

**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, 11542, 20101, 20114e, and 20115 (MCL 324.8504, 324.8505, 324.8513, 324.11502, 324.11503, 324.11504, 324.11505, 324.11506, 324.11542, 324.20101, 324.20114e, and 324.20115), sections 8504 and 11542 as amended by 2004 PA 325, section 8505 as amended by 2006 PA 503, 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

1 PERMIT IS NOT REQUIRED UNDER THIS PART FOR ANY OF THE FOLLOWING:

2 (A) THE USE OF A BENEFICIAL USE BY-PRODUCT FOR BENEFICIAL
3 USE 3 IN COMPLIANCE WITH PART 115.

4 (B) THE STORAGE OF A BENEFICIAL USE BY-PRODUCT IN COMPLIANCE
5 WITH PART 115.

6 (2) AS USED IN SUBSECTION (1), "BENEFICIAL USE BY-PRODUCT"
7 AND "BENEFICIAL USE 3" MEAN THOSE TERMS AS DEFINED IN SECTION
8 11502.

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

17 (a) Each fixed location at which fertilizer is manufactured
18 in this state.

19 (b) Each mobile unit used to manufacture fertilizer in this
20 state.

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

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

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

27 (b) The name and address of each bulk distribution point in

1 the state not licensed for fertilizer manufacture or
2 distribution. The name and address shown on the license shall be
3 shown on all labels, pertinent invoices, and bulk storage for
4 fertilizers distributed by the licensee in this state.

5 **(3) IF THE FERTILIZER IS A BENEFICIAL USE BY-PRODUCT**
6 **INTENDED FOR BENEFICIAL USE 3 UNDER PART 115, THE APPLICATION**
7 **SHALL ALSO INCLUDE THE INFORMATION IDENTIFIED IN SECTION**
8 **11551(7).**

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

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

15 **(6) ~~(5)~~**—All licenses to manufacture or distribute fertilizer
16 expire on December 31 of each year.

17 Sec. 8505. (1) A person shall not distribute a specialty
18 fertilizer or soil conditioner unless it is registered with the
19 department. An application **FOR REGISTRATION** listing each brand
20 and product name of each grade of specialty fertilizer or soil
21 conditioner shall be made on a form furnished by the director.
22 ~~and~~ **AN APPLICATION** shall be accompanied with the fees described
23 in subsection ~~(2)~~ **(4)** for each brand and product name of each
24 grade. Labels for each brand and product name of each grade shall
25 accompany the application.

26 **(2) IF THE SPECIALTY FERTILIZER OR SOIL CONDITIONER IS A**
27 **BENEFICIAL USE BY-PRODUCT INTENDED FOR BENEFICIAL USE 3 UNDER**

1 PART 115, THE APPLICATION SHALL ALSO INCLUDE THE INFORMATION
2 IDENTIFIED IN SECTION 11551(7).

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

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

9 (a) Registration fee of \$25.00.

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

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

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

24 (7) ~~(5)~~—A manufacturer or distributor of soil conditioners
25 blended according to specifications provided to a blender or
26 blended as specifically requested by the consumer prior to
27 blending shall either register each brand or blend distributed or

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

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

9 (2) IF STORAGE OF A MATERIAL USED AS A BENEFICIAL USE BY-
 10 PRODUCT FOR BENEFICIAL USE 3 UNDER PART 115 MEETS THE STORAGE
 11 REQUIREMENTS OF THAT PART, THEN THE STORAGE IS EXEMPT FROM
 12 REGULATION NO. 641, COMMERCIAL FERTILIZER BULK STORAGE, R
 13 285.641.1 TO R 285.641.18 OF THE MICHIGAN ADMINISTRATIVE CODE.

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

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

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

26 (2) "Ashes" means the residue from the burning of wood,
 27 ~~coal, coke, refuse,~~ SCRAP WOOD, TIRES, BIOMASS, wastewater

1 sludge, FOSSIL FUELS INCLUDING COAL OR COKE, or other combustible
2 materials.

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

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

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

9 (i) IS PLACED AT LEAST 4 FEET ABOVE THE SEASONAL GROUNDWATER
10 TABLE.

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

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

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

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

24 (C) ROAD SHOULDER MATERIAL THAT DOES NOT EXCEED 4 FEET IN
25 THICKNESS EXCEPT FOR AREAS WHERE EXCEEDANCES ARE INCIDENTAL TO
26 VARIATIONS IN EXISTING TOPOGRAPHY, IS PLACED AT LEAST 4 FEET
27 ABOVE THE SEASONAL GROUNDWATER TABLE, DOES NOT COME INTO CONTACT

1 WITH A SURFACE WATER BODY, IS SLOPED, AND IS COVERED BY ASPHALT
2 PAVEMENT, CONCRETE, 6 INCHES OF GRAVEL, OR OTHER MATERIAL
3 APPROVED BY THE DEPARTMENT.

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

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

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

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

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

16 (iii) CAUSE A VIOLATION OF A PART 31 SURFACE WATER QUALITY
17 STANDARD.

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

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

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

26 (C) TO STABILIZE, NEUTRALIZE, SOLIDIFY, CAP, OR OTHERWISE
27 REMEDIATE HAZARDOUS SUBSTANCES OR CONTAMINANTS AS PART OF A

1 RESPONSE ACTIVITY IN COMPLIANCE WITH PART 201, PART 213, OR THE
2 COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY
3 ACT OF 1980, 42 USC 9601 TO 9657, OR A CORRECTIVE ACTION IN
4 COMPLIANCE WITH PART 111 OR THE SOLID WASTE DISPOSAL ACT, 42 USC
5 6901 TO 6992K.

6 (D) AS CONSTRUCTION MATERIAL AT A LANDFILL LICENSED UNDER
7 THIS PART.

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

10 (8) "BENEFICIAL USE BY-PRODUCT" MEANS THE FOLLOWING
11 MATERIALS IF THE MATERIALS ARE STORED FOR BENEFICIAL USE OR ARE
12 USED BENEFICIALLY AS SPECIFIED AND THE REQUIREMENTS OF SECTION
13 11551(1) ARE MET:

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

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

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

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

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

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

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

27 (H) PULP AND PAPER MILL MATERIAL, OTHER THAN THE FOLLOWING,

- 1 USED FOR BENEFICIAL USE 3:
- 2 (i) REJECTS, FROM SCREENS, CLEANERS, AND MILLS DISPERSION
3 EQUIPMENT, CONTAINING MORE THAN DE MINIMIS AMOUNTS OF PLASTIC.
- 4 (ii) SCRAP PAPER.
- 5 (I) SPENT MEDIA FROM SANDBLASTING, WITH UNCONTAMINATED SAND,
6 NEWLY MANUFACTURED, UNPAINTED STEEL USED FOR BENEFICIAL USE 1 OR
7 2.
- 8 (J) DEWATERED CONCRETE GRINDING SLURRY FROM PUBLIC
9 TRANSPORTATION AGENCY ROAD PROJECTS USED FOR BENEFICIAL USE 1, 2,
10 3, OR 4.
- 11 (K) LIME SOFTENING RESIDUALS FROM THE TREATMENT AND
12 CONDITIONING OF WATER FOR DOMESTIC USE OR FROM A COMMUNITY WATER
13 SUPPLY USED FOR BENEFICIAL USE 3 OR 4.
- 14 (L) SOIL WASHED OR OTHERWISE REMOVED FROM SUGAR BEETS THAT IS
15 USED FOR BENEFICIAL USE 3.
- 16 (M) SEGREGATED FLUE GAS DESULFURIZATION MATERIAL USED FOR
17 BENEFICIAL USE 1 OR 3.
- 18 (N) MATERIALS AND USES APPROVED BY THE DEPARTMENT UNDER
19 SECTION 11553(3) OR (4). APPROVAL OF MATERIALS AND USES BY THE
20 DEPARTMENT UNDER SECTION 11553(3) OR (4) DOES NOT REQUIRE THE USE
21 OF THOSE MATERIALS BY ANY GOVERNMENTAL ENTITY OR ANY OTHER
22 PERSON.
- 23 (9) ~~(3)~~—"Beverage container" means an airtight metal, glass,
24 paper, or plastic container, or a container composed of a
25 combination of these materials, which, at the time of sale,
26 contains 1 gallon or less of any of the following:
- 27 (a) A soft drink, soda water, carbonated natural or mineral

1 water, or other nonalcoholic carbonated drink.

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

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

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

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

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

1 be renewed not less than 60 days before the maturity date. An
 2 applicant who uses a certificate of deposit as a bond shall
 3 receive any accrued interest on that certificate of deposit upon
 4 release of the bond by the department.

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

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

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

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

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

26 ~~——(a) The residue remaining after the ignition of coal or~~
 27 ~~wood, or both, and may include noncombustible materials,~~

1 ~~otherwise referred to as bottom ash.~~

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

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

10 (16) ~~(8)~~—"Collection center" means a tract of land,
11 building, unit, or appurtenance or combination thereof that is
12 used to collect junk motor vehicles and farm implements under
13 section 11530.

14 (17) ~~(9)~~—"Composting facility" means a facility where
15 composting of yard clippings or other organic materials occurs
16 using mechanical handling techniques such as physical turning,
17 windrowing, or aeration or using other management techniques
18 approved by the director.

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

25 (19) ~~(11)~~—"Corrective action" means the investigation,
26 assessment, cleanup, removal, containment, isolation, treatment,
27 or monitoring of constituents, as defined in a facility's

1 approved hydrogeological monitoring plan, released into the
 2 environment from a disposal area, or the taking of other actions
 3 related to the release as may be necessary to prevent, minimize,
 4 or mitigate injury to the public health, safety, or welfare, the
 5 environment, or natural resources that is consistent with 42 USC
 6 6941 to 6949a and regulations promulgated thereunder.

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

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

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

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

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

24 (a) A solid waste transfer facility.

25 (b) ~~Incinerator~~**AN INCINERATOR**.

26 (c) ~~Sanitary~~**A SANITARY** landfill.

27 (d) ~~Processing~~**A PROCESSING** plant.

1 (e) ~~Other~~ **ANY OTHER** solid waste handling or disposal
2 facility utilized in the disposal of solid waste. However, a
3 waste diversion center is not a disposal area.

4 (6) "Diverted waste" means waste that meets all of the
5 following requirements:

6 (a) Is generated by households, businesses, or governmental
7 entities.

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

10 (c) Is separated from other waste.

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

12 (i) Hazardous material.

13 (ii) Liquid waste.

14 (iii) Pharmaceuticals.

15 (iv) Electronics.

16 (v) Batteries.

17 (vi) Light bulbs.

18 (vii) Pesticides.

19 (viii) Thermostats, switches, thermometers, or other devices
20 that contain elemental mercury.

21 (ix) Sharps.

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

25 (7) "Enforceable mechanism" means a legal method whereby ~~the~~
26 **THIS** state, a county, a municipality, or another person is
27 authorized to take action to guarantee compliance with an

1 approved county solid waste management plan. Enforceable
2 mechanisms include contracts, intergovernmental agreements, laws,
3 ordinances, rules, and regulations.

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

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

10 (10) "Farm operation" means that term as defined in section
11 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

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

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

1 law.

2 (13) "FLUE GAS DESULFURIZATION MATERIAL" MEANS THE MATERIAL
3 RECOVERED FROM AIR POLLUTION CONTROL SYSTEMS THAT CAPTURE SULFUR
4 DIOXIDE FROM THE COMBUSTION OF WOOD, COAL, OR FOSSIL FUELS, OR
5 OTHER COMBUSTIBLE MATERIALS, IF THE OTHER COMBUSTIBLE MATERIALS
6 CONSTITUTE LESS THAN 50% BY WEIGHT OF THE TOTAL MATERIAL
7 COMBUSTED AND THE DEPARTMENT DETERMINES IN WRITING THAT THE OTHER
8 COMBUSTIBLE MATERIALS DO NOT MATERIALLY AFFECT THE CHARACTER OF
9 THE RESIDUE. FLUE GAS DESULFURIZATION MATERIAL INCLUDES SYNTHETIC
10 GYPSUM.

11 (14) ~~(13)~~—"Food processing residuals" means any of the
12 following:

13 (a) Residuals of fruits, vegetables, aquatic plants, or
14 field crops.

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

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

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

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

26 (17) ~~(14)~~—"Garbage" means rejected food wastes including
27 waste accumulation of animal, fruit, or vegetable matter used or

1 intended for food or that results from the preparation, use,
 2 cooking, dealing in, or storing of meat, fish, fowl, fruit, or
 3 vegetable matter.

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

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

8 ~~—— (b) Wood or wood product treated with creosote or
 9 pentachlorophenol.~~

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

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

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

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

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

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

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

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

27 (2) "Inert material" means a substance that will not

1 ~~decompose, dissolve, or in any other way form a contaminated~~
2 ~~leachate upon contact with water, or other liquids determined by~~
3 ~~the department as likely to be found at the disposal area,~~
4 ~~percolating through the substance.~~ ANY OF THE FOLLOWING:

5 (A) ROCK.

6 (B) TREES, STUMPS, AND OTHER SIMILAR LAND-CLEARING DEBRIS,
7 IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

8 (i) THE DEBRIS IS BURIED ON THE SITE OF ORIGIN OR ANOTHER
9 SITE, WITH THE APPROVAL OF THE OWNER OF THE SITE.

10 (ii) THE DEBRIS IS NOT BURIED IN A WETLAND OR FLOODPLAIN.

11 (iii) THE DEBRIS IS PLACED AT LEAST 3 FEET ABOVE THE
12 GROUNDWATER TABLE AS OBSERVED AT THE TIME OF PLACEMENT.

13 (iv) THE PLACEMENT OF THE DEBRIS DOES NOT VIOLATE FEDERAL,
14 STATE, OR LOCAL LAW OR CREATE A NUISANCE.

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

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

27 (ii) FOR ANY HAZARDOUS SUBSTANCE THAT COULD REASONABLY BE

1 EXPECTED TO BE PRESENT AS A RESULT OF PAST LAND USE AND HUMAN
2 ACTIVITY, THE SOIL OR SEDIMENT DOES NOT EXCEED THE BACKGROUND
3 CONCENTRATION, AS THAT TERM IS DEFINED IN PART 201.

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

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

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

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

1 (ii) THE MATERIAL IS NOT MATERIALLY CONTAMINATED. TYPICAL
2 SURFACE OIL STAINING ON PAVEMENT AND CONCRETE FROM DRIVEWAYS,
3 ROADWAYS, AND PARKING LOTS IS NOT MATERIAL CONTAMINATION.
4 MATERIAL COVERED IN WHOLE OR IN PART WITH LEAD-BASED PAINT IS
5 MATERIALLY CONTAMINATED.

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

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

10 (G) ASPHALT PAVEMENT OR CONCRETE PAVEMENT THAT MEETS ALL OF
11 THE FOLLOWING REQUIREMENTS:

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

13 (ii) HAS BEEN STOCKPILED OR CRUSHED FOR REUSE AS AGGREGATE
14 MATERIAL.

15 (iii) DOES NOT INCLUDE EXPOSED REINFORCEMENT BARS.

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

20 (I) ANY MATERIAL DETERMINED BY THE DEPARTMENT UNDER SECTION
21 11553(5) OR (6) TO BE AN INERT MATERIAL, EITHER FOR GENERAL USE
22 OR FOR A PARTICULAR USE.

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

1 coverage by submitting both of the following to the department:

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

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

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

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

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

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

16 (A) COAL ASH OR WOOD ASH.

17 (B) CEMENT KILN DUST.

18 (C) PULP AND PAPER MILL MATERIAL.

19 (D) SCRAP WOOD.

20 (E) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FOR
21 DOMESTIC USE.

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

24 (G) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FROM
25 A COMMUNITY WATER SUPPLY.

26 (H) FOUNDRY SAND.

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

- 1 (J) STREET CLEANINGS.
- 2 (K) ASPHALT SHINGLES.
- 3 (L) NEW CONSTRUCTION OR PRODUCTION SCRAP DRYWALL.
- 4 (M) CHIPPED OR SHREDDED TIRES.
- 5 (N) COPPER SLAG.
- 6 (O) COPPER STAMP SANDS.
- 7 (P) DREDGE MATERIAL FROM NONREMEDIAL ACTIVITIES.
- 8 (Q) FLUE GAS DESULFURIZATION MATERIAL.
- 9 (R) DEWATERED GRINDING SLURRY GENERATED FROM PUBLIC
10 TRANSPORTATION AGENCY ROAD PROJECTS.
- 11 (S) ANY MATERIAL DETERMINED BY THE DEPARTMENT UNDER SECTION
12 11553(7) TO BE A LOW-HAZARD INDUSTRIAL WASTE.
- 13 (8) ~~(6)~~—"Medical waste" means that term as it is defined in
14 section 13805 of the public health code, 1978 PA 368, MCL
15 333.13805.
- 16 (9) "MIXED WOOD ASH" MEANS THE MATERIAL RECOVERED FROM AIR
17 POLLUTION CONTROL SYSTEMS FOR, OR THE NONCOMBUSTED RESIDUE
18 REMAINING AFTER, THE COMBUSTION OF ANY COMBINATION OF WOOD, SCRAP
19 WOOD, RAILROAD TIES, OR TIRES, IF RAILROAD TIES COMPOSED LESS
20 THAN 35% BY WEIGHT OF THE TOTAL COMBUSTED MATERIAL AND TIRES
21 COMPOSED LESS THAN 10% BY WEIGHT OF THE TOTAL COMBUSTED MATERIAL.
- 22 (10) ~~(7)~~—"Municipal solid waste incinerator" means an
23 incinerator that is owned or operated by any person, and meets
24 all of the following requirements:
- 25 (a) The incinerator receives solid waste from off site and
26 burns only household waste from single and multiple dwellings,
27 hotels, motels, and other residential sources, or this household

1 waste together with solid waste from commercial, institutional,
2 municipal, county, or industrial sources that, if disposed of,
3 would not be required to be placed in a disposal facility
4 licensed under part 111.

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

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

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

13 (e) The incinerator is not an incinerator that receives and
14 burns only medical waste or only waste produced at 1 or more
15 hospitals.

16 (11) ~~(8)~~—"Municipal solid waste incinerator ash" means the
17 substances remaining after combustion in a municipal solid waste
18 incinerator.

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

21 (A) A CHILD DAY CARE CENTER.

22 (B) AN ELEMENTARY SCHOOL.

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

24 (D) A NURSING HOME.

25 (E) A SINGLE-FAMILY OR MULTIFAMILY DWELLING UNLESS THE
26 DWELLING IS PART OF A MIXED USE DEVELOPMENT AND ALL DWELLING
27 UNITS AND ASSOCIATED OUTDOOR RESIDENTIAL USE AREAS ARE LOCATED

1 ABOVE THE GROUND FLOOR.

2 (13) ~~(9)~~ "Perpetual care fund" means a trust or escrow
3 account or perpetual care fund bond provided for in section
4 11525.

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

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

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

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

25 (A) WASTEWATER TREATMENT SLUDGE, INCLUDING WOOD FIBERS,
26 MINERALS, AND MICROBIAL BIOMASS.

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

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

2 (D) SCRAP PAPER.

3 (E) CAUSTICIZING RESIDUES, INCLUDING LIME MUD AND GRIT AND
4 GREEN LIQUOR DREGS.

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

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

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

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

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

26 (5) "Rubbish" means nonputrescible solid waste, excluding
27 ashes, consisting of both combustible and noncombustible waste,

1 including paper, cardboard, metal containers, yard clippings,
2 wood, glass, bedding, crockery, demolished building materials, or
3 litter of any kind that may be a detriment to the public health
4 and safety.

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

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

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

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

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

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

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

26 (10) ~~(9)~~—"Slag" means the nonmetallic product resulting from
27 melting or smelting operations for iron or steel.

1 Sec. 11506. (1) "Solid waste" means garbage, rubbish, ashes,
2 incinerator ash, incinerator residue, street cleanings, municipal
3 and industrial sludges, solid commercial ~~and WASTE~~, solid
4 industrial waste, and animal waste. However, solid waste does not
5 include the following:

6 (a) Human body waste.

7 (b) Medical waste.

8 (c) Organic waste generated in the production of livestock
9 and poultry.

10 (d) Liquid waste.

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

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

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

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

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

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

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

27 (iv) **LIME** from kraft pulping processes generated prior to

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

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

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

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

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

27 (i) ~~With a maximum of 6% of unburned carbon, if used as~~ **AS** a

1 component of concrete, grout, mortar, or casting molds, **IF THE**
2 **COAL ASH DOES NOT HAVE MORE THAN 6% UNBURNED CARBON.**

3 ~~(ii) With a maximum of 12% unburned carbon passing M.D.O.T.~~
4 ~~test method MTM 101, if used as AS a raw material in asphalt for~~
5 ~~road construction, IF THE COAL ASH DOES NOT HAVE MORE THAN 12%~~
6 ~~UNBURNED CARBON AND PASSES MICHIGAN TEST METHOD FOR WATER ASPHALT~~
7 ~~PREFERENTIAL TEST, MTM 101, AS SET FORTH IN THE STATE~~
8 ~~TRANSPORTATION DEPARTMENT'S MANUAL FOR THE MICHIGAN TEST METHODS~~
9 ~~(MTM) .~~

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

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

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

1 ~~is designed to prevent water percolation through the material.~~

2 (M) **INERT MATERIAL.**

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

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

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

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

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

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

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

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

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

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

24 (V) ~~(o)~~—Other wastes regulated by statute.

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

27 (3) "Solid waste processing plant" means a tract of land,

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

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

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

19 (6) "Source separated material" means ~~glass, ANY OF THE~~
20 **FOLLOWING MATERIALS IF SEPARATED AT THE SOURCE OF GENERATION AND**
21 **NOT SPECULATIVELY ACCUMULATED:**

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

1 compost, biogas from anaerobic digestion, ~~or~~ synthetic gas from
2 gasification or pyrolysis, OR OTHER FUEL. THIS SUBDIVISION DOES
3 NOT PREVENT MATERIAL FROM BEING CLASSIFIED AS A RENEWABLE ENERGY
4 RESOURCE AS DEFINED IN SECTION 11 OF THE CLEAN, RENEWABLE, AND
5 EFFICIENT ENERGY ACT, 2008 PA 295, MCL 460.1011.

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

10 (C) CHIPPED OR WHOLE TIRES USED TO FUEL AN INDUSTRIAL
11 BOILER, KILN, POWER PLANT, OR FURNACE, SUBJECT TO PART 55, OR FOR
12 OTHER USES APPROVED BY THE DEPARTMENT. THIS SUBDIVISION DOES NOT
13 PREVENT MATERIAL FROM BEING CLASSIFIED AS A RENEWABLE ENERGY
14 RESOURCE AS DEFINED IN SECTION 11 OF THE CLEAN, RENEWABLE, AND
15 EFFICIENT ENERGY ACT, 2008 PA 295, MCL 460.1011.

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

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

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

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

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

4 (I) UTILITY POLES OR POLE SEGMENTS REUSED AS POLES, POSTS,
5 OR SIMILAR USES APPROVED BY THE DEPARTMENT IN WRITING.

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

8 (K) ANY MATERIALS AND USES APPROVED BY THE DEPARTMENT UNDER
9 SECTION 11553(8).

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

13 (7) "STAMP SANDS" MEANS FINELY GRAINED CRUSHED ROCK
14 RESULTING FROM MINING, MILLING, OR SMELTING OF COPPER ORE AND
15 INCLUDES NATIVE SUBSTANCES CONTAINED WITHIN THE CRUSHED ROCK AND
16 ANY ANCILLARY MATERIAL ASSOCIATED WITH THE CRUSHED ROCK.

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

19 (A) CHROMATED COPPER ARSENATE (CCA).

20 (B) AMMONIACAL COPPER QUAT (ACQ).

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

22 (D) ANY OTHER CHEMICAL DESIGNATED IN RULES PROMULGATED BY
23 THE DEPARTMENT.

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

27 (10) ~~(7)~~—"Type I public water supply", "type IIa public

1 water supply", "type IIb public water supply", and "type III
2 public water supply" mean those terms, respectively, as described
3 in R 325.10502 of the Michigan administrative code.

4 (11) ~~(8)~~—"Waste diversion center" means property or a
5 building, or a portion of property or a building, designated for
6 the purpose of receiving or collecting diverted wastes and not
7 used for residential purposes.

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

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

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

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

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

27 (i) The landfill is in compliance with this part and the

1 rules promulgated under this part.

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

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

6 (A) A leachate collection system.

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

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

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

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

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

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

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

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

21 (A) A leachate collection system.

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

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

25 (D) A second composite liner.

26 (iv) If contaminants that may threaten the public health,
27 safety, or welfare, or the environment are found in the leachate

1 collection system described in subparagraph (iii) (C), the owner or
2 operator of the landfill shall determine the source and nature of
3 the contaminants and make repairs, to the extent practicable,
4 that will prevent the contaminants from entering the leachate
5 collection system. If the department determines that the source
6 of the contaminants is caused by a design failure of the
7 landfill, the department, notwithstanding an approved
8 construction permit or operating license, may require landfill
9 cells at that landfill that will be used for the disposal of
10 municipal solid waste incinerator ash, which are under
11 construction or will be constructed in the future at the
12 landfill, to be constructed in conformance with improved design
13 standards approved by the department. However, this subparagraph
14 does not require the removal of liners or leak detection and
15 leachate collection systems that are already in place in a
16 landfill cell under construction.

17 (c) A landfill that is a monitorable unit, as defined in R
18 299.4104 of the Michigan administrative code, and that meets all
19 of the following requirements:

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

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

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

26 (A) A leachate collection system.

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

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

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

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

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

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

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

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

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

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

1 (c) An infiltration collection system.

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

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

5 (3) A landfill that receives municipal solid waste
6 incinerator ash under this section may be capped with a design
7 approved by the department that will prevent the migration of any
8 hazardous constituent into the groundwater or surface water at
9 least as effectively as the design requirements of subsection
10 (2).

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

14 (5) As an alternative to disposal described in subsection
15 (1), the owner or operator of a municipal solid waste incinerator
16 may process municipal solid waste incinerator ash through
17 mechanical or chemical methods, or both, to substantially
18 diminish the toxicity of the ash or its constituents or limit the
19 leachability of the ash or its constituents to minimize threats
20 to human health and the environment, if processing is performed
21 on the site of the municipal solid waste incinerator or at the
22 site of a landfill described in subsection (1), if the process
23 has been approved by the department as provided by rule, and if
24 the ash is tested after processing in accordance with a protocol
25 approved by the department as provided by rule. The department
26 shall approve the process and testing protocol under this
27 subsection only if the process and testing protocol will protect

1 human health and the environment. In making this determination,
2 the department shall consider all potential pathways of human and
3 environmental exposure, including both short-term and long-term,
4 to constituents of the ash that may be released during the reuse
5 or recycling of the ash. The department shall consider requiring
6 methods to determine the leaching, total chemical analysis,
7 respirability, and toxicity of reused or recycled ash. A leaching
8 procedure shall include testing under both acidic and native
9 conditions. If municipal solid waste incinerator ash is processed
10 in accordance with the requirements of this subsection and the
11 processed ash satisfies the testing protocol approved by the
12 department as provided by rule, the ash may be disposed of in a
13 municipal solid waste landfill, as defined by R 299.4104 of the
14 Michigan administrative code, licensed under this part or may be
15 used in any manner approved by the department. If municipal solid
16 waste incinerator ash is processed as provided in this
17 subsection, but does not satisfy the testing protocol approved by
18 the department as provided by rule, the ash shall be disposed of
19 in accordance with subsection (1).

20 (6) The disposal of municipal solid waste incinerator ash
21 within a landfill that is in compliance with subsection (1) does
22 not constitute a new proposal for which a new construction permit
23 is required under section ~~11510~~, **11509**, if a construction permit
24 has previously been issued under section 11509 for the landfill
25 and the owner or operator of the landfill submits 6 copies of an
26 operating license amendment application to the department for
27 approval pursuant to part 13. The operating license amendment

1 application shall include revised plans and specifications for
2 all facility modifications including a leachate disposal plan, an
3 erosion control plan, and a dust control plan which shall be part
4 of the operating license amendment. The dust control plan shall
5 contain sufficient detail to ensure that dust emissions are
6 controlled by available control technologies that reduce dust
7 emissions by a reasonably achievable amount to the extent
8 necessary to protect human health and the environment. The dust
9 control plan shall provide for the ash to be wet during all times
10 that the ash is exposed to the atmosphere at the landfill or
11 otherwise to be covered by daily cover material; for dust
12 emissions to be controlled during dumping, grading, loading, and
13 bulk transporting of the ash at the landfill; and for dust
14 emissions from access roads within the landfill to be controlled.
15 With the exception of a landfill that is in existence on June 12,
16 1989 that the department determines is otherwise in compliance
17 with this section, the owner or operator of the landfill shall
18 obtain the operating license amendment prior to initiating
19 construction. Prior to operation, the owner or operator of a
20 landfill shall submit to the department certification from a
21 licensed professional engineer that the landfill has been
22 constructed in accordance with the approved plan and
23 specifications. ~~At the time~~ **WHEN** the copies are submitted to the
24 department, the owner or operator of the landfill shall send a
25 copy of the operating license amendment application to the
26 municipality where the landfill is located. At least 30 days
27 prior to making a final decision on the operating license

1 amendment, the department shall hold at least 1 public meeting in
2 the vicinity of the landfill to receive public comments. Prior to
3 a public meeting, the department shall publish notice of the
4 meeting in a newspaper serving the local area.

5 (7) The owner or operator of a municipal solid waste
6 incinerator or a disposal area that receives municipal solid
7 waste incinerator ash shall allow the department access to the
8 facility for the purpose of supervising the collection of samples
9 or obtaining samples of ash to test or to monitor air quality at
10 the facility.

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

13 **SEC. 11551. (1) EXCEPT FOR A MATERIAL THAT THE DEPARTMENT**
14 **APPROVES AS A BENEFICIAL USE BY-PRODUCT UNDER SECTION 11553(3) OR**
15 **(4), TO QUALIFY AS A BENEFICIAL USE BY-PRODUCT, A MATERIAL OR THE**
16 **USE OF THE MATERIAL, AS APPLICABLE, SHALL MEET ALL OF THE**
17 **FOLLOWING REQUIREMENTS:**

18 (A) THE MATERIAL IS NOT A PART 111 HAZARDOUS WASTE OR MIXED
19 WITH A HAZARDOUS WASTE.

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

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

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

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

7 (F) THE USE OF THE MATERIAL IS FOR A LEGITIMATE BENEFICIAL
 8 PURPOSE OTHER THAN A MEANS TO DISCARD THE MATERIAL AND THE
 9 MATERIAL IS USED ACCORDING TO GENERALLY ACCEPTED ENGINEERING,
 10 INDUSTRIAL, OR COMMERCIAL STANDARDS FOR THAT USE.

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

15	CONSTITUENT -	COAL	PULP	FOUNDRY	CEMENT	WATER	STAMP	SPENT
16	MAXIMUM	ASH	AND	SAND	KILN	SOFTENING	SAND	MEDIA
17	LEACHATE MG/L	OR	PAPER		DUST,	LIMES,		FROM
18		WOOD	MILL		LIME	DEWATERED		SAND
19		ASH	ASH,		KILN	GRINDING		BLASTING
20			MIXED		DUST	SLUDGE		
21			WOOD					
22			ASH					
23	ARSENIC - 0.2	X	X	X	X	X		
24	BORON - 10	X						
25	CADMIUM - 0.1	X	X		X	X		
26	CHROMIUM - 2.0	X						X
27	LEAD - 0.08	X	X	X	X	X		

1	MERCURY - 0.04	X	X		X	X	
2	COPPER - 20		X			X	X
3	NICKEL - 2.0		X	X		X	X
4	SELENIUM - 1.0	X				X	
5	THALLIUM - 0.04	X			X		
6	ZINC - 48	X	X			X	

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

9 (i) THE MATERIAL IS COAL BOTTOM ASH, WOOD ASH, PULP AND PAPER
 10 MILL MATERIAL, PULP AND PAPER MILL ASH, MIXED WOOD ASH, FOUNDRY
 11 SAND FROM FERROUS OR ALUMINUM FOUNDRIES, CEMENT KILN DUST, LIME
 12 KILN DUST, LIME WATER SOFTENING RESIDUALS, FLUE GAS
 13 DESULFURIZATION GYPSUM, SOIL WASHED OR OTHERWISE REMOVED FROM
 14 SUGAR BEETS, OR DEWATERED CONCRETE GRINDING SLURRY FROM PUBLIC
 15 TRANSPORTATION AGENCY ROAD PROJECTS.

16 (ii) THE AMOUNT OF ANY CONSTITUENT LISTED BELOW APPLIED TO AN
 17 AREA OF LAND OVER ANY PERIOD OF TIME DOES NOT EXCEED THE
 18 FOLLOWING:

19	CONSTITUENT	CUMULATIVE LOAD
20		POUNDS PER ACRE
21	ARSENIC	37
22	CADMIUM	35
23	COPPER	1,335
24	LEAD	267
25	MERCURY	15
26	NICKEL	374

1 SELENIUM 89
2 ZINC 2,492

3 (iii) IF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT
4 DETERMINES, BASED ON PEER-REVIEWED SCIENTIFIC LITERATURE, THAT
5 ANY OTHER CONSTITUENT IS SUBJECT TO A CUMULATIVE LOADING
6 REQUIREMENT, THE AMOUNT OF THAT CONSTITUENT APPLIED TO AN AREA OF
7 LAND OVER ANY PERIOD OF TIME DOES NOT EXCEED THAT CUMULATIVE
8 LOADING REQUIREMENT. THE CUMULATIVE LOAD FOR THAT CONSTITUENT
9 SHALL BE CALCULATED AS FOLLOWS: CONSTITUENT CONCENTRATION (MG/KG
10 DRY WEIGHT) X CONVERSION FACTOR OF 0.002 (CONCENTRATION TO POUNDS
11 PER DRY TON) X THE MATERIAL APPLICATION RATE IN DRY TONS PER
12 ACRE.

13 (I) FOR BENEFICIAL USE 5, THE MATERIAL IS FOUNDRY SAND FROM
14 FERROUS OR ALUMINUM FOUNDRIES AND REPRESENTATIVE SAMPLING OF THE
15 FOUNDRY SAND USING EITHER A TOTALS ANALYSIS, A LEACHATE ANALYSIS
16 (USING EPA METHOD 1311, EPA METHOD 1312, ASTM METHOD 3987, OR
17 OTHER LEACHING PROTOCOL APPROVED BY THE DEPARTMENT), OR ANY
18 COMBINATION OF THE 2 TYPES OF ANALYSES DEMONSTRATES THAT NONE OF
19 THE FOLLOWING MAXIMUM CONCENTRATIONS ARE EXCEEDED:

20 CONSTITUENT	TOTALS	LEACHATE
21	ANALYSIS MG/KG	ANALYSIS MG/L
22 ANTIMONY	4.3	0.006
23 COBALT	0.8	0.04
24 COPPER	5,800	1
25 IRON	23,185	2.0
26 LEAD	700	0.004

1	MANGANESE	1,299	0.86
2	MOLYBDENUM	5	0.073
3	NICKEL	100	0.1
4	THALLIUM	2.3	0.002
5	VANADIUM	72	0.0045
6	ZINC	2,400	2.4
7	BENZENE	0.1	0.005
8	FORMALDEHYDE	26	1.3
9	PHENOL	88	4.4
10	TRICHLOROETHYLENE	0.1	0.005

11 (2) THE DETERMINATION WHETHER A MATERIAL MEETS THE
12 REQUIREMENTS OF SUBSECTION (1)(A) OR (G) SHALL BE BASED ON THE
13 ANALYSIS OF A REPRESENTATIVE SAMPLE OF THE MATERIAL BY THE
14 INITIAL GENERATOR. THE INITIAL GENERATOR SHALL MAINTAIN RECORDS
15 OF THE TEST RESULTS FOR NOT LESS THAN 10 YEARS AFTER THE DATE THE
16 MATERIAL WAS SENT OFF SITE AND MAKE THE RECORDS AVAILABLE TO THE
17 DEPARTMENT UPON REQUEST. THE GENERATOR SHALL RESAMPLE AND ANALYZE
18 THE MATERIAL WHEN RAW MATERIALS OR PROCESSES CHANGE IN A WAY THAT
19 COULD REASONABLY BE EXPECTED TO MATERIALLY AFFECT ANALYSIS
20 RESULTS.

21 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, STORAGE AND
22 USE OF BENEFICIAL USE BY-PRODUCTS SHALL COMPLY WITH ALL OTHER
23 APPLICABLE PROVISIONS OF THIS ACT.

24 (4) THE STORAGE OF A MATERIAL FOR BENEFICIAL USE 3 THAT
25 COMPLIES WITH REGULATION NO. 641, COMMERCIAL FERTILIZER BULK
26 STORAGE, R 285.641.1 TO R 285.641.18 OF THE MICHIGAN
27 ADMINISTRATIVE CODE, SHALL BE CONSIDERED TO COMPLY WITH THE

1 STORAGE REQUIREMENTS OF THIS PART.

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

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

7 (A) ROUTINE REPAIR AND REPLACEMENT OF ROADWAYS CONSTRUCTED
8 USING BENEFICIAL USE MATERIALS DOES NOT CONSTITUTE GENERATION OF
9 BENEFICIAL USE BY-PRODUCTS TRIGGERING THE REQUIREMENTS OF THIS
10 SECTION IF THE BENEFICIAL USE BY-PRODUCTS REMAIN OR ARE REUSED AT
11 THE SAME ROADWAY AND ARE USED IN A MANNER THAT MEETS THE
12 DEFINITION OF BENEFICIAL USE 1 OR BENEFICIAL USE 2, AS
13 APPROPRIATE. IF THE BENEFICIAL USE BY-PRODUCTS WILL BE REUSED AT
14 SOME PLACE OTHER THAN THE SAME ROADWAY, THEN THE REQUIREMENTS
15 APPLICABLE TO GENERATORS OF BENEFICIAL USE BY-PRODUCTS MUST BE
16 MET, EXCEPT AS FOLLOWS:

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

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

20 (B) FOR BENEFICIAL USE 2, THE REQUIREMENT THAT BENEFICIAL
21 USE MATERIALS BE COVERED BY CONCRETE, ASPHALT, OR 6 INCHES OF
22 GRAVEL APPLIES AT THE TIME OF PLACEMENT AND USE. THE DEVELOPMENT
23 OF POTHoles, SHOULDER EROSION, OR SIMILAR DETERIORATION DOES NOT
24 RESULT IN A VIOLATION OF THIS PART.

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

1 (D) THIS PART DOES NOT PROHIBIT THE STATE TRANSPORTATION
2 DEPARTMENT FROM SEEKING ADDITIONAL DATA OR INFORMATION FOR ROAD
3 BUILDING MATERIALS OR FROM REQUIRING THAT ROAD BUILDING MATERIALS
4 MEET STATE TRANSPORTATION DEPARTMENT SPECIFICATIONS AND
5 STANDARDS.

6 (7) FOR BENEFICIAL USE 3, THE MATERIAL THAT IS OFFERED FOR
7 SALE OR USE SHALL BE ANNUALLY REGISTERED OR LICENSED UNDER PART
8 85 OR 1955 PA 162, MCL 290.531 TO 290.538. IN ADDITION TO THE
9 INFORMATION REQUIRED UNDER PART 85 OR 1955 PA 162, MCL 290.531 TO
10 290.538, THE FOLLOWING INFORMATION SHALL BE SUBMITTED TO THE
11 DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT WITH THE LICENSE
12 OR REGISTRATION APPLICATION:

13 (A) DIRECTIONS FOR USE TO ENSURE THAT THE MATERIAL IS
14 APPLIED AT AN AGRONOMIC RATE THAT HAS BEEN REVIEWED BY A
15 CERTIFIED CROP ADVISOR.

16 (B) A LABORATORY ANALYSIS REPORT THAT CONTAINS ALL OF THE
17 FOLLOWING:

18 (i) SAMPLING RESULTS THAT DEMONSTRATE THAT THE MATERIAL DOES
19 NOT POSE HARM TO HUMAN HEALTH OR THE ENVIRONMENT. ONE METHOD BY
20 WHICH THIS DEMONSTRATION CAN BE MADE IS BY SAMPLING RESULTS THAT
21 COMPLY WITH BOTH OF THE FOLLOWING:

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

25 (B) THE PART 201 GENERIC RESIDENTIAL SOIL DIRECT CONTACT
26 CLEANUP CRITERIA FOR VOLATILE ORGANIC COMPOUNDS (AS DETERMINED BY
27 U.S. EPA METHOD 8260), SEMIVOLATILE ORGANIC COMPOUNDS (AS

1 DETERMINED BY U.S. EPA METHOD 8270C), AND DIOXINS (AS DETERMINED
2 BY U.S. EPA METHOD 1613B). RESULTS FOR DIOXINS SHALL BE REPORTED
3 ON A DRY WEIGHT BASIS, AND TOTAL DIOXIN EQUIVALENCE SHALL BE
4 CALCULATED AND REPORTED UTILIZING THE U.S. EPA TOXIC EQUIVALENCY
5 FACTORS (U.S. EPA/100/R10/005).

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

9 (A) A DEMONSTRATION THAT THE MATERIAL CONTAINS THE MINIMUM
10 PERCENTAGE OF EACH PLANT NUTRIENT GUARANTEED OR CLAIMED TO BE
11 PRESENT.

12 (B) THE PERCENTAGE OF DRY SOLIDS, NITROGEN, AMMONIUM
13 NITROGEN, NITRATE NITROGEN, PHOSPHORUS, AND POTASSIUM IN THE
14 MATERIAL.

15 (C) THE LEVELS OF CALCIUM, MAGNESIUM, ACIDITY OR BASICITY
16 MEASURED BY PH, SULFUR, CHROMIUM, COPPER, SILVER, CHLORINE, AND
17 BORON.

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

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

23 (B) THE LEVELS OF CALCIUM, MAGNESIUM, ACIDITY OR BASICITY
24 MEASURED BY PH, SULFUR, CHROMIUM, COPPER, SILVER, CHLORINE, AND
25 BORON.

26 (iv) FOR A SOIL CONDITIONER, SCIENTIFICALLY ACCEPTABLE DATA
27 THAT GIVE REASONABLE ASSURANCE THAT THE MATERIAL WILL IMPROVE THE

1 PHYSICAL NATURE OF THE SOIL BY ALTERING THE SOIL STRUCTURE BY
2 MAKING SOIL NUTRIENTS MORE AVAILABLE OR OTHERWISE ENHANCING THE
3 SOIL MEDIA RESULTING IN BENEFICIAL CROP RESPONSE OR OTHER PLANT
4 GROWTH.

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

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

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

16 (10) IF AN OWNER OF PROPERTY HAS KNOWLEDGE THAT A MATERIAL
17 HAS BEEN USED ON THE PROPERTY FOR BENEFICIAL USE 2, BEFORE
18 TRANSFERRING THE PROPERTY, THE OWNER SHALL PROVIDE NOTICE TO A
19 PROSPECTIVE TRANSFEREE THAT THE MATERIAL WAS USED FOR BENEFICIAL
20 USE 2, INCLUDING THE DATE AND LOCATION OF THE USE, IF KNOWN. IF A
21 CONTRACTOR, CONSULTANT, OR AGENT OF AN OWNER OF PROPERTY USES A
22 MATERIAL ON THE PROPERTY FOR BENEFICIAL USE 2, THE CONTRACTOR,
23 CONSULTANT, OR AGENT SHALL PROVIDE NOTICE TO THE OWNER THAT THE
24 MATERIAL WAS USED FOR BENEFICIAL USE 2, INCLUDING THE DATE AND
25 LOCATION OF THE USE.

26 SEC. 11551A. THIS PART DOES NOT REQUIRE THE USE OF ANY
27 BENEFICIAL USE BY-PRODUCT, INCLUDING, BUT NOT LIMITED TO, THE

1 USES AND BENEFICIAL USE BY-PRODUCTS IDENTIFIED IN SECTIONS 11502
2 TO 11506, BY ANY GOVERNMENTAL ENTITY OR ANY OTHER PERSON.

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

10 (2) BY OCTOBER 30 OF EACH YEAR, ANY GENERATOR OR BROKER OF
11 MORE THAN 1,000 CUBIC YARDS OF MATERIAL USED AS BENEFICIAL USE
12 BY-PRODUCTS FOR BENEFICIAL USE 1, 2, OR 4 IN THE IMMEDIATELY
13 PRECEDING PERIOD OF OCTOBER 1 TO SEPTEMBER 30 OR ANY PERSON THAT
14 USES OR REUSES MORE THAN 1,000 CUBIC YARDS OF A SOURCE SEPARATED
15 MATERIAL IN THAT PERIOD SHALL SUBMIT A REPORT TO THE DEPARTMENT
16 CONTAINING ALL OF THE FOLLOWING INFORMATION, AS APPLICABLE:

17 (A) THE BUSINESS NAME, ADDRESS, TELEPHONE NUMBER, AND NAME
18 OF A CONTACT PERSON FOR THE GENERATOR, BROKER, OR OTHER PERSON.

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

21 (C) THE APPROXIMATE AMOUNT OF BENEFICIAL USE BY-PRODUCTS
22 SHIPPED OFF SITE DURING THAT PERIOD AND THE USES AND CONDITIONS
23 OF USE.

24 (D) THE AMOUNT OF SOURCE SEPARATED MATERIALS USED OR REUSED.

25 (3) A GENERATOR OR BROKER MAY DESIGNATE THE INFORMATION
26 REQUIRED IN THE REPORT UNDER SUBSECTION (2) (B) AND (C) AS
27 CONFIDENTIAL BUSINESS INFORMATION. IF THE SCOPE OF A REQUEST FOR

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

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

26 (2) ANY PERSON MAY REQUEST THE DEPARTMENT, CONSISTENT WITH
27 THE DEFINITIONS AND OTHER TERMS OF THIS PART, TO APPROVE A

1 MATERIAL, A USE, OR A MATERIAL AND USE AS A SOURCE SEPARATED
2 MATERIAL; A BENEFICIAL USE BY-PRODUCT FOR BENEFICIAL USE 1, 2, 4,
3 OR 5; AN INERT MATERIAL; A LOW-HAZARD INDUSTRIAL WASTE; OR
4 ANOTHER MATERIAL, USE, OR MATERIAL AND USE THAT CAN BE APPROVED
5 UNDER THIS PART. AMONG OTHER THINGS, A PERSON MAY REQUEST THE
6 DEPARTMENT TO APPROVE A USE THAT DOES NOT QUALIFY AS BENEFICIAL
7 USE 2 UNDER SECTION 11502(4)(A) BECAUSE THE PROPERTY IS NOT
8 NONRESIDENTIAL PROPERTY OR UNDER SECTION 11502(4)(A), (B), OR (C)
9 BECAUSE THE MATERIAL EXCEEDS 4 FEET IN THICKNESS. A REQUEST UNDER
10 THIS SUBSECTION SHALL CONTAIN A DESCRIPTION OF THE MATERIAL
11 INCLUDING THE PROCESS GENERATING IT; RESULTS OF ANALYSES OF
12 REPRESENTATIVE SAMPLES OF THE MATERIAL FOR ANY HAZARDOUS
13 SUBSTANCES THAT THE PERSON HAS KNOWLEDGE OR REASON TO BELIEVE
14 COULD BE PRESENT IN THE MATERIAL, BASED ON ITS SOURCE, ITS
15 COMPOSITION, OR THE PROCESS THAT GENERATED IT; AND, IF
16 APPLICABLE, A DESCRIPTION OF THE PROPOSED USE. THE ANALYSIS AND
17 SAMPLING OF THE MATERIAL UNDER THIS SUBSECTION SHALL BE
18 CONSISTENT WITH THE METHODS CONTAINED IN THE EPA DOCUMENT
19 ENTITLED "TEST METHODS FOR THE EVALUATION OF SOLID WASTE,
20 PHYSICAL/CHEMICAL METHODS," SW 846 3RD EDITION; 1 OR MORE PEER-
21 REVIEWED STANDARDS DEVELOPED BY A NATIONAL OR INTERNATIONAL
22 ORGANIZATION, SUCH AS ASTM INTERNATIONAL; OR 1 OR MORE STANDARDS
23 OR METHODS APPROVED BY THE DEPARTMENT OR THE EPA. THE DEPARTMENT
24 SHALL APPROVE OR DENY THE REQUEST WITHIN 150 DAYS AFTER THE
25 REQUEST IS RECEIVED, UNLESS THE PARTIES AGREE TO AN EXTENSION. IF
26 THE DEPARTMENT DETERMINES THAT THE REQUEST DOES NOT INCLUDE
27 SUFFICIENT INFORMATION, THE DEPARTMENT SHALL, NOT MORE THAN 60

1 DAYS AFTER RECEIPT OF THE REQUEST, NOTIFY THE REQUESTER. THE
2 NOTICE SHALL SPECIFY THE ADDITIONAL INFORMATION THAT IS REQUIRED.
3 THE 150-DAY PERIOD IS TOLLED UNTIL THE REQUESTOR SUBMITS THE
4 INFORMATION SPECIFIED IN THE NOTICE. IF THE DEPARTMENT APPROVES A
5 REQUEST UNDER THIS SUBSECTION, THE APPROVAL SHALL INCLUDE THE
6 FOLLOWING STATEMENT: "THIS APPROVAL DOES NOT REQUIRE ANY USE OF
7 ANY BENEFICIAL USE BY-PRODUCT BY A GOVERNMENTAL ENTITY OR ANY
8 OTHER PERSON." THE DEPARTMENT MAY IMPOSE CONDITIONS AND OTHER
9 REQUIREMENTS CONSISTENT WITH THE PURPOSES OF THIS PART ON A
10 MATERIAL, A USE, OR A MATERIAL AND USE APPROVED UNDER THIS
11 SECTION THAT ARE REASONABLY NECESSARY FOR THE USE. IF A REQUEST
12 IS APPROVED WITH CONDITIONS OR OTHER REQUIREMENTS, THE APPROVAL
13 SHALL SPECIFICALLY STATE THE CONDITIONS OR OTHER REQUIREMENTS. IF
14 THE REQUEST IS DENIED, THE DEPARTMENT'S DENIAL SHALL, TO THE
15 EXTENT PRACTICAL, STATE WITH SPECIFICITY ALL OF THE REASONS FOR
16 DENIAL. IF THE DEPARTMENT FAILS TO APPROVE OR DENY THE REQUEST
17 WITHIN THE 150-DAY PERIOD, THE REQUEST IS CONSIDERED APPROVED. A
18 PERSON REQUESTING APPROVAL UNDER THIS SUBSECTION MAY SEEK REVIEW
19 OF ANY FINAL DEPARTMENT DECISION PURSUANT TO SECTION 631 OF THE
20 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.631.

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

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

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

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

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

6 (E) THE MATERIAL MEETS ALL OF THE FOLLOWING REQUIREMENTS:

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

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

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

16 (4) THE DEPARTMENT MAY APPROVE A MATERIAL FOR A SPECIFIED
17 USE AS A BENEFICIAL USE BY-PRODUCT IF THE MATERIAL MEETS THE
18 REQUIREMENTS OF SUBSECTION (3) (A), (B), (C), AND (D) BUT FAILS TO
19 MEET THE REQUIREMENTS OF SUBSECTION (3) (E) AND IF THE DEPARTMENT
20 DETERMINES THAT THE MATERIAL AND USE ARE PROTECTIVE OF THE PUBLIC
21 HEALTH AND ENVIRONMENT. IN MAKING THE DETERMINATION, THE
22 DEPARTMENT SHALL CONSIDER THE POTENTIAL FOR EXPOSURE AND RISK TO
23 HUMAN HEALTH AND THE ENVIRONMENT GIVEN THE NATURE OF THE
24 MATERIAL, ITS PROPOSED USE, AND THE ENVIRONMENTAL FATE AND
25 TRANSPORT OF ANY HAZARDOUS SUBSTANCES IN THE MATERIAL IN SOIL,
26 GROUNDWATER, OR OTHER RELEVANT MEDIA.

27 (5) THE DEPARTMENT SHALL APPROVE A MATERIAL AS INERT IF ALL

1 OF THE FOLLOWING REQUIREMENTS ARE MET:

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

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

6 (C) THE MATERIAL DOES NOT LEACH, DECOMPOSE, OR DISSOLVE IN A
7 WAY THAT FORMS AN UNACCEPTABLY CONTAMINATED LEACHATE UPON CONTACT
8 WITH WATER OR OTHER LIQUIDS LIKELY TO BE FOUND AT THE AREA OF
9 PLACEMENT, DISPOSAL, OR USE. AN UNACCEPTABLY CONTAMINATED
10 LEACHATE IS LEACHATE THAT EXCEEDS PART 201 GENERIC RESIDENTIAL
11 GROUNDWATER DRINKING WATER CRITERIA OR SURFACE WATER QUALITY
12 STANDARDS ESTABLISHED UNDER PART 31.

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

15 (6) THE DEPARTMENT MAY APPROVE A MATERIAL AS INERT IF THE
16 MATERIAL MEETS THE REQUIREMENTS OF SUBSECTION (5) (A) BUT FAILS TO
17 MEET THE REQUIREMENTS OF SUBSECTION (5) (B), (C), OR (D) AND IF
18 THE DEPARTMENT DETERMINES THAT THE MATERIAL IS PROTECTIVE OF THE
19 PUBLIC HEALTH AND ENVIRONMENT. IN MAKING THE DETERMINATION, THE
20 DEPARTMENT SHALL CONSIDER THE POTENTIAL FOR EXPOSURE AND RISK TO
21 HUMAN HEALTH AND THE ENVIRONMENT GIVEN THE NATURE OF THE
22 MATERIAL, ITS PROPOSED USE, AND THE ENVIRONMENTAL FATE AND
23 TRANSPORT OF ANY HAZARDOUS SUBSTANCES IN THE MATERIAL IN SOIL,
24 GROUNDWATER, OR OTHER RELEVANT MEDIA.

25 (7) THE DEPARTMENT SHALL APPROVE A MATERIAL AS A LOW-HAZARD
26 INDUSTRIAL WASTE IF HAZARDOUS SUBSTANCES IN REPRESENTATIVE
27 SAMPLES OF THE MATERIAL DO NOT LEACH, USING, AT THE OPTION OF THE

1 GENERATOR, EPA METHOD 1311, 1312, OR ANY OTHER METHOD APPROVED BY
2 THE DEPARTMENT THAT MORE ACCURATELY SIMULATES MOBILITY, ABOVE THE
3 HIGHER OF THE FOLLOWING:

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

6 (B) TEN TIMES THE GENERIC RESIDENTIAL GROUNDWATER DRINKING
7 WATER CLEANUP CRITERIA AS SET FORTH IN RULES PROMULGATED UNDER
8 PART 201.

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

23 (9) ANY WRITTEN DETERMINATION BY THE DEPARTMENT MADE PRIOR
24 TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
25 SECTION DESIGNATING A MATERIAL AS AN INERT MATERIAL, AN INERT
26 MATERIAL APPROPRIATE FOR GENERAL REUSE, AN INERT MATERIAL
27 APPROPRIATE FOR REUSE AT A SPECIFIC LOCATION, AN INERT MATERIAL

1 APPROPRIATE FOR SPECIFIC REUSE INSTEAD OF VIRGIN MATERIAL, A
2 SOURCE SEPARATED MATERIAL, A SITE SEPARATED MATERIAL, A LOW-
3 HAZARD INDUSTRIAL WASTE, OR A NON-SOLID-WASTE MATERIAL REMAINS IN
4 EFFECT ACCORDING TO ITS TERMS OR UNTIL FORFEITED IN WRITING BY
5 THE PERSON WHO RECEIVED THE DETERMINATION. UPON TERMINATION,
6 EXPIRATION, OR FORFEITURE OF THE WRITTEN DETERMINATION, THE
7 CURRENT REQUIREMENTS OF THIS PART CONTROL. THE AMENDMENTS MADE TO
8 THIS PART BY THE AMENDATORY ACT THAT ADDED THIS SECTION DO NOT
9 RESCIND, INVALIDATE, LIMIT, OR MODIFY ANY SUCH PRIOR
10 DETERMINATION IN ANY WAY.

11 SEC. 11554. THE DEPARTMENT OF AGRICULTURE AND RURAL
12 DEVELOPMENT, AND NOT THE DEPARTMENT OF ENVIRONMENTAL QUALITY,
13 SHALL ADMINISTER AND ENFORCE THIS PART IN CONNECTION WITH ANY
14 MATERIAL THAT IS LICENSED OR REGISTERED UNDER PART 85 OR 1955 PA
15 162, MCL 290.531 TO 290.538.

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

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

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

1 conjunction with, these farming operations. Agricultural property
2 does not include property used for commercial storage,
3 processing, distribution, marketing, or shipping operations.

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

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

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

18 (i) The hazardous substance complies with the statewide
19 default background levels under R ~~299.5746~~**299.46** of the Michigan
20 administrative code.

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

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

1 (iv) A site-specific demonstration.

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

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

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

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

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

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

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

27 (k) "Director" means the director of the department of

1 environmental quality.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (A) The site-specific criteria do not depend on any land use

1 or resource use restriction to ensure protection of the public
2 health, safety, or welfare or the environment.

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

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

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

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

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

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

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

26 (y) "Hazardous substance" means 1 or more of the following,
27 but does not include fruit, vegetable, or field crop residuals or

1 processing by-products, or aquatic plants, that are applied to
2 the land for an agricultural use or for use as an animal feed, if
3 the use is consistent with generally accepted agricultural
4 management practices developed pursuant to the Michigan right to
5 farm act, 1981 PA 93, MCL 286.471 to 286.474:

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

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

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

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

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

- 1 (aa) "Lender" means any of the following:
- 2 (i) A state or nationally chartered bank.
- 3 (ii) A state or federally chartered savings and loan
4 association or savings bank.
- 5 (iii) A state or federally chartered credit union.
- 6 (iv) Any other state or federally chartered lending
7 institution. ~~or~~
- 8 (v) **ANY STATE OR FEDERALLY** regulated affiliate or regulated
9 subsidiary of any entity listed in ~~this subparagraph or~~
10 subparagraphs (i) to ~~(iii)~~-(iv) .
- 11 (vi) ~~(v)~~—An insurance company authorized to do business in
12 this state pursuant to the insurance code of 1956, 1956 PA 218,
13 MCL 500.100 to 500.8302.
- 14 (vii) ~~(vi)~~—A motor vehicle **SALES** finance company subject to
15 the motor vehicle finance act, 1950 (Ex Sess) PA 27, MCL 492.101
16 to 492.141, with net assets in excess of \$50,000,000.00.
- 17 (viii) ~~(vii)~~—A foreign bank.
- 18 (ix) ~~(viii)~~—A retirement fund regulated pursuant to state law
19 or a pension fund regulated pursuant to federal law with net
20 assets in excess of \$50,000,000.00.
- 21 (x) ~~(ix)~~—A state or federal agency authorized by law to hold
22 a security interest in real property or a local unit of
23 government holding a reversionary interest in real property.
- 24 (xi) ~~(x)~~—A nonprofit tax exempt organization created to
25 promote economic development in which a majority of the
26 organization's assets are held by a local unit of government.
- 27 (xii) ~~(xi)~~—Any other person who loans money for the purchase

1 of or improvement of real property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (kk) "Postclosure agreement" means an agreement between the
27 department and a person who has submitted a no further action

1 report that prescribes, as appropriate, activities required to be
2 undertaken upon completion of remedial actions as provided for in
3 section 20114d.

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

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

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

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

20 (iii) A release of source, by-product, or special nuclear
21 material from a nuclear incident, as those terms are defined in
22 the atomic energy act of 1954, 42 USC 2011 to ~~2297h-13,~~ **2286I**, if
23 the release is subject to requirements with respect to financial
24 protection established by the nuclear regulatory commission under
25 42 USC 2210, or any release of source by-product or special
26 nuclear material from any processing site designated under 42 USC
27 7912(a)(1) or 42 USC 7942(a).

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

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

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

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

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

1 welfare, or to the environment.

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

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

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

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

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

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

27 (ii) A plan for evaluation activities.

1 (iii) A feasibility study.

2 (iv) A remedial action plan.

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

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

27 (i) The low level capabilities of methods published by

1 government agencies.

2 (ii) Reported method detection limits published by state
3 laboratories.

4 (iii) Reported method detection limits published by commercial
5 laboratories.

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

8 (vv) "Threatened release" or "threat of release" means any
9 circumstance that may reasonably be anticipated to cause a
10 release.

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

13 (2) As used in this part:

14 (a) The phrase "a person who is liable" includes a person
15 who is described as being subject to liability in section 20126.
16 The phrase "a person who is liable" does not presume that
17 liability has been adjudicated.

18 (b) The phrase "this part" includes "rules promulgated under
19 this part".

20 Sec. 20114e. (1) The director shall establish a response
21 activity review panel to advise him or her on technical or
22 scientific disputes, including disputes regarding assessment of
23 risk, response activity plans, no further action reports,
24 certificates of completion, and documentations of due care
25 compliance under this part, and initial assessment reports, final
26 assessment reports, closure reports, and documentations of due
27 care compliance under part 213.

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

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

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

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

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

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

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

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

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

26 (c) The individual is employed by an entity that is a party
27 to 1 or more contracts with the department and the compensation

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

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

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

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

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

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

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

20 (8) If a dispute is not resolved pursuant to subsection (7),
21 the director shall schedule a meeting of 5 members of the panel,
22 selected on the basis of their relevant expertise, within 45 days
23 after receiving the original petition. If the dispute involves an
24 underground storage tank system, at least 3 of the members
25 selected shall have relevant experience in the American society
26 for testing and materials risk-based corrective action processes
27 described in part 213. A member selected for the dispute

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

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

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

5 (10) Within 60 days after receiving written notice of the
6 panel's recommendation, the director shall issue a final
7 decision, in writing, regarding the petition. However, this time
8 period may be extended by written agreement between the director
9 and the petitioner. If the director agrees with the
10 recommendation of the panel, the department shall incorporate the
11 recommendation into its response to the response activity plan,
12 no further action report, request for certificate of completion,
13 initial assessment report, final assessment report, closure
14 report, or documentation of due care compliance. If the director
15 rejects the recommendation of the panel, the director shall issue
16 a written decision to the petitioner with a specific rationale
17 for rejecting the recommendation of the panel. If the director
18 fails to issue a final decision within the time period provided
19 for in this subsection, the recommendation of the panel shall be
20 considered the final decision of the director. The final decision
21 of the director under this subsection is subject to review
22 pursuant to section 631 of the revised judicature act of 1961,
23 1961 PA 236, MCL 600.631.

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

1 the member with regard to compliance with this part.

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

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

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

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

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

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

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

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

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

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

19 Enacting section 1. R 299.4113 to R 299.4116, R299.4118, R
20 299.4119, and R 299.4122 to R 299.4127 of the Michigan
21 administrative code are rescinded.

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

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