EPA METHOD 1311, 1312, OR  
25 ASTM TEST METHOD 3987:

26 CONSTITUENT - COAL PULP FOUNDRY CEMENT WATER STAMP SPENT

	ASH							
1								
2	MAXIMUM	OR	AND	SAND	KILN	SOFTENING	SAND	MEDIA
3	LEACHATE MG/L	WOOD	PAPER		DUST,	LIMES,		FROM
4		ASH	MILL		LIME	DEWATERED		SAND
5			ASH,		KILN	GRINDING		BLASTING
6			MIXED		DUST	SLUDGE		
7			WOOD					
8			ASH					
9	ARSENIC - 0.2	X	X	X	X	X		
10	BORON - 10	X						
11	CADMIUM - 0.1	X	X		X	X		
12	CHROMIUM - 2.0	X						X
13	LEAD - 0.08	X	X	X	X	X		
14	MERCURY - 0.04	X	X		X	X		
15	COPPER - 20		X			X	X	
16	NICKEL - 2.0		X	X		X		X
17	SELENIUM - 1.0	X				X		
18	THALLIUM - 0.04	X			X			
19	ZINC - 48	X	X			X		

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

22 (i) THE MATERIAL IS COAL BOTTOM ASH, WOOD ASH, PULP AND PAPER  
 23 MILL MATERIAL, PULP AND PAPER MILL ASH, MIXED WOOD ASH, FOUNDRY  
 24 SAND FROM FERROUS OR ALUMINUM FOUNDRIES, CEMENT KILN DUST, LIME  
 25 KILN DUST, LIME WATER SOFTENING RESIDUALS, FLUE GAS  
 26 DESULFURIZATION GYPSUM, SOIL WASHED OR OTHERWISE REMOVED FROM  
 27 SUGAR BEETS, OR DEWATERED CONCRETE GRINDING SLURRY FROM PUBLIC  
 28 TRANSPORTATION AGENCY ROAD PROJECTS.

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           (I) FOR BENEFICIAL USE 5, THE MATERIAL IS FOUNDRY SAND FROM  
25 FERROUS OR ALUMINUM FOUNDRIES AND REPRESENTATIVE SAMPLING OF THE  
26 FOUNDRY SAND USING EITHER A TOTALS ANALYSIS, A LEACHATE ANALYSIS

1 (USING EPA METHOD 1311, EPA METHOD 1312, ASTM METHOD 3987, OR  
 2 OTHER LEACHING PROTOCOL APPROVED BY THE DEPARTMENT), OR ANY  
 3 COMBINATION OF THE 2 TYPES OF ANALYSES DEMONSTRATES THAT NONE OF  
 4 THE FOLLOWING MAXIMUM CONCENTRATIONS ARE EXCEEDED:

5 CONSTITUENT	TOTALS ANALYSIS MG/KG	LEACHATE ANALYSIS MG/L
6 ANTIMONY	4.3	0.006
7 COBALT	0.8	0.04
8 COPPER	5,800	1
9 IRON	23,185	2.0
10 LEAD	700	0.004
11 MANGANESE	1,299	0.86
12 MOLYBDENUM	5	0.073
13 NICKEL	100	0.1
14 THALLIUM	2.3	0.002
15 VANADIUM	72	0.0045
16 ZINC	2,400	2.4
17 BENZENE	0.1	0.005
18 FORMALDEHYDE	26	1.3
19 PHENOL	88	4.4
20 TRICHLOROETHYLENE	0.1	0.005

21 (2) THE DETERMINATION WHETHER A MATERIAL MEETS THE  
 22 REQUIREMENTS OF SUBSECTION (1) (A) OR (G) SHALL BE BASED ON THE  
 23 ANALYSIS OF A REPRESENTATIVE SAMPLE OF THE MATERIAL BY THE  
 24 INITIAL GENERATOR. THE INITIAL GENERATOR SHALL MAINTAIN RECORDS  
 25 OF THE TEST RESULTS FOR NOT LESS THAN 10 YEARS AFTER THE DATE THE  
 26 MATERIAL WAS SENT OFF SITE AND MAKE THE RECORDS AVAILABLE TO THE

1 DEPARTMENT UPON REQUEST. THE GENERATOR SHALL RESAMPLE AND ANALYZE  
2 THE MATERIAL WHEN RAW MATERIALS OR PROCESSES CHANGE IN A WAY THAT  
3 COULD REASONABLY BE EXPECTED TO MATERIALLY AFFECT ANALYSIS  
4 RESULTS.

5 (3) STORAGE THAT COMPLIES WITH THIS PART DOES NOT REQUIRE A  
6 GROUNDWATER OR SURFACE WATER DISCHARGE PERMIT UNDER PART 31.  
7 EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, STORAGE AND USE OF  
8 BENEFICIAL USE BY-PRODUCTS SHALL COMPLY WITH ALL OTHER APPLICABLE  
9 PROVISIONS OF THIS ACT.

10 (4) THE STORAGE OF A MATERIAL FOR BENEFICIAL USE 3 THAT  
11 COMPLIES WITH REGULATION NO. 641, COMMERCIAL FERTILIZER BULK  
12 STORAGE, R 285.641.1 TO R 285.641.18 OF THE MICHIGAN  
13 ADMINISTRATIVE CODE, SHALL BE CONSIDERED TO COMPLY WITH THIS  
14 PART.

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

18 (6) ALL OF THE FOLLOWING APPLY TO BENEFICIAL USES 1 AND 2 AT  
19 AND ALONG ROADWAYS:

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

1 APPLICABLE TO GENERATORS OF BENEFICIAL USE BY-PRODUCTS MUST BE  
2 MET, EXCEPT AS FOLLOWS:

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

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

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

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

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

19 (7) FOR BENEFICIAL USE 3, THE MATERIAL THAT IS OFFERED FOR  
20 SALE OR USE SHALL BE ANNUALLY REGISTERED OR LICENSED UNDER PART  
21 85 OR 1955 PA 162, MCL 290.531 TO 290.538. IN ADDITION TO THE  
22 INFORMATION REQUIRED UNDER PART 85 OR 1955 PA 162, MCL 290.531 TO  
23 290.538, THE FOLLOWING INFORMATION SHALL BE SUBMITTED TO THE  
24 DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT WITH THE LICENSE  
25 OR REGISTRATION APPLICATION:

26 (A) DIRECTIONS FOR USE TO ENSURE THAT THE MATERIAL IS  
27 APPLIED AT AN AGRONOMIC RATE THAT HAS BEEN REVIEWED BY A

1 CERTIFIED CROP ADVISOR.

2 (B) A LABORATORY ANALYSIS REPORT THAT CONTAINS ALL OF THE  
3 FOLLOWING:

4 (i) SAMPLING THAT DEMONSTRATES THAT THE MATERIAL DOES NOT  
5 POSE HARM TO HUMAN HEALTH OR THE ENVIRONMENT. ONE METHOD BY WHICH  
6 THIS DEMONSTRATION CAN BE MADE IS BY SAMPLING THAT COMPLIES WITH  
7 BOTH OF THE FOLLOWING:

8 (A) THE LEVELS ESTABLISHED PURSUANT TO THE ASSOCIATION OF  
9 AMERICAN PLANT FOOD CONTROL OFFICIALS' STATEMENT OF UNIFORM  
10 INTERPRETATION AND POLICY #25.

11 (B) THE PART 201 GENERIC RESIDENTIAL SOIL DIRECT CONTACT  
12 CLEANUP CRITERIA FOR VOLATILE ORGANIC COMPOUNDS (AS DETERMINED BY  
13 U.S. EPA METHOD 8260), SEMIVOLATILE ORGANIC COMPOUNDS (AS  
14 DETERMINED BY U.S. EPA METHOD 8270C), AND DIOXINS (AS DETERMINED  
15 BY U.S. EPA METHOD 1613B). RESULTS FOR DIOXINS SHALL BE REPORTED  
16 ON A DRY WEIGHT BASIS, AND TOTAL DIOXIN EQUIVALENCE SHALL BE  
17 CALCULATED AND REPORTED UTILIZING THE U.S. EPA TOXIC EQUIVALENCY  
18 FACTORS (U.S. EPA/100/R10/005).

19 (ii) FOR A FERTILIZER, ALL OF THE FOLLOWING USED BY A  
20 CERTIFIED CROP ADVISOR TO DETERMINE AN AGRONOMIC RATE CONSISTENT  
21 WITH GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES:

22 (A) A DEMONSTRATION THAT THE MATERIAL CONTAINS THE MINIMUM  
23 PERCENTAGE OF EACH PLANT NUTRIENT GUARANTEED OR CLAIMED TO BE  
24 PRESENT.

25 (B) THE PERCENTAGE IN THE MATERIAL OF DRY SOLIDS, NITROGEN,  
26 AMMONIUM NITROGEN, NITRATE NITROGEN, PHOSPHORUS, AND POTASSIUM.

27 (C) THE LEVELS OF CALCIUM, MAGNESIUM, ACIDITY OR BASICITY



1 MEASURED BY PH, SULFUR, CHROMIUM, COPPER, SILVER, CHLORINE, AND  
2 BORON.

3 (iii) FOR A SOIL CONDITIONER OR A LIMING MATERIAL, ALL OF THE  
4 FOLLOWING USED BY A CERTIFIED CROP ADVISOR TO DETERMINE AN  
5 AGRONOMIC RATE CONSISTENT WITH GENERALLY ACCEPTED AGRICULTURAL  
6 AND MANAGEMENT PRACTICES:

7 (A) THE PERCENTAGE IN THE MATERIAL OF DRY SOLIDS.

8 (B) THE LEVELS OF CALCIUM, MAGNESIUM, ACIDITY OR BASICITY  
9 MEASURED BY PH, SULFUR, CHROMIUM, COPPER, SILVER, CHLORINE, AND  
10 BORON.

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

17 (v) FOR A LIMING MATERIAL, SCIENTIFICALLY ACCEPTABLE DATA  
18 DEMONSTRATING THAT THE MATERIAL WILL CORRECT SOIL ACIDITY.

19 (8) WHEN A MATERIAL IS LICENSED OR REGISTERED AS DESCRIBED  
20 IN SUBSECTION (7), THE LABORATORY ANALYSIS REPORT AND THE  
21 SCIENTIFICALLY ACCEPTABLE DATA SUBMITTED WITH A PRIOR APPLICATION  
22 MAY BE RESUBMITTED FOR A SUBSEQUENT APPLICATION UNLESS THE RAW  
23 MATERIALS OR PROCESSES USED TO GENERATE THE MATERIAL CHANGE IN A  
24 WAY THAT COULD REASONABLY BE EXPECTED TO MATERIALLY AFFECT THE  
25 LABORATORY ANALYSIS REPORT OR SCIENTIFICALLY ACCEPTABLE DATA.

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

1           (10) IF AN OWNER OF PROPERTY HAS KNOWLEDGE THAT A MATERIAL  
2 HAS BEEN USED ON THE PROPERTY FOR BENEFICIAL USE 2, BEFORE  
3 TRANSFERRING THE PROPERTY, THE OWNER SHALL PROVIDE NOTICE TO A  
4 PROSPECTIVE TRANSFEREE THAT THE MATERIAL WAS USED FOR BENEFICIAL  
5 USE 2, INCLUDING THE DATE AND LOCATION OF THE USE, IF KNOWN. IF A  
6 CONTRACTOR, CONSULTANT, OR AGENT OF AN OWNER OF PROPERTY USES A  
7 MATERIAL ON THE PROPERTY FOR BENEFICIAL USE 2, THE CONTRACTOR,  
8 CONSULTANT, OR AGENT SHALL PROVIDE NOTICE TO THE OWNER THAT THE  
9 MATERIAL WAS USED FOR BENEFICIAL USE 2, INCLUDING THE DATE AND  
10 LOCATION OF THE USE.

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

15           SEC. 11552. (1) WRITTEN NOTICE SHALL BE SUBMITTED TO THE  
16 DEPARTMENT BEFORE A BENEFICIAL USE BY-PRODUCT IS USED FOR  
17 BENEFICIAL USE 2 AS CONSTRUCTION FILL AT A PARTICULAR SITE FOR  
18 THE FIRST TIME, IF THE AMOUNT USED WILL EXCEED 5,000 CUBIC YARDS.  
19 THE GENERATOR OF THE BENEFICIAL USE BY-PRODUCT SHALL SUBMIT THE  
20 NOTICE UNLESS THE GENERATOR TRANSFERS MATERIAL TO A BROKER, IN  
21 WHICH CASE THE BROKER SHALL SUBMIT THE NOTICE.

22           (2) BY OCTOBER 30 OF EACH YEAR, ANY GENERATOR OR BROKER OF  
23 MORE THAN 1,000 CUBIC YARDS OF MATERIAL USED AS BENEFICIAL USE  
24 BY-PRODUCTS FOR BENEFICIAL USE 1, 2, OR 4 IN THE IMMEDIATELY  
25 PRECEDING PERIOD OF OCTOBER 1 TO SEPTEMBER 30 SHALL SUBMIT A  
26 REPORT TO THE DEPARTMENT CONTAINING ALL OF THE FOLLOWING  
27 INFORMATION:

1 (A) BUSINESS NAME, ADDRESS, TELEPHONE NUMBER, AND NAME OF A  
2 CONTACT PERSON.

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

5 (C) THE APPROXIMATE AMOUNT OF BENEFICIAL USE BY-PRODUCTS  
6 SHIPPED OFF SITE DURING THAT PERIOD AND THE USES AND CONDITIONS  
7 OF USE.

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

1 REQUESTING THE INFORMATION, THE DIRECTOR SHALL GRANT OR DENY THE  
2 REQUEST. THE INFORMATION REQUESTED SHALL NOT BE RELEASED UNTIL 2  
3 DAYS HAVE ELAPSED AFTER THE DEPARTMENT NOTIFIES THE GENERATOR OR  
4 BROKER OF A DECISION TO GRANT THE REQUEST.

5 SEC. 11553. (1) CONSISTENT WITH THE REQUIREMENTS OF THIS  
6 PART, THE DEPARTMENT SHALL APPLY THIS SECTION SO AS TO PROMOTE  
7 AND FOSTER THE USE OF WASTES AND BY-PRODUCTS FOR RECYCLING OR  
8 BENEFICIAL PURPOSES.

9 (2) ANY PERSON MAY REQUEST THE DEPARTMENT, CONSISTENT WITH  
10 THE DEFINITIONS AND OTHER TERMS OF THIS PART, TO APPROVE A  
11 MATERIAL, A USE, OR A MATERIAL AND USE AS A SOURCE SEPARATED  
12 MATERIAL; A BENEFICIAL USE BY-PRODUCT FOR BENEFICIAL USE 1, 2, 4,  
13 OR 5; AN INERT MATERIAL; A LOW-HAZARD INDUSTRIAL WASTE; OR  
14 ANOTHER MATERIAL, USE, OR MATERIAL AND USE THAT CAN BE APPROVED  
15 UNDER THIS PART. AMONG OTHER THINGS, A PERSON MAY REQUEST THE  
16 DEPARTMENT TO APPROVE A USE THAT DOES NOT QUALIFY AS BENEFICIAL  
17 USE 2 UNDER SECTION 11502(4)(A) BECAUSE THE PROPERTY IS NOT  
18 NONRESIDENTIAL PROPERTY OR UNDER SECTION 11502(4)(A), (B), OR (C)  
19 BECAUSE THE MATERIAL EXCEEDS 4 FEET IN THICKNESS. A REQUEST UNDER  
20 THIS SUBSECTION SHALL CONTAIN A DESCRIPTION OF THE MATERIAL  
21 INCLUDING THE PROCESS GENERATING IT; RESULTS OF ANALYSES OF  
22 REPRESENTATIVE SAMPLES OF THE MATERIAL FOR ANY HAZARDOUS  
23 SUBSTANCES THAT THE PERSON HAS KNOWLEDGE OR REASON TO BELIEVE  
24 COULD BE PRESENT IN THE MATERIAL, BASED ON ITS SOURCE, ITS  
25 COMPOSITION, OR THE PROCESS THAT GENERATED IT; AND, IF  
26 APPLICABLE, A DESCRIPTION OF THE PROPOSED USE. THE ANALYSIS AND  
27 SAMPLING OF THE MATERIAL UNDER THIS SUBSECTION SHALL BE

1 CONSISTENT WITH THE METHODS CONTAINED IN THE EPA DOCUMENT  
2 ENTITLED "TEST METHODS FOR THE EVALUATION OF SOLID WASTE,  
3 PHYSICAL/CHEMICAL METHODS," SW 846 3RD EDITION; 1 OR MORE PEER-  
4 REVIEWED STANDARDS DEVELOPED BY A NATIONAL OR INTERNATIONAL  
5 ORGANIZATION, SUCH AS ASTM INTERNATIONAL; OR 1 OR MORE STANDARDS  
6 OR METHODS APPROVED BY THE DEPARTMENT OR THE EPA. THE DEPARTMENT  
7 SHALL APPROVE OR DENY THE REQUEST WITHIN 150 DAYS AFTER THE  
8 REQUEST IS RECEIVED, UNLESS THE PARTIES AGREE TO AN EXTENSION. IF  
9 THE DEPARTMENT DETERMINES THAT THE REQUEST DOES NOT INCLUDE  
10 SUFFICIENT INFORMATION, THE DEPARTMENT SHALL, NOT MORE THAN 60  
11 DAYS AFTER RECEIPT OF THE REQUEST, NOTIFY THE REQUESTER. THE  
12 NOTICE SHALL SPECIFY THE ADDITIONAL INFORMATION THAT IS REQUIRED.  
13 THE 150-DAY PERIOD IS TOLLED UNTIL THE REQUESTOR SUBMITS THE  
14 INFORMATION SPECIFIED IN THE NOTICE. IF THE DEPARTMENT APPROVES A  
15 REQUEST UNDER THIS SUBSECTION, THE APPROVAL SHALL INCLUDE THE  
16 FOLLOWING STATEMENT: "THIS APPROVAL DOES NOT REQUIRE ANY USE OF  
17 ANY BENEFICIAL USE BY-PRODUCT BY A GOVERNMENTAL ENTITY OR ANY  
18 OTHER PERSON." THE DEPARTMENT MAY IMPOSE CONDITIONS AND OTHER  
19 REQUIREMENTS ON A MATERIAL AND A MATERIAL AND USE APPROVED UNDER  
20 THIS SECTION THAT ARE REASONABLY NECESSARY FOR THE USE TO BE  
21 CONSISTENT WITH THIS PART. IF A REQUEST IS APPROVED WITH  
22 CONDITIONS OR OTHER REQUIREMENTS, THE APPROVAL SHALL SPECIFICALLY  
23 STATE THE CONDITIONS OR OTHER REQUIREMENTS. IF THE REQUEST IS  
24 DENIED, THE DEPARTMENT'S DENIAL SHALL, TO THE EXTENT PRACTICAL,  
25 STATE WITH SPECIFICITY ALL OF THE REASONS FOR DENIAL. IF THE  
26 DEPARTMENT FAILS TO APPROVE OR DENY THE REQUEST WITHIN THE 150-  
27 DAY PERIOD, THE REQUEST IS CONSIDERED APPROVED. A PERSON

1 REQUESTING APPROVAL UNDER THIS SUBSECTION MAY SEEK REVIEW OF ANY  
2 FINAL DEPARTMENT DECISION PURSUANT TO SECTION 631 OF THE REVISED  
3 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.631.

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

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

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

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

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

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

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

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

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

27 (F) IF A MATERIAL FAILS TO SATISFY THE REQUIREMENTS OF

1 SUBDIVISION (E), THE DEPARTMENT MAY DETERMINE THAT THE MATERIAL  
2 AND USE ARE PROTECTIVE OF THE PUBLIC HEALTH AND ENVIRONMENT AND  
3 APPROVE THE MATERIAL. IN MAKING THE DETERMINATION, THE DEPARTMENT  
4 SHALL CONSIDER THE POTENTIAL FOR EXPOSURE AND RISK TO HUMAN  
5 HEALTH AND THE ENVIRONMENT GIVEN THE NATURE OF THE MATERIAL, ITS  
6 PROPOSED USE, AND THE ENVIRONMENTAL FATE AND TRANSPORT OF ANY  
7 HAZARDOUS SUBSTANCES IN THE MATERIAL IN SOIL, GROUNDWATER, OR  
8 OTHER RELEVANT MEDIA.

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

11 (A) THE MATERIAL IS PROPOSED TO BE USED FOR A LEGITIMATE  
12 PURPOSE OTHER THAN A MEANS TO DISPOSE OF THE MATERIAL.

13 (B) HAZARDOUS SUBSTANCES IN THE MATERIAL DO NOT POSE A  
14 DIRECT CONTACT HEALTH HAZARD TO HUMANS.

15 (C) THE MATERIAL DOES NOT LEACH, DECOMPOSE, OR DISSOLVE IN A  
16 WAY THAT FORMS AN UNACCEPTABLY CONTAMINATED LEACHATE UPON CONTACT  
17 WITH WATER OR OTHER LIQUIDS LIKELY TO BE FOUND AT THE AREA OF  
18 PLACEMENT, DISPOSAL, OR USE. AN UNACCEPTABLY CONTAMINATED  
19 LEACHATE IS LEACHATE THAT EXCEEDS PART 201 GENERIC RESIDENTIAL  
20 GROUNDWATER DRINKING WATER CRITERIA OR SURFACE WATER QUALITY  
21 STANDARDS ESTABLISHED UNDER PART 31.

22 (D) THE MATERIAL DOES NOT PRODUCE EMISSIONS THAT VIOLATE  
23 PART 55 OR THAT CREATE A NUISANCE.

24 (5) THE DEPARTMENT MAY APPROVE A MATERIAL AS INERT IF THE  
25 MATERIAL IS PROPOSED TO BE USED FOR A LEGITIMATE PURPOSE OTHER  
26 THAN AS A MEANS TO DISPOSE OF THE MATERIAL AND THE DEPARTMENT  
27 DETERMINES THAT THE MATERIAL IS PROTECTIVE OF THE PUBLIC HEALTH

1 AND ENVIRONMENT. IN MAKING THE DETERMINATION, THE DEPARTMENT  
2 SHALL CONSIDER THE POTENTIAL FOR EXPOSURE AND RISK TO HUMAN  
3 HEALTH AND THE ENVIRONMENT GIVEN THE NATURE OF THE MATERIAL, ITS  
4 PROPOSED USE, AND THE ENVIRONMENTAL FATE AND TRANSPORT OF ANY  
5 HAZARDOUS SUBSTANCES IN THE MATERIAL IN SOIL, GROUNDWATER, OR  
6 OTHER RELEVANT MEDIA.

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

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

15 (B) TEN TIMES THE GENERIC RESIDENTIAL GROUNDWATER DRINKING  
16 WATER CLEANUP CRITERIA AS SET FORTH IN RULES PROMULGATED UNDER  
17 PART 201.

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



1 NUISANCE. IF A MATERIAL WILL BE APPLIED TO OR PLACED ON THE LAND,  
2 OR WILL BE USED TO PRODUCE PRODUCTS THAT ARE APPLIED TO OR PLACED  
3 ON THE LAND, THE MATERIAL MUST QUALIFY AS AN INERT MATERIAL OR  
4 BENEFICIAL USE BY-PRODUCT.

5 (8) ANY WRITTEN DETERMINATION BY THE DEPARTMENT MADE PRIOR  
6 TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
7 SECTION DESIGNATING A MATERIAL AS AN INERT MATERIAL, AN INERT  
8 MATERIAL APPROPRIATE FOR GENERAL REUSE, AN INERT MATERIAL  
9 APPROPRIATE FOR REUSE AT A SPECIFIC LOCATION, AN INERT MATERIAL  
10 APPROPRIATE FOR SPECIFIC REUSE INSTEAD OF VIRGIN MATERIAL, A  
11 SOURCE SEPARATED MATERIAL, A SITE SEPARATED MATERIAL, A LOW-  
12 HAZARD INDUSTRIAL WASTE, OR A NON-SOLID-WASTE MATERIAL SHALL  
13 REMAIN IN EFFECT ACCORDING TO ITS TERMS, OR UNTIL FORFEITED IN  
14 WRITING BY THE PERSON WHO RECEIVED THE DETERMINATION. UPON  
15 TERMINATION, EXPIRATION, OR FORFEITURE OF THE WRITTEN  
16 DETERMINATION, THE CURRENT REQUIREMENTS OF THIS PART CONTROL. THE  
17 AMENDMENTS MADE TO THIS PART BY THE AMENDATORY ACT THAT ADDED  
18 THIS SECTION DO NOT RESCIND, INVALIDATE, LIMIT, OR MODIFY ANY  
19 SUCH PRIOR DETERMINATION IN ANY WAY.

20 SEC. 11554. THE DEPARTMENT OF AGRICULTURE AND RURAL  
21 DEVELOPMENT, AND NOT THE DEPARTMENT OF ENVIRONMENTAL QUALITY,  
22 SHALL ADMINISTER AND ENFORCE THIS PART IN CONNECTION WITH ANY  
23 MATERIAL THAT IS LICENSED OR REGISTERED UNDER PART 85 OR 1955 PA  
24 162, MCL 290.531 TO 290.538.

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

26 (a) "Act of God" means an unanticipated grave natural  
27 disaster or other natural phenomenon of an exceptional,

1 inevitable, and irresistible character, the effects of which  
2 could not have been prevented or avoided by the exercise of due  
3 care or foresight.

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

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

18 (d) "Attorney general" means the department of the attorney  
19 general.

20 (e) "Background concentration" means the concentration or  
21 level of a hazardous substance that exists in the environment at  
22 or regionally proximate to a facility that is not attributable to  
23 any release at or regionally proximate to the facility. A person  
24 may demonstrate ~~a~~ **THAT A HAZARDOUS SUBSTANCE IS NOT PRESENT AT A**  
25 **LEVEL THAT EXCEEDS** background concentration ~~for a hazardous~~  
26 ~~substance~~ by any of the following methods:

27 (i) The hazardous substance complies with the statewide

1 default background levels under R 299.5746 of the Michigan  
2 administrative code.

3 (ii) The hazardous substance is listed in the department's  
4 2005 Michigan background soil survey and falls within the typical  
5 ranges published in that document.

6 (iii) The hazardous substance is listed in any other study or  
7 survey conducted or approved by the department and is within the  
8 concentrations or falls within the typical ranges published in  
9 that study or survey.

10 (iv) A site-specific demonstration.

11 (f) "Baseline environmental assessment" means a written  
12 document that describes the results of an all appropriate inquiry  
13 and the sampling and analysis that confirm that the property is a  
14 facility. However, for purposes of a baseline environmental  
15 assessment, the all appropriate inquiry under 40 CFR 312.20(a)  
16 may be conducted within 45 days after the date of acquisition of  
17 a property and the components of an all appropriate inquiry under  
18 40 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or  
19 updated within 45 days after the date of acquisition of a  
20 property.

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

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

27 (i) "Cleanup criteria for unrestricted residential use"

1 means either of the following:

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

4 (ii) Cleanup criteria for unrestricted residential use under  
5 part 213.

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

9 (k) "Director" means the director of the department of  
10 environmental quality.

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

14 (m) "Disposal" means the discharge, deposit, injection,  
15 dumping, spilling, leaking, or placing of any hazardous substance  
16 into or on any land or water so that the hazardous substance or  
17 any constituent of the hazardous substance may enter the  
18 environment or be emitted into the air or discharged into any  
19 groundwater or surface water.

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

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

27 (p) "Environmental contamination" means the release of a

1 hazardous substance, or the potential release of a discarded  
2 hazardous substance, in a quantity which is or may become  
3 injurious to the environment or to the public health, safety, or  
4 welfare.

5 (q) "Evaluation" means those activities including, but not  
6 limited to, investigation, studies, sampling, analysis,  
7 development of feasibility studies, and administrative efforts  
8 that are needed to determine the nature, extent, and impact of a  
9 release or threat of release and necessary response activities.

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

14 (i) ~~Contamination that has migrated~~ **MIGRATION OF**  
15 **CONTAMINATION** beyond the boundaries of the property ~~which~~ **THAT** is  
16 the source of the release at levels above cleanup criteria for  
17 unrestricted residential use unless a criterion is not relevant  
18 because exposure is reliably restricted as otherwise provided in  
19 this part.

20 (ii) A change in facility conditions that increases response  
21 activity costs.

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

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

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

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

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

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

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

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

22           (u) "Financial assurance" means a performance bond, escrow,  
23 cash, certificate of deposit, irrevocable letter of credit,  
24 corporate guarantee, or other equivalent security, or any  
25 combination thereof.

26           (v) "Foreclosure" means possession of a property by a lender  
27 on which it has foreclosed on a security interest or the

1 expiration of a lawful redemption period, whichever occurs first.

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

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

8 (y) "Hazardous substance" means 1 or more of the following,  
9 but does not include fruit, vegetable, or field crop residuals or  
10 processing by-products, or aquatic plants, that are applied to  
11 the land for an agricultural use or for use as an animal feed, if  
12 the use is consistent with generally accepted agricultural  
13 management practices developed pursuant to the Michigan right to  
14 farm act, 1981 PA 93, MCL 286.471 to 286.474:

15 (i) Any substance that the department demonstrates, on a case  
16 by case basis, poses an unacceptable risk to the public health,  
17 safety, or welfare, or the environment, considering the fate of  
18 the material, dose-response, toxicity, or adverse impact on  
19 natural resources.

20 (ii) Hazardous substance as defined in the comprehensive  
21 environmental response, compensation, and liability act, 42 USC  
22 9601 to 9675.

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

24 (iv) Petroleum as described **AS A REGULATED SUBSTANCE** in part  
25 ~~213-~~**SECTION 21303**.

26 (z) "Interim response activity" means the cleanup or removal  
27 of a released hazardous substance or the taking of other actions,

1 prior to the implementation of a remedial action, as may be  
 2 necessary to prevent, minimize, or mitigate injury to the public  
 3 health, safety, or welfare, or to the environment. Interim  
 4 response activity also includes, but is not limited to, measures  
 5 to limit access, replacement of water supplies, and temporary  
 6 relocation of people as determined to be necessary by the  
 7 department. In addition, interim response activity means the  
 8 taking of other actions as may be necessary to prevent, minimize,  
 9 or mitigate a threatened release.

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

11 (i) A state or nationally chartered bank.

12 (ii) A state or federally chartered savings and loan  
 13 association or savings bank.

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

15 (iv) Any other state or federally chartered lending  
 16 institution. ~~or~~

17 (v) **ANY STATE OR FEDERALLY** regulated affiliate or regulated  
 18 subsidiary of any entity listed in ~~this subparagraph or~~  
 19 subparagraphs (i) to ~~(iii)-(iv)~~.

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

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

26 (viii) ~~(vii)~~—A foreign bank.

27 (ix) ~~(viii)~~—A retirement fund regulated pursuant to state law



1 or a pension fund regulated pursuant to federal law with net  
2 assets in excess of \$50,000,000.00.

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

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

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

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

13 (bb) "Local health department" means that term as defined in  
14 section 1105 of the public health code, 1978 PA 368, MCL  
15 333.1105.

16 (cc) "Local unit of government" means a county, city,  
17 township, or village, an agency of a local unit of government, an  
18 authority or any other public body or entity created by or  
19 pursuant to state law. Local unit of government does not include  
20 ~~the~~ **THIS** state, ~~or~~ **THE** federal government, or a state or federal  
21 agency.

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

27 (ee) "No further action letter" means a written response

1 provided by the department under section 20114d confirming that a  
2 no further action report has been approved after review by the  
3 department.

4 (ff) "No further action report" means a report under section  
5 20114d detailing the completion of remedial actions and including  
6 a postclosure plan and a postclosure agreement, if appropriate.

7 (gg) "Operator" means a person who is in control of or  
8 responsible for the operation of a facility. Operator does not  
9 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, unless  
12 that person participates in the management of the facility as  
13 described in section 20101a.

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

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

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

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

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

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

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

3           (ii) A lawful and authorized discharge into a permitted waste  
4 treatment facility.

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

8           (kk) "Postclosure agreement" means an agreement between the  
9 department and a person who has submitted a no further action  
10 report that prescribes, as appropriate, activities required to be  
11 undertaken upon completion of remedial actions as provided for in  
12 section 20114d.

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

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

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

27           (ii) Emissions from the engine exhaust of a motor vehicle,

1 rolling stock, aircraft, or vessel.

2 (iii) A release of source, by-product, or special nuclear  
3 material from a nuclear incident, as those terms are defined in  
4 the atomic energy act of 1954, 42 USC 2011 to ~~2297h-13, 2286I~~, if  
5 the release is subject to requirements with respect to financial  
6 protection established by the nuclear regulatory commission under  
7 42 USC 2210, or any release of source by-product or special  
8 nuclear material from any processing site designated under 42 USC  
9 7912(a)(1) or 42 USC 7942(a).

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

20 (v) ~~A release does not include~~ **APPLICATION OF** fruits,  
21 vegetables, field crop processing by-products, or aquatic plants,  
22 ~~that are applied~~ to the land for an agricultural use or for use  
23 as an animal feed, if the use is consistent with generally  
24 accepted agricultural and management practices developed pursuant  
25 to the Michigan right to farm act, 1981 PA 93, MCL 286.471 to  
26 286.474.

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

1           (vii) THE PLACEMENT, STORAGE, OR USE OF BENEFICIAL USE BY-  
2 PRODUCTS OR INERT MATERIALS AT THE SITE OF STORAGE OR USE IF IN  
3 COMPLIANCE WITH PART 115.

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

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

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

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

1 health and enforcement actions related to any response activity.

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

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

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

9 (ii) A plan for evaluation activities.

10 (iii) A feasibility study.

11 (iv) A remedial action plan.

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

25 (uu) "Target detection limit" means the detection limit for  
26 a hazardous substance in a given environmental medium that is  
27 specified by the department on a list that it publishes not more

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

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

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

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

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

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

20 (ww) "Venting groundwater" means groundwater that is  
21 entering a surface water of ~~the~~**THIS** state from a facility.

22 (2) As used in this part:

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

27 (b) The phrase "this part" includes "rules promulgated under

1 this part".

2           Sec. 20114e. (1) The director shall establish a response  
3 activity review panel to advise him or her on technical or  
4 scientific disputes, including disputes regarding assessment of  
5 risk, response activity plans, no further action reports,  
6 certificates of completion, and documentations of due care  
7 compliance under this part, and initial assessment reports, final  
8 assessment reports, closure reports, and documentations of due  
9 care compliance under part 213.

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

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

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

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

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

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

27           (3) An individual is not eligible to be a member of the



1 panel if any 1 of the following is true:

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

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

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

13 (d) The individual was employed by the department within the  
14 preceding 3 years.

15 (4) An individual appointed to the panel shall serve for a  
16 term of 3 years and may be reappointed for 1 additional 3-year  
17 term. After serving 2 consecutive terms, the individual shall not  
18 be a member of the panel for a period of at least 2 years before  
19 being eligible to be appointed to the panel again. The terms for  
20 members first appointed shall be staggered so that not more than  
21 5 vacancies are scheduled to occur in a single year. Individuals  
22 appointed to the panel shall serve without compensation. However,  
23 members of the panel may be reimbursed for their actual and  
24 necessary expenses incurred in the performance of their official  
25 duties as members of the panel.

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

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

4           (7) A person who submitted a response activity plan; ~~—~~a no  
5 further action report; ~~—~~a request for certificate of completion  
6 ~~—~~or documentation of due care compliance under this part; or an  
7 initial assessment report, final assessment report, closure  
8 report, or documentation of due care compliance under part 213  
9 may appeal a decision made by the department regarding a  
10 technical or scientific dispute, including a dispute regarding  
11 assessment of risk, concerning the response activity plan, no  
12 further action report, request for certificate of completion,  
13 initial assessment report, final assessment report, closure  
14 report, or documentation of due care compliance by submitting a  
15 petition to the director. However, an issue that was addressed as  
16 part of the final decision of the director under section 21332 or  
17 that is the subject of a contested case hearing under section  
18 21332 is not eligible for review by the panel. The petition shall  
19 include the issues in dispute, the relevant facts upon which the  
20 dispute is based, factual data, analysis, opinion, and supporting  
21 documentation for the petitioner's position. The petitioner shall  
22 also submit a fee of \$3,500.00. If the director believes that the  
23 dispute may be able to be resolved without convening the panel,  
24 the director may contact the petitioner regarding the issues in  
25 dispute and may negotiate a resolution of the dispute. This  
26 negotiation period shall not exceed 45 days. If the dispute is  
27 resolved without convening the panel, any fee that is submitted

1 with the petition shall be returned.

2 (8) If a dispute is not resolved pursuant to subsection (7),  
3 the director shall schedule a meeting of 5 members of the panel,  
4 selected on the basis of their relevant expertise, within 45 days  
5 after receiving the original petition. If the dispute involves an  
6 underground storage tank system, at least 3 of the members  
7 selected shall have relevant experience in the American society  
8 for testing and materials risk-based corrective action processes  
9 described in part 213. A member selected for the dispute  
10 resolution process shall agree not to accept employment by the  
11 person bringing the dispute before the panel, or to undertake any  
12 employment concerning the facility in question for a period of 1  
13 year after the decision has been rendered on the matter if that  
14 employment would represent more than 5% of the member's gross  
15 revenue in any of the preceding 3 years. The director shall  
16 provide a copy of all supporting documentation to members of the  
17 panel who will hear the dispute. An alternative member may be  
18 selected by the director to replace a member who is unable to  
19 participate in the dispute resolution process. Any action by the  
20 members selected to hear the dispute shall require a majority of  
21 the votes cast. The members selected for the dispute resolution  
22 process shall elect a chairperson of the dispute resolution  
23 process. At a meeting scheduled to hear the dispute,  
24 representatives of the petitioner and the department shall each  
25 be afforded an opportunity to present their positions to the  
26 panel. The fee that is received by the director along with the  
27 petition shall be forwarded to the state treasurer for deposit

1 into the fund.

2 (9) Within 45 days after hearing the dispute, the members of  
3 the panel who were selected for and participated in the dispute  
4 resolution process shall make a recommendation regarding the  
5 petition and provide written notice of the recommendation to the  
6 director of the department and the petitioner. The written  
7 recommendation shall include the specific scientific or technical  
8 rationale for the recommendation. The panel's recommendation  
9 regarding the petition may be to adopt, modify, or reverse, in  
10 whole or in part, the department's decision that is the subject  
11 of the petition. If the panel does not make its recommendation  
12 within this 45-day time period, the decision of the department is  
13 the final decision of the director.

14 (10) Within 60 days after receiving written notice of the  
15 panel's recommendation, the director shall issue a final  
16 decision, in writing, regarding the petition. However, this time  
17 period may be extended by written agreement between the director  
18 and the petitioner. If the director agrees with the  
19 recommendation of the panel, the department shall incorporate the  
20 recommendation into its response to the response activity plan,  
21 no further action report, request for certificate of completion,  
22 initial assessment report, final assessment report, closure  
23 report, or documentation of due care compliance. If the director  
24 rejects the recommendation of the panel, the director shall issue  
25 a written decision to the petitioner with a specific rationale  
26 for rejecting the recommendation of the panel. If the director  
27 fails to issue a final decision within the time period provided

1 for in this subsection, the recommendation of the panel shall be  
2 considered the final decision of the director. The final decision  
3 of the director under this subsection is subject to review  
4 pursuant to section 631 of the revised judicature act of 1961,  
5 1961 PA 236, MCL 600.631.

6 (11) Upon request of the director, the panel shall make a  
7 recommendation to the department on whether a member should be  
8 removed from the panel. Prior to making this recommendation, the  
9 panel may convene a peer review panel to evaluate the conduct of  
10 the member with regard to compliance with this part.

11 (12) A member of the panel shall not participate in the  
12 dispute resolution process for any appeal in which that member  
13 has a conflict of interest. The director shall select a member of  
14 the panel to replace a member who has a conflict of interest  
15 under this subsection. For purposes of this subsection, a member  
16 has a conflict of interest if a petitioner has hired that member  
17 or the member's employer on any environmental matter within the  
18 preceding 3 years.

19 (13) As used in this section, "relevant experience" means  
20 active participation in the preparation, design, implementation,  
21 and assessment of remedial investigations, feasibility studies,  
22 interim response activities, and remedial actions under this part  
23 or experience in the American society for testing and materials  
24 risk-based corrective action processes described in part 213.  
25 This experience must demonstrate the exercise of sound  
26 professional judgment and knowledge of the requirements of this  
27 part or part 213, or both.

1           Sec. 20115. (1) The department, upon confirmation of a  
2 release or threat of release of a substance that is regulated by  
3 the department of agriculture **AND RURAL DEVELOPMENT**, shall notify  
4 the department of agriculture **AND RURAL DEVELOPMENT**. The  
5 department of agriculture **AND RURAL DEVELOPMENT** shall undertake  
6 or ensure the initiation of the necessary response activity to  
7 immediately stop or prevent further releases at the site. The  
8 department of agriculture **AND RURAL DEVELOPMENT** shall consult  
9 with the department in the development of response activities if  
10 a release or threat of a release of a substance regulated by the  
11 department of agriculture **AND RURAL DEVELOPMENT** occurs. The  
12 department of agriculture **AND RURAL DEVELOPMENT** shall provide to  
13 the department information necessary to identify substances  
14 regulated by the department of agriculture **AND RURAL DEVELOPMENT**.  
15 This information shall include but is not limited to the list of  
16 state registered pesticides.

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

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

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

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

24           (D) A **LIMING MATERIAL AS DEFINED IN SECTION 1 OF 1955 PA**  
25 **162, MCL 290.531.**

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

1           Enacting section 1. R 299.4113 to R 299.4116, R299.4118, R  
2 299.4119, and R 299.4122 to R 299.4127 of the Michigan  
3 administrative code are rescinded.

4           Enacting section 2. This amendatory act takes effect upon  
5 the expiration of 90 days after the date it is enacted into law.

6           Enacting section 3. This amendatory act does not take effect  
7 unless House Bill No. 5401 of the 97th Legislature is enacted  
8 into law.