

**SUBSTITUTE FOR
HOUSE BILL NO. 6269**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 11502, 11503, 11504, 11505, 11509, 11510,
11512, 11513, 11515, 11516, 11518, 11523, 11523a, 11523b, 11525,
11525a, 11525b, 11528, 11538, 11539, 11542, and 11550 (MCL
324.11502, 324.11503, 324.11504, 324.11505, 324.11509, 324.11510,
324.11512, 324.11513, 324.11515, 324.11516, 324.11518, 324.11523,
324.11523a, 324.11523b, 324.11525, 324.11525a, 324.11525b,
324.11528, 324.11538, 324.11539, 324.11542, and 324.11550),
sections 11502, 11503, 11504, 11505, and 11542 as amended by 2014
PA 178, sections 11509, 11512, and 11516 as amended by 2004 PA 325,
section 11510 as amended by 1998 PA 397, sections 11523, 11523a,
11525, and 11525b as amended by 2013 PA 250, section 11523b as
added by 1996 PA 359, section 11525a as amended by 2015 PA 82,

section 11538 as amended by 2004 PA 44, and section 11550 as amended by 2003 PA 153, and by adding sections 11511a, 11512a, and 11519a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11502. (1) "Agronomic rate" means a rate that meets both
2 of the following requirements:

3 (a) Is generally recognized by the agricultural community or
4 is calculated for a particular area of land to improve the physical
5 nature of soil, such as structure, tilth, water retention, pH, or
6 porosity, or to provide macronutrients or micronutrients in an
7 amount not materially in excess of that needed by the crop, forest,
8 or vegetation grown on the land.

9 (b) Takes into account and minimizes runoff of beneficial use
10 by-products to surface water or neighboring properties, the
11 percolation of excess nutrients beyond the root zone, and the
12 liberation of metals from the soil into groundwater.

13 (2) "Ashes" means the residue from the burning of wood, scrap
14 wood, tires, biomass, wastewater sludge, fossil fuels including
15 coal or coke, or other combustible materials.

16 (3) "Beneficial use 1" means use as aggregate, road material,
17 or building material that in ultimate use is or will be bonded or
18 encapsulated by cement, limes, or asphalt.

19 (4) "Beneficial use 2" means use as any of the following:

20 (a) Construction fill at nonresidential property that meets
21 all of the following requirements:

22 (i) Is placed at least 4 feet above the seasonal groundwater
23 table.

1 (ii) Does not come into contact with a surface water body.

2 (iii) Is covered by concrete, asphalt pavement, or other
3 material approved by the department.

4 (iv) Does not exceed 4 feet in thickness, except for areas
5 where exceedances are incidental to variations in the existing
6 topography. This subparagraph does not apply to construction fill
7 placed underneath a building or other structure.

8 (b) Road base or soil stabilizer that does not exceed 4 feet
9 in thickness except for areas where exceedances are incidental to
10 variations in existing topography, is placed at least 4 feet above
11 the seasonal groundwater table, does not come into contact with a
12 surface water body, and is covered by concrete, asphalt pavement,
13 or other material approved by the department.

14 (c) Road shoulder material that does not exceed 4 feet in
15 thickness except for areas where exceedances are incidental to
16 variations in existing topography, is placed at least 4 feet above
17 the seasonal groundwater table, does not come into contact with a
18 surface water body, is sloped, and is covered by asphalt pavement,
19 concrete, 6 inches of gravel, or other material approved by the
20 department.

21 (5) "Beneficial use 3" means applied to land as a fertilizer
22 or soil conditioner under part 85 or a liming material under 1955
23 PA 162, MCL 290.531 to 290.538, if all of the following
24 requirements are met:

25 (a) The material is applied at an agronomic rate consistent
26 with generally accepted agricultural and management practices.

27 (b) The use, placement, or storage at the location of use does

1 not do any of the following:

2 (i) Violate part 55 or create a nuisance.

3 (ii) Cause groundwater to no longer be fit for 1 or more
4 protected uses as defined in R 323.2202 of the Michigan
5 administrative code.

6 (iii) Cause a violation of a part 31 surface water quality
7 standard.

8 (6) "Beneficial use 4" means any of the following uses:

9 (a) To stabilize, neutralize, solidify, or otherwise treat
10 waste for ultimate disposal at a facility licensed under this part
11 or part 111.

12 (b) To treat wastewater, wastewater treatment sludge, or
13 wastewater sludge in compliance with part 31 or the federal water
14 pollution control act, 33 USC 1251 to ~~1387~~ **1388**, at a private or
15 publicly owned wastewater treatment plant.

16 (c) To stabilize, neutralize, solidify, cap, or otherwise
17 remediate hazardous substances or contaminants as part of a
18 response activity in compliance with part 201, part 213, or the
19 comprehensive environmental response, compensation and liability
20 act of 1980, 42 USC 9601 to 9657, or a corrective action in
21 compliance with part 111 or the solid waste disposal act, 42 USC
22 6901 to 6992k.

23 (d) As construction material at a landfill licensed under this
24 part.

25 (7) "Beneficial use 5" means blended with inert materials or
26 with compost and used to manufacture soil.

27 (8) "Beneficial use by-product" means the following materials

1 if the materials are stored for beneficial use or are used
2 beneficially as specified and the requirements of section 11551(1)
3 are met:

4 (a) Coal bottom ash or wood ash used for beneficial use 3 or
5 wood ash or coal ash, except for segregated flue gas
6 desulfurization material, used for beneficial use 1, 2, or 4.

7 (b) Pulp and paper mill ash used for beneficial use 1, 2, 3,
8 or 4.

9 (c) Mixed wood ash used for beneficial use 1, 2, 3, or 4.

10 (d) Cement kiln dust used as a flue gas scrubbing reagent or
11 for beneficial use 1, 2, 3, or 4.

12 (e) Lime kiln dust used as a flue gas scrubbing reagent or for
13 beneficial use 1, 2, 3, or 4.

14 (f) Stamp sands used for beneficial use 1 or 2.

15 (g) Foundry sand from ferrous or aluminum foundries used for
16 beneficial use 1, 2, 3, 4, or 5.

17 (h) Pulp and paper mill material, other than the following,
18 used for beneficial use 3:

19 (i) Rejects, from screens, cleaners, and mills dispersion
20 equipment, containing more than de minimis amounts of plastic.

21 (ii) Scrap paper.

22 (i) Spent media from sandblasting, with uncontaminated sand,
23 newly manufactured, unpainted steel used for beneficial use 1 or 2.

24 (j) Dewatered concrete grinding slurry from public
25 transportation agency road projects used for beneficial use 1, 2,
26 3, or 4.

27 (k) Lime softening residuals from the treatment and

1 conditioning of water for domestic use or from a community water
2 supply used for beneficial use 3 or 4.

3 (l) Soil washed or otherwise removed from sugar beets that is
4 used for beneficial use 3.

5 (m) Segregated flue gas desulfurization material used for
6 beneficial use 1 or 3.

7 (n) Materials and uses approved by the department under
8 section 11553(3) or (4). Approval of materials and uses by the
9 department under section 11553(3) or (4) does not require the use
10 of those materials by any governmental entity or any other person.

11 (9) "Beverage container" means an airtight metal, glass,
12 paper, or plastic container, or a container composed of a
13 combination of these materials, which, at the time of sale,
14 contains 1 gallon or less of any of the following:

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

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

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

20 (10) "Bond" means a financial instrument executed on a form
21 approved by the department, including a surety bond from a surety
22 company authorized to transact business in this state, a
23 certificate of deposit, a cash bond, an irrevocable letter of
24 credit, insurance, a trust fund, an escrow account, or a
25 combination of any of these instruments in favor of the department.
26 The owner or operator of a disposal area who is required to
27 establish a bond under another state statute or a federal statute

1 may petition the department to allow such a bond to meet the
2 requirements of this part. The department shall approve a bond
3 established under another state statute or a federal statute if the
4 bond provides equivalent funds and access by the department as
5 other financial instruments allowed by this subsection.

6 **(11) "CAPTIVE FACILITY" MEANS A LANDFILL OR COAL ASH**
7 **IMPOUNDMENT THAT ACCEPTS FOR DISPOSAL, AND ACCEPTED FOR DISPOSAL**
8 **DURING THE PREVIOUS CALENDAR YEAR, ONLY NONHAZARDOUS INDUSTRIAL**
9 **WASTE GENERATED ONLY BY THE OWNER OF THE LANDFILL OR COAL ASH**
10 **IMPOUNDMENT.**

11 **(12)** ~~(11)~~—"Cement kiln dust" means particulate matter
12 collected in air emission control devices serving Portland cement
13 kilns.

14 **(13)** ~~(12)~~—"Certificate of deposit" means a negotiable
15 certificate of deposit held by a bank or other financial
16 institution regulated and examined by a state or federal agency,
17 the value of which is fully insured by an agency of the United
18 States government. A certificate of deposit used to fulfill the
19 requirements of this part shall be in the sole name of the
20 department with a maturity date of not less than 1 year and shall
21 be renewed not less than 60 days before the maturity date. An
22 applicant who uses a certificate of deposit as a bond shall receive
23 any accrued interest on that certificate of deposit upon release of
24 the bond by the department.

25 **(14)** ~~(13)~~—"Certified health department" means a city, county,
26 or district department of health that is specifically delegated
27 authority by the department to perform designated activities as

1 prescribed by this part.

2 **(15) ~~(14)~~ "Coal ash", SUBJECT TO SUBSECTION (16), means ANY OF**
3 ~~the material~~**FOLLOWING:**

4 **(A) MATERIAL** recovered from systems for the control of air
5 pollution from, or the noncombusted residue remaining after, the
6 combustion of coal **OR COAL COKE**, including, but not limited to,
7 **COAL** bottom ash, fly ash, boiler slag, **FLUE GAS DESULFURIZATION**
8 **MATERIALS**, or fluidized-bed combustion ash.

9 **(B) RESIDUALS REMOVED FROM COAL ASH IMPOUNDMENTS.**

10 **(16)** For beneficial use 2, coal ash does not include coal fly
11 ash except for the following if used at nonresidential property:

12 (a) Class C fly ash under ASTM standard C618-12A.

13 (b) Class F fly ash under ASTM standard C618-12A if that fly
14 ash forms a pozzolanic-stabilized mixture by being blended with
15 lime, Portland cement, or cement kiln dust.

16 (c) A combination of class C fly ash and class F fly ash under
17 ASTM standard C618-12A if that combination forms a pozzolanic-
18 stabilized mixture by being blended with lime, Portland cement, or
19 cement kiln dust and is used as a road base, soil stabilizer, or
20 road shoulder material under subsection (4)(b) or (c).

21 **(17) "COAL ASH IMPOUNDMENT" MEANS A NATURAL TOPOGRAPHIC**
22 **DEPRESSION, MAN-MADE EXCAVATION, OR DIKED AREA THAT IS NOT A**
23 **LANDFILL AND THAT IS DESIGNED TO HOLD AND, AFTER OCTOBER 14, 2015,**
24 **ACCEPTED AN ACCUMULATION OF COAL ASH AND LIQUIDS OR OTHER MATERIALS**
25 **APPROVED BY THE DEPARTMENT FOR TREATMENT, STORAGE, OR DISPOSAL AND**
26 **DID NOT RECEIVE DEPARTMENT APPROVAL OF ITS CLOSURE. A COAL ASH**
27 **IMPOUNDMENT IN EXISTENCE BEFORE OCTOBER 14, 2015 THAT RECEIVES**

1 WASTE AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
2 THIS SUBSECTION, AND THAT DOES NOT HAVE A PERMIT PURSUANT TO PART
3 31, IS CONSIDERED AN OPEN DUMP BEGINNING 2 YEARS AFTER THE
4 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION
5 UNLESS THE OWNER OR OPERATOR HAS COMPLETED CLOSURE OF THE COAL ASH
6 IMPOUNDMENT UNDER SECTION 11519A OR OBTAINED AN OPERATING LICENSE
7 FOR THE COAL ASH IMPOUNDMENT.

8 (18) "COAL ASH LANDFILL" MEANS A LANDFILL THAT IS USED FOR THE
9 DISPOSAL OF COAL ASH AND MAY ALSO BE USED FOR THE DISPOSAL OF INERT
10 MATERIALS AND CONSTRUCTION MATERIAL USED FOR PURPOSES OF MEETING
11 THE DEFINITION OF BENEFICIAL USE 4 OR OTHER MATERIALS APPROVED BY
12 THE DEPARTMENT.

13 (19) ~~(15)~~—"Coal bottom ash" means ash particles from the
14 combustion of coal that are too large to be carried in flue gases
15 and that collect on furnace walls or at the bottom of the furnace.

16 (20) ~~(16)~~—"Collection center" means a tract of land, building,
17 unit, or appurtenance or combination thereof that is used to
18 collect junk motor vehicles and farm implements under section
19 11530.

20 (21) ~~(17)~~—"Composting facility" means a facility where
21 composting of yard clippings or other organic materials occurs
22 using mechanical handling techniques such as physical turning,
23 windrowing, or aeration or using other management techniques
24 approved by the director.

25 (22) ~~(18)~~—"Consistency review" means evaluation of the
26 administrative and technical components of an application for a
27 permit or license or evaluation of operating conditions in the

1 course of inspection, for the purpose of determining consistency
2 with the requirements of this part, rules promulgated under this
3 part, and approved plans and specifications.

4 (23) ~~(19)~~—"Corrective action" means the investigation,
5 assessment, cleanup, removal, containment, isolation, treatment, or
6 monitoring of constituents, as defined in a facility's approved
7 hydrogeological monitoring plan, released into the environment from
8 a disposal area, or the taking of other actions related to the
9 release as may be necessary to prevent, minimize, or mitigate
10 injury to the public health, safety, or welfare, the environment,
11 or natural resources that is consistent with 42 USC 6941 to 6949a
12 and regulations promulgated thereunder.

13 Sec. 11503. (1) "De minimis" refers to a small amount of
14 material or number of items, as applicable, incidentally commingled
15 with inert material for beneficial use by-products, or incidentally
16 disposed of with other solid waste.

17 (2) "Department", subject to section 11554, means the
18 department of environmental quality.

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

20 (4) "Discharge" includes, but is not limited to, any spilling,
21 leaking, pumping, pouring, emitting, emptying, discharging,
22 injecting, escaping, leaching, dumping, or disposing of a substance
23 into the environment that is or may become injurious to the public
24 health, safety, or welfare, or to the environment.

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

1 (a) A solid waste transfer facility.

2 (b) An incinerator.

3 (c) A sanitary landfill.

4 (d) A processing plant.

5 **(E) A COAL ASH IMPOUNDMENT.**

6 **(F)** ~~(e)~~—Any other solid waste handling or disposal facility
7 utilized in the disposal of solid waste. However, a waste diversion
8 center is not a disposal area.

9 (6) "Diverted waste" means waste that meets all of the
10 following requirements:

11 (a) Is generated by households, businesses, or governmental
12 entities.

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

15 (c) Is separated from other waste.

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

17 (i) Hazardous material.

18 (ii) Liquid waste.

19 (iii) Pharmaceuticals.

20 (iv) Electronics.

21 (v) Batteries.

22 (vi) Light bulbs.

23 (vii) Pesticides.

24 (viii) Thermostats, switches, thermometers, or other devices
25 that contain elemental mercury.

26 (ix) Sharps.

27 (x) Other wastes approved by the department that can be

1 readily separated from solid waste for diversion to preferred
2 methods of management and disposal.

3 (7) "Enforceable mechanism" means a legal method whereby this
4 state, a county, a municipality, or another person is authorized to
5 take action to guarantee compliance with an approved county solid
6 waste management plan. Enforceable mechanisms include contracts,
7 intergovernmental agreements, laws, ordinances, rules, and
8 regulations.

9 (8) "Escrow account" means an account that is managed by a
10 bank or other financial institution whose account operations are
11 regulated and examined by a federal or state agency and that
12 complies with section 11523b.

13 (9) **"EXISTING COAL ASH IMPOUNDMENT" MEANS A COAL ASH**
14 **IMPOUNDMENT THAT HAS IN EFFECT A PERMIT PURSUANT TO PART 31, THAT**
15 **RECEIVED COAL ASH BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT**
16 **THAT ADDED THIS SUBSECTION, AND THAT, AS OF THAT DATE, HAS NOT**
17 **INITIATED ELEMENTS OF CLOSURE THAT INCLUDE DEWATERING, STABILIZING**
18 **RESIDUALS, OR PLACEMENT OF AN ENGINEERED COVER OR OTHERWISE CLOSED**
19 **PURSUANT TO ITS PART 31 PERMIT OR PURSUANT TO R 299.4309 OF THE**
20 **PART 115 RULES AND, THEREFORE, IS CAPABLE OF RECEIVING COAL ASH IN**
21 **THE FUTURE.**

22 (10) **"EXISTING DISPOSAL AREA" MEANS ANY OF THE FOLLOWING:**

23 (A) **A DISPOSAL AREA THAT HAS IN EFFECT A CONSTRUCTION PERMIT**
24 **UNDER THIS PART.**

25 (B) **A DISPOSAL AREA THAT HAD ENGINEERING PLANS APPROVED BY THE**
26 **DIRECTOR BEFORE JANUARY 11, 1979.**

27 (C) **AN INDUSTRIAL WASTE LANDFILL THAT WAS AUTHORIZED TO**

1 OPERATE BY THE DIRECTOR OR BY COURT ORDER BEFORE OCTOBER 9, 1993.

2 (D) AN INDUSTRIAL WASTE PILE THAT WAS LOCATED AT THE SITE OF
3 GENERATION ON OCTOBER 9, 1993.

4 (E) AN EXISTING COAL ASH IMPOUNDMENT.

5 (11) "EXISTING LANDFILL UNIT" OR "EXISTING UNIT" MEANS ANY
6 LANDFILL UNIT THAT RECEIVED SOLID WASTE ON OR BEFORE OCTOBER 9,
7 1993.

8 (12) ~~(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 (13) ~~(10)~~"Farm operation" means that term as defined in
11 section 2 of the Michigan right to farm act, 1981 PA 93, MCL
12 286.472.

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

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

1 financial test under state or federal law.

2 **(16)** ~~(13)~~—"Flue gas desulfurization material" means the
3 material recovered from air pollution control systems that capture
4 sulfur dioxide from the combustion of wood, coal, or fossil fuels,
5 or other combustible materials, if the other combustible materials
6 constitute less than 50% by weight of the total material combusted
7 and the department determines in writing that the other combustible
8 materials do not materially affect the character of the residue.
9 Flue gas desulfurization material includes synthetic gypsum.

10 **(17)** ~~(14)~~—"Food processing residuals" means any of the
11 following:

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

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

16 (c) Otherwise unusable food products that do not meet size,
17 quality, or other product specifications and that were intended for
18 human or animal consumption.

19 **(18)** ~~(15)~~—"Foundry sand" means silica sand used in the metal
20 casting process, including binding material or carbonaceous
21 additives, from ferrous or nonferrous foundries.

22 **(19)** ~~(16)~~—"GAAMPS" means the generally accepted agricultural
23 and management practices under the Michigan right to farm act, 1981
24 PA 93, MCL 286.471 to 286.474.

25 **(20)** ~~(17)~~—"Garbage" means rejected food wastes including waste
26 accumulation of animal, fruit, or vegetable matter used or intended
27 for food or that results from the preparation, use, cooking,

1 dealing in, or storing of meat, fish, fowl, fruit, or vegetable
2 matter.

3 Sec. 11504. (1) "Health officer" means a full-time
4 administrative officer of a certified health department.

5 **(2) "INDUSTRIAL WASTE" MEANS SOLID WASTE THAT IS GENERATED BY**
6 **MANUFACTURING OR INDUSTRIAL PROCESSES AND THAT IS NOT A HAZARDOUS**
7 **WASTE REGULATED UNDER PART 111.**

8 **(3) "INDUSTRIAL WASTE LANDFILL" MEANS A LANDFILL THAT IS USED**
9 **FOR THE DISPOSAL OF INDUSTRIAL WASTE THAT HAS BEEN CHARACTERIZED**
10 **FOR HAZARD AND THAT HAS BEEN DETERMINED TO BE NONHAZARDOUS UNDER**
11 **PART 111.**

12 **(4) ~~(2)~~**—"Inert material" means any of the following:

13 (a) Rock.

14 (b) Trees, stumps, and other similar land-clearing debris, if
15 all of the following conditions are met:

16 (i) The debris is buried on the site of origin or another
17 site, with the approval of the owner of the site.

18 (ii) The debris is not buried in a wetland or floodplain.

19 (iii) The debris is placed at least 3 feet above the
20 groundwater table as observed at the time of placement.

21 (iv) The placement of the debris does not violate federal,
22 state, or local law or create a nuisance.

23 (c) Uncontaminated excavated soil or dredged sediment.

24 Excavated soil or dredged sediment is considered uncontaminated if
25 it does not contain more than de minimis amounts of solid waste and
26 1 of the following applies:

27 (i) The soil or sediment is not contaminated by a hazardous

1 substance as a result of human activity. Soil or sediment that
2 naturally contains elevated levels of hazardous substances above
3 unrestricted residential or any other part 201 generic soil cleanup
4 criteria is not considered contaminated for purposes of this
5 subdivision. A soil or sediment analysis is not required under this
6 subparagraph if, based on past land use, there is no reason to
7 believe that the soil or sediment is contaminated.

8 (ii) For any hazardous substance that could reasonably be
9 expected to be present as a result of past land use and human
10 activity, the soil or sediment does not exceed the background
11 concentration, as that term is defined in part 201.

12 (iii) For any hazardous substance that could reasonably be
13 expected to be present as a result of past land use and human
14 activity, the soil or sediment falls below part 201 generic
15 residential soil direct contact cleanup criteria and hazardous
16 substances in leachate from the soil or sediment, using, at the
17 option of the generator, EPA method 1311, 1312, or any other
18 leaching protocol approved by the department, fall below part 201
19 generic residential health based groundwater drinking water values
20 or criteria, and the soil or sediment would not cause a violation
21 of any surface water quality standard established under part 31 at
22 the area of placement, disposal, or use.

23 (d) Excavated soil from a site of environmental contamination,
24 corrective action, or response activity if the soil is not a listed
25 hazardous waste under part 111 and if hazardous substances in the
26 soil do not exceed generic soil cleanup criteria for unrestricted
27 residential use as defined in part 201 or background concentration

1 as defined in part 201, as applicable.

2 (e) Construction brick, masonry, pavement, or broken concrete
3 that is reused for fill, rip rap, slope stabilization, or other
4 construction, if all of the following conditions are met:

5 (i) The use of the material does not violate section 3108,
6 part 301, or part 303.

7 (ii) The material is not materially contaminated. Typical
8 surface oil staining on pavement and concrete from driveways,
9 roadways, and parking lots is not material contamination. Material
10 covered in whole or in part with lead-based paint is materially
11 contaminated.

12 (iii) The material does not include exposed reinforcing bars.

13 (f) Portland cement clinker produced by a cement kiln using
14 wood, fossil fuels, or solid waste as a fuel or feedstock, but not
15 including cement kiln dust generated in the process.

16 (g) Asphalt pavement or concrete pavement that meets all of
17 the following requirements:

18 (i) Has been removed from a public right-of-way.

19 (ii) Has been stockpiled or crushed for reuse as aggregate
20 material.

21 (iii) Does not include exposed reinforcement bars.

22 (h) Cuttings, drilling materials, and fluids used to drill or
23 complete a well installed pursuant to part 127 of the public health
24 code, 1978 PA 368, MCL 333.12701 to 333.12771, if the location of
25 the well is not a facility under part 201.

26 (i) Any material determined by the department under section
27 11553(5) or (6) to be an inert material, either for general use or

1 for a particular use.

2 (5) ~~(3)~~—"Insurance" means insurance that conforms to the
3 requirements of 40 CFR 258.74(d) provided by an insurer who has a
4 certificate of authority from the director of insurance and
5 financial services to sell this line of coverage. An applicant for
6 an operating license shall submit evidence of the required coverage
7 by submitting both of the following to the department:

8 (a) A certificate of insurance that uses wording approved by
9 the department.

10 (b) A certified true and complete copy of the insurance
11 policy.

12 (6) ~~(4)~~—"Landfill" means a disposal area that is a sanitary
13 landfill.

14 (7) **"LATERAL EXPANSION" MEANS A HORIZONTAL EXPANSION OF THE**
15 **SOLID WASTE BOUNDARY OF ANY OF THE FOLLOWING:**

16 **(A) A LANDFILL, OTHER THAN A COAL ASH LANDFILL, IF THE**
17 **EXPANSION IS BEYOND THE LIMIT ESTABLISHED IN A CONSTRUCTION PERMIT**
18 **OR ENGINEERING PLANS APPROVED BY THE SOLID WASTE CONTROL AGENCY**
19 **BEFORE JANUARY 11, 1979.**

20 **(B) A COAL ASH LANDFILL, IF THE EXPANSION IS BEYOND THE LIMIT**
21 **ESTABLISHED IN A CONSTRUCTION PERMIT ISSUED AFTER THE EFFECTIVE**
22 **DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION OR THE**
23 **HORIZONTAL LIMITS OF COAL ASH IN PLACE ON OR BEFORE OCTOBER 14,**
24 **2015.**

25 **(C) A COAL ASH IMPOUNDMENT, IF THE EXPANSION IS BEYOND THE**
26 **LIMIT ESTABLISHED IN A CONSTRUCTION PERMIT OR THE HORIZONTAL LIMITS**
27 **OF COAL ASH IN PLACE ON OR BEFORE OCTOBER 14, 2015.**

1 **(8)** ~~(5)~~—"Letter of credit" means an irrevocable letter of
2 credit that complies with 40 CFR 258.74(c).

3 **(9)** ~~(6)~~—"Lime kiln dust" means particulate matter collected in
4 air emission control devices serving lime kilns.

5 **(10)** ~~(7)~~—"Low-hazard industrial waste" means industrial
6 material that has a low potential for groundwater contamination
7 when managed in accordance with this part. The following materials
8 are low-hazard industrial wastes:

9 (a) Coal ash or wood ash.

10 (b) Cement kiln dust.

11 (c) Pulp and paper mill material.

12 (d) Scrap wood.

13 (e) Sludge from the treatment and conditioning of water for
14 domestic use.

15 (f) Residue from the thermal treatment of petroleum
16 contaminated soil, media, or debris.

17 (g) Sludge from the treatment and conditioning of water from a
18 community water supply.

19 (h) Foundry sand.

20 (i) Mixed wood ash, scrap wood ash, pulp and paper mill ash.

21 (j) Street cleanings.

22 (k) Asphalt shingles.

23 (l) New construction or production scrap drywall.

24 (m) Chipped or shredded tires.

25 (n) Copper slag.

26 (o) Copper stamp sands.

27 (p) Dredge material from nonremedial activities.

1 (q) Flue gas desulfurization material.

2 (r) Dewatered grinding slurry generated from public
3 transportation agency road projects.

4 (s) Any material determined by the department under section
5 11553(7) to be a low-hazard industrial waste.

6 **(11) "LOW-HAZARD-POTENTIAL COAL ASH IMPOUNDMENT" MEANS A COAL**
7 **ASH IMPOUNDMENT THAT IS A DIKED SURFACE IMPOUNDMENT, THE FAILURE OR**
8 **MISOPERATION OF WHICH IS EXPECTED TO RESULT IN NO LOSS OF HUMAN**
9 **LIFE AND LOW ECONOMIC OR ENVIRONMENTAL LOSSES PRINCIPALLY LIMITED**
10 **TO THE IMPOUNDMENT OWNER'S PROPERTY.**

11 **(12)** ~~(8)~~—"Medical waste" means that term as it is defined in
12 section 13805 of the public health code, 1978 PA 368, MCL
13 333.13805.

14 **(13)** ~~(9)~~—"Mixed wood ash" means the material recovered from
15 air pollution control systems for, or the noncombusted residue
16 remaining after, the combustion of any combination of wood, scrap
17 wood, railroad ties, or tires, if railroad ties composed less than
18 35% by weight of the total combusted material and tires composed
19 less than 10% by weight of the total combusted material.

20 **(14)** ~~(10)~~—"Municipal solid waste incinerator" means an
21 incinerator that is owned or operated by any person, and meets all
22 of the following requirements:

23 (a) The incinerator receives solid waste from off site and
24 burns only household waste from single and multiple dwellings,
25 hotels, motels, and other residential sources, or this household
26 waste together with solid waste from commercial, institutional,
27 municipal, county, or industrial sources that, if disposed of,

1 would not be required to be placed in a disposal facility licensed
2 under part 111.

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

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

9 (d) The incinerator is not an industrial furnace as defined in
10 40 CFR 260.10.

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

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

17 **(16) "NEW COAL ASH IMPOUNDMENT" MEANS A COAL ASH IMPOUNDMENT**
18 **THAT FIRST RECEIVES COAL ASH AFTER THE EFFECTIVE DATE OF THE**
19 **AMENDATORY ACT THAT ADDED THIS SUBSECTION.**

20 **(17) "NEW DISPOSAL AREA" MEANS A DISPOSAL AREA THAT REQUIRES A**
21 **CONSTRUCTION PERMIT UNDER THIS PART AND INCLUDES ALL OF THE**
22 **FOLLOWING:**

23 **(A) A DISPOSAL AREA, OTHER THAN AN EXISTING DISPOSAL AREA,**
24 **THAT IS PROPOSED FOR CONSTRUCTION.**

25 **(B) FOR A LANDFILL, A LATERAL EXPANSION, VERTICAL EXPANSION,**
26 **OR OTHER EXPANSION THAT RESULTS IN AN INCREASE IN THE LANDFILL'S**
27 **DESIGN CAPACITY.**

1 (C) A NEW COAL ASH IMPOUNDMENT, OR A LATERAL EXPANSION OF A
2 COAL ASH IMPOUNDMENT BEYOND THE PLACEMENT OF WASTE AS OF OCTOBER
3 14, 2015.

4 (D) FOR A DISPOSAL AREA OTHER THAN LANDFILLS OR COAL ASH
5 IMPOUNDMENTS, AN ENLARGEMENT IN CAPACITY BEYOND THAT INDICATED IN
6 THE CONSTRUCTION PERMIT OR IN ENGINEERING PLANS APPROVED BEFORE
7 JANUARY 11, 1979.

8 (E) FOR ANY EXISTING DISPOSAL AREA, AN ALTERATION OF THE
9 DISPOSAL AREA TO A DIFFERENT DISPOSAL AREA TYPE THAN HAD BEEN
10 SPECIFIED IN THE PREVIOUS CONSTRUCTION PERMIT APPLICATION OR IN
11 ENGINEERING PLANS THAT WERE APPROVED BY THE DIRECTOR OR HIS OR HER
12 DESIGNEE BEFORE JANUARY 11, 1979.

13 (18) ~~(12)~~—"Nonresidential property" means property not used or
14 intended to be used for any of the following:

15 (a) A child day care center.

16 (b) An elementary school.

17 (c) An elder care and assisted living center.

18 (d) A nursing home.

19 (e) A single-family or multifamily dwelling unless the
20 dwelling is part of a mixed use development and all dwelling units
21 and associated outdoor residential use areas are located above the
22 ground floor.

23 (19) "PART 115 RULES" MEANS R 299.4101 TO R 299.4922 OF THE
24 MICHIGAN ADMINISTRATIVE CODE INCLUDING ANY AMENDMENTS TO OR
25 REPLACEMENTS OF THOSE RULES.

26 (20) ~~(13)~~—"Perpetual care fund" means a trust or escrow
27 account or perpetual care fund bond provided for in section 11525.

1 **(21)** ~~(14)~~—"Perpetual care fund bond" means a surety bond, an
2 irrevocable letter of credit, or a combination of these instruments
3 in favor of and on a form approved by the department by which a
4 perpetual care fund is established.

5 **(22)** ~~(15)~~—"Pulp and paper mill ash" means the material
6 recovered from air pollution control systems for, or the
7 noncombusted residue remaining after, the combustion of any
8 combination of coal, wood, pulp and paper mill material, wood or
9 biomass fuel pellets, scrap wood, railroad ties, or tires, from a
10 boiler, power plant, or furnace at a pulp and paper mill, if
11 railroad ties composed less than 35% by weight of the total
12 combusted material and tires composed less than 10% by weight of
13 the total combusted material.

14 **(23)** ~~(16)~~—"Pulp and paper mill material" means all of the
15 following materials if generated at a facility that produces pulp
16 or paper:

17 (a) Wastewater treatment sludge, including wood fibers,
18 minerals, and microbial biomass.

19 (b) Rejects from screens, cleaners, and mills.

20 (c) Bark, wood fiber, and chips.

21 (d) Scrap paper.

22 (e) Causticizing residues, including lime mud and grit and
23 green liquor dregs.

24 (f) Any material that the department determines has
25 characteristics that are similar to any of the materials listed in
26 subdivisions (a) to (e).

27 Sec. 11505. (1) "Recyclable materials" means source separated

1 materials, site separated materials, high grade paper, glass,
2 metal, plastic, aluminum, newspaper, corrugated paper, yard
3 clippings, and other materials that may be recycled or composted.

4 (2) "Regional solid waste management planning agency" means
5 the regional solid waste planning agency designated by the governor
6 pursuant to 42 USC 6946.

7 (3) "Resource recovery facility" means machinery, equipment,
8 structures, or any parts or accessories of machinery, equipment, or
9 structures, installed or acquired for the primary purpose of
10 recovering materials or energy from the waste stream.

11 (4) "Response activity" means an activity that is necessary to
12 protect the public health, safety, welfare, or the environment, and
13 includes, but is not limited to, evaluation, cleanup, removal,
14 containment, isolation, treatment, monitoring, maintenance,
15 replacement of water supplies, and temporary relocation of people.

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

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

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

26 **(7) "SANITARY LANDFILL" MEANS A TYPE OF DISPOSAL AREA**
27 **CONSISTING OF 1 OR MORE LANDFILL UNITS AND THE ACTIVE WORK AREAS**

1 ASSOCIATED WITH THOSE UNITS. SANITARY LANDFILLS ARE CLASSIFIED AS 1
2 OF THE FOLLOWING TYPES OF LANDFILLS:

3 (A) A TYPE II LANDFILL, WHICH IS A MUNICIPAL SOLID WASTE
4 LANDFILL AND INCLUDES A MUNICIPAL SOLID WASTE INCINERATOR ASH
5 LANDFILL.

6 (B) A TYPE III LANDFILL, WHICH IS ANY LANDFILL THAT IS NOT A
7 MUNICIPAL SOLID WASTE LANDFILL OR HAZARDOUS WASTE LANDFILL AND
8 INCLUDES ALL OF THE FOLLOWING:

9 (i) A CONSTRUCTION AND DEMOLITION WASTE LANDFILL.

10 (ii) AN INDUSTRIAL WASTE LANDFILL.

11 (iii) A LANDFILL THAT ACCEPTS WASTE OTHER THAN HOUSEHOLD
12 WASTE, MUNICIPAL SOLID WASTE INCINERATOR ASH, OR HAZARDOUS WASTE
13 FROM CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS.

14 (iv) A COAL ASH LANDFILL.

15 (v) AN EXISTING COAL ASH IMPOUNDMENT THAT IS CLOSED OR IS
16 ACTIVELY BEING CLOSED AS A LANDFILL PURSUANT TO R 299.4309 OF THE
17 PART 115 RULES.

18 (8) "Scrap wood" means wood or wood product that is 1 or more
19 of the following:

20 (a) Plywood, particle board, pressed board, oriented strand
21 board, fiberboard, resonated wood, or any other wood or wood
22 product mixed with glue, resins, or filler.

23 (b) Wood or wood product treated with creosote or
24 pentachlorophenol.

25 (c) Any wood or wood product designated as scrap wood in rules
26 promulgated by the department.

27 (9) "SHARPS" MEANS THAT TERM AS DEFINED IN SECTION 13807 OF

1 **THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.13807.**

2 (10) ~~(9)~~ "Site separated material" means glass, metal, wood,
3 paper products, plastics, rubber, textiles, garbage, or any other
4 material approved by the department that is separated from solid
5 waste for the purpose of recycling or conversion into raw materials
6 or new products.

7 (11) ~~(10)~~ "Slag" means the nonmetallic product resulting from
8 melting or smelting operations for iron or steel.

9 Sec. 11509. (1) Except as otherwise provided in section 11529,
10 a person shall not establish a disposal area except as authorized
11 by a construction permit issued by the department pursuant to part
12 13. In addition, a person shall not establish a disposal area
13 contrary to an approved solid waste management plan, or contrary to
14 a permit, license, or final order issued pursuant to this part. A
15 person proposing the establishment of a disposal area shall apply
16 for a construction permit to the department through the health
17 officer. If the disposal area is located in a county or city that
18 does not have a certified health department, the application shall
19 be made directly to the department.

20 (2) The application for a construction permit shall contain
21 the name and residence of the applicant, the location of the
22 proposed disposal area, the design capacity of the disposal area,
23 and other information specified by rule. A person may apply to
24 construct more than 1 type of disposal area at the same facility
25 under a single permit. The application shall be accompanied by an
26 engineering plan and a construction permit application fee. A
27 construction permit application for a landfill shall be accompanied

1 by a fee in an amount that is the sum of all of the following fees,
2 as applicable:

3 (a) For a new sanitary landfill, a fee equal to the following
4 amount:

5 (i) For a municipal solid waste landfill, \$1,500.00.

6 (ii) For an industrial waste landfill, \$1,000.00.

7 (iii) For a type III landfill limited to low hazard industrial
8 waste, \$750.00.

9 (b) For a lateral expansion of a sanitary landfill, a fee
10 equal to the following amount:

11 (i) For a municipal solid waste landfill, \$1,000.00.

12 (ii) For an industrial waste landfill, \$750.00.

13 (iii) For a type III landfill limited to low hazard industrial
14 waste, construction and demolition waste, or other nonindustrial
15 waste, \$500.00.

16 (c) For a vertical expansion of an existing sanitary landfill,
17 a fee equal to the following amount:

18 (i) For a municipal solid waste landfill, \$750.00.

19 (ii) For an industrial waste landfill, \$500.00.

20 (iii) For an industrial waste landfill limited to low hazard
21 industrial waste, construction and demolition waste, or other
22 nonindustrial waste, \$250.00.

23 **(D) FOR A NEW COAL ASH IMPOUNDMENT, A FEE OF \$1,000.00.**

24 **(E) FOR A LATERAL OR VERTICAL EXPANSION OF A COAL ASH**
25 **IMPOUNDMENT, A FEE OF \$750.00.**

26 (3) The application for a construction permit for a solid
27 waste transfer facility, a solid waste processing plant, other

1 disposal area, or a combination of these, shall be accompanied by a
2 fee in the following amount:

3 (a) For a new facility for municipal solid waste, or a
4 combination of municipal solid waste and waste listed in
5 subdivision (b), \$1,000.00.

6 (b) For a new facility for industrial waste, or construction
7 and demolition waste, \$500.00.

8 (c) For the expansion of an existing facility for any type of
9 waste, \$250.00.

10 (4) If an application is returned to the applicant as
11 administratively incomplete, the department shall refund the entire
12 fee. If a permit is denied or an application is withdrawn, the
13 department shall refund 1/2 the amount specified in subsection (3)
14 to the applicant. An applicant for a construction permit, within 12
15 months after a permit denial or withdrawal, may resubmit the
16 application and the refunded portion of the fee, together with the
17 additional information as needed to address the reasons for denial,
18 without being required to pay an additional application fee.

19 (5) An application for a modification to a construction permit
20 or for renewal of a construction permit which has expired shall be
21 accompanied by a fee of \$250.00. Increases in final elevations that
22 do not result in an increase in design capacity or a change in the
23 solid waste boundary shall be considered a modification and not a
24 vertical expansion.

25 (6) A person who applies to permit more than 1 type of
26 disposal area at the same facility shall pay a fee equal to the sum
27 of the applicable fees listed in this section.

1 (7) The department shall deposit permit application fees
2 collected under this section in the solid waste staff account of
3 the solid waste management fund established in section 11550.

4 Sec. 11510. (1) Before the submission of a construction permit
5 application for a new disposal area, the applicant shall request a
6 health officer or the department to provide an advisory analysis of
7 the proposed disposal area. However, the applicant, not less than
8 15 days after the request, and notwithstanding an analysis result,
9 may file an application for a construction permit.

10 (2) Upon receipt of a construction permit application, the
11 department shall do all of the following:

12 (a) Immediately notify the clerk of the municipality in which
13 the disposal area is located or proposed to be located, the local
14 soil erosion and sedimentation control agency, each division within
15 the department and the department of natural resources that has
16 responsibilities in land, air, or water management, and the
17 designated regional solid waste management planning agency.

18 (b) Publish a notice in a newspaper having major circulation
19 in the vicinity of the proposed disposal area. The required
20 published notice shall contain a map indicating the location of the
21 proposed disposal area and shall contain a description of the
22 proposed disposal area and the location where the complete
23 application package may be reviewed and where copies may be
24 obtained.

25 (c) Indicate in the public, departmental, and municipality
26 notice that the department shall hold a public hearing in the area
27 of the proposed disposal area if a written request is submitted by

1 the applicant or a municipality within 30 days after the date of
2 publication of the notice, or by a petition submitted to the
3 department containing a number of signatures equal to not less than
4 10% of the number of registered voters of the municipality where
5 the proposed disposal area is to be located who voted in the last
6 gubernatorial election. The petition shall be validated by the
7 clerk of the municipality. The public hearing shall be held after
8 the department makes a preliminary review of the application and
9 all pertinent data and before a construction permit is issued or
10 denied.

11 (d) Conduct a consistency review of the plans of the proposed
12 disposal area to determine if it complies with this part and the
13 rules promulgated under this part. The review shall be made by
14 persons qualified in hydrogeology and sanitary landfill
15 engineering. A written acknowledgment that the application package
16 is in compliance with the requirements of this part and rules
17 promulgated under this part by the persons qualified in
18 hydrogeology and sanitary landfill engineering shall be received
19 before a construction permit is issued. If the consistency review
20 of the site and the plans and the application meet the requirements
21 of this part and the rules promulgated under this part, the
22 department shall issue a construction permit that may contain a
23 stipulation specifically applicable to the site and operation.
24 Except as otherwise provided in section 11542, an expansion of the
25 area of a disposal area, an enlargement in capacity of a disposal
26 area, or an alteration of a disposal area to a different type of
27 disposal area than had been specified in the previous construction

1 permit application constitutes a new proposal for which a new
2 construction permit is required. The upgrading of a disposal area
3 type required by the department to comply with this part or the
4 rules promulgated under this part or to comply with a consent order
5 does not require a new construction permit.

6 (e) Notify the Michigan aeronautics commission if the disposal
7 area is a sanitary landfill that is a new site or a lateral
8 ~~extension~~**EXPANSION** or vertical expansion of an existing unit
9 proposed to be located within 5 miles of a runway or a proposed
10 runway extension contained in a plan approved by the Michigan
11 aeronautics commission of an airport licensed and regulated by the
12 Michigan aeronautics commission. The department shall make a copy
13 of the application available to the Michigan aeronautics
14 commission. If, after a period of time for review and comment not
15 to exceed 60 days, the Michigan aeronautics commission informs the
16 department that it finds that operation of the proposed disposal
17 area would present a potential hazard to air navigation and
18 presents the basis for its findings, the department may either
19 recommend appropriate changes in the location, construction, or
20 operation of the proposed disposal area or deny the application for
21 a construction permit. The department shall give an applicant an
22 opportunity to rebut a finding of the Michigan aeronautics
23 commission that the operation of a proposed disposal area would
24 present a potential hazard to air navigation. The Michigan
25 aeronautics commission shall notify the department and the owner or
26 operator of a landfill if the Michigan aeronautics commission is
27 considering approving a plan that would provide for a runway or the

1 extension of a runway within 5 miles of a landfill.

2 SEC. 11511A. (1) A NEW COAL ASH LANDFILL OR LATERAL EXPANSIONS
3 OF A COAL ASH LANDFILL SHALL COMPLY WITH THE REQUIREMENTS OF R
4 299.4304, R 299.4305, AND R 299.4307 TO R 299.4317 OF THE PART 115
5 RULES, EXCEPT THAT THE MINIMUM DESIGN STANDARD FOR A NEW OR LATERAL
6 EXPANSION OF A COAL ASH LANDFILL PURSUANT TO R 299.4307(4) OF THE
7 PART 115 RULES SHALL BE SOLELY R 299.4307(4) (B) OF THE PART 115
8 RULES AND NOT R 299.4307(4) (A), (C), OR (D) OF THE PART 115 RULES.

9 (2) A NEW COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT OR A
10 LATERAL EXPANSION OF A COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT
11 SHALL COMPLY WITH THE LOCATION REQUIREMENTS OF R 299.4411 TO R
12 299.4413 AND R 299.4415 TO 299.4418 OF THE PART 115 RULES, EXCEPT
13 THAT A NEW COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT OR A LATERAL
14 EXPANSION OF A COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT SHALL
15 MAINTAIN A PERMANENT MINIMUM CLEARANCE FROM THE BOTTOM OF THE
16 PRIMARY LINER OF NOT LESS THAN 5 FEET TO THE NATURAL GROUNDWATER
17 LEVEL.

18 (3) THE DEPARTMENT SHALL NOT ISSUE A CONSTRUCTION PERMIT FOR A
19 NEW COAL ASH LANDFILL OR NEW COAL ASH IMPOUNDMENT OR A LATERAL
20 EXPANSION OF A COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT UNLESS ALL
21 OF THE FOLLOWING APPLY:

22 (A) THE LANDFILL, IMPOUNDMENT, OR EXPANSION, RESPECTIVELY,
23 COMPLIES WITH SUBSECTIONS (1) AND (2), AS APPLICABLE.

24 (B) THE LANDFILL, IMPOUNDMENT, OR EXPANSION, RESPECTIVELY,
25 COMPLIES WITH R 299.4306 OF THE PART 115 RULES.

26 (C) THE OWNER OR OPERATOR HAS PROVIDED TO THE DEPARTMENT A
27 DETECTION MONITORING PROGRAM IN A HYDROGEOLOGICAL MONITORING PLAN

1 THAT COMPLIES WITH R 299.4440 TO R 299.4445 AND R 299.4905 TO R
2 299.4908 OF THE PART 115 RULES, AS APPLICABLE. THE CONSTITUENTS
3 MONITORED IN THE DETECTION MONITORING PROGRAM SHALL INCLUDE ALL OF
4 THE FOLLOWING:

5 (i) BORON.

6 (ii) CALCIUM.

7 (iii) CHLORIDE.

8 (iv) FLUORIDE.

9 (v) IRON.

10 (vi) PH.

11 (vii) SULFATE.

12 (viii) TOTAL DISSOLVED SOLIDS.

13 (D) THE LANDFILL, IMPOUNDMENT, OR EXPANSION, RESPECTIVELY,
14 COMPLIES WITH SECTION 11519A(11) AND, IF APPLICABLE, SECTION
15 11519A(13) OR A SCHEDULE, ISSUED BY THE DEPARTMENT, OF REMEDIAL
16 MEASURES, INCLUDING A SEQUENCE OF ACTIONS OR OPERATIONS, THAT LEADS
17 TO COMPLIANCE WITH THIS PART WITHIN A REASONABLE TIME PERIOD BUT
18 NOT MORE THAN 2 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
19 ACT THAT ADDED THIS SECTION.

20 (4) THE CONSTITUENTS LISTED IN THIS SECTION SHALL BE ANALYZED
21 BY METHODS SPECIFIED IN "STANDARD METHODS FOR THE EXAMINATION OF
22 WATER AND WASTEWATER, 19TH EDITION," PUBLISHED BY THE UNITED STATES
23 ENVIRONMENTAL PROTECTION AGENCY, OR BY OTHER METHODS APPROVED BY
24 THE DIRECTOR OR HIS OR HER DESIGNEE.

25 Sec. 11512. (1) A person shall dispose of solid waste at a
26 disposal area licensed under this part unless a person is permitted
27 by state law or rules promulgated by the department to dispose of

1 the solid waste at the site of generation. **WASTE PLACEMENT IN**
2 **EXISTING LANDFILL UNITS SHALL BE CONSISTENT WITH PAST OPERATING**
3 **PRACTICES OR MODIFIED PRACTICES TO ENSURE GOOD MANAGEMENT.**

4 (2) Except as otherwise provided in this section or in section
5 11529, a person shall not conduct, manage, maintain, or operate a
6 disposal area within this state except as authorized by an
7 operating license issued by the department pursuant to part 13. In
8 addition, a person shall not conduct, manage, maintain, or operate
9 a disposal area contrary to an approved solid waste management
10 plan, or contrary to a permit, license, or final order issued under
11 this part. A person who intends to conduct, manage, maintain, or
12 operate a disposal area shall submit a license application to the
13 department through a certified health department. **EXISTING COAL ASH**
14 **IMPOUNDMENTS ARE EXEMPT FROM THE LICENSING REQUIREMENTS OF THIS**
15 **PART THROUGH THE DATE THAT IS 2 YEARS AFTER THE EFFECTIVE DATE OF**
16 **THE AMENDATORY ACT THAT ADDED SECTION 11511A.** If the disposal area
17 is located in a county or city that does not have a certified
18 health department, the application shall be made directly to the
19 department. A person authorized by this part to operate more than 1
20 type of disposal area at the same facility may apply for a single
21 license.

22 (3) The application for a license shall contain the name and
23 residence of the applicant, the location of the proposed or
24 existing disposal area, the type or types of disposal area
25 proposed, evidence of bonding, and other information required by
26 rule. In addition, an applicant for a type II landfill shall submit
27 evidence of financial assurance adequate to meet the requirements

1 of section 11523a, the maximum waste slope in the active portion,
2 an estimate of remaining permitted capacity, and documentation on
3 the amount of waste received at the disposal area during the
4 previous license period or expected to be received, whichever is
5 greater. The application shall be accompanied by a fee as specified
6 in subsections (7), (9), and (10).

7 (4) At the time of application for a license for a disposal
8 area, the applicant shall submit to a health officer or the
9 department a certification under the seal of a licensed
10 professional engineer verifying that the construction of the
11 disposal area has proceeded according to the approved plans. **ANY**
12 **APPLICANT FOR A LICENSE FOR AN EXISTING COAL ASH IMPOUNDMENT IS**
13 **EXEMPT FROM THE PRECEDING REQUIREMENT OF THIS SUBSECTION BUT, WHEN**
14 **APPLYING FOR A LICENSE, SHALL SUBMIT DOCUMENTATION IN THE**
15 **APPLICANT'S POSSESSION OR CONTROL REGARDING THE CONSTRUCTION OF THE**
16 **IMPOUNDMENT.** If construction of the disposal area or a portion of
17 the disposal area is not complete, the department shall require
18 additional construction certification of that portion of the
19 disposal area during intermediate progression of the operation, as
20 specified in section 11516(5).

21 (5) An applicant for an operating license, within 6 months
22 after a license denial, may resubmit the application, together with
23 additional information or corrections as are necessary to address
24 the reason for denial, without being required to pay an additional
25 application fee.

26 (6) In order to conduct tests and assess operational
27 capabilities, the owner or operator of a municipal solid waste

1 incinerator that is designed to burn at a temperature in excess of
2 2500 degrees Fahrenheit may operate the incinerator without an
3 operating license, upon notice to the department, for a period not
4 to exceed 60 days.

5 (7) The application for a type II landfill operating license
6 shall be accompanied by the following fee for the 5-year term of
7 the operating license, calculated in accordance with subsection
8 (8):

9 (a) Landfills receiving less than 100 tons per day, \$250.00.

10 (b) Landfills receiving 100 tons per day or more, but less
11 than 250 tons per day, \$1,000.00.

12 (c) Landfills receiving 250 tons per day or more, but less
13 than 500 tons per day, \$2,500.00.

14 (d) Landfills receiving 500 tons per day or more, but less
15 than 1,000 tons per day, \$5,000.00.

16 (e) Landfills receiving 1,000 tons per day or more, but less
17 than 1,500 tons per day, \$10,000.00.

18 (f) Landfills receiving 1,500 tons per day or more, but less
19 than 3,000 tons per day, \$20,000.00.

20 (g) Landfills receiving greater than 3,000 tons per day,
21 \$30,000.00.

22 (8) Type II landfill application fees shall be based on the
23 average amount of waste projected to be received daily during the
24 license period. Application fees for license renewals shall be
25 based on the average amount of waste received in the previous
26 calendar year. Application fees shall be adjusted in the following
27 circumstances:

1 (a) If a landfill accepts more waste than projected, a
2 supplemental fee equal to the difference shall be submitted with
3 the next license application.

4 (b) If a landfill accepts less waste than projected, the
5 department shall credit the applicant an amount equal to the
6 difference with the next license application.

7 (c) A type II landfill that measures waste by volume rather
8 than weight shall pay a fee based on 3 cubic yards per ton.

9 (d) A landfill used exclusively for municipal solid waste
10 incinerator ash that measures waste by volume rather than weight
11 shall pay a fee based on 1 cubic yard per ton.

12 (e) If an application is submitted to renew a license more
13 than 1 year prior to license expiration, the department shall
14 credit the applicant an amount equal to 1/2 the application fee.

15 (f) If an application is submitted to renew a license more
16 than 6 months but less than 1 year prior to license expiration, the
17 department shall credit the applicant an amount equal to 1/4 the
18 application fee.

19 (9) The operating license application for a type III landfill
20 shall be accompanied by a fee ~~equal to~~ **OF** \$2,500.00.

21 **(10) AN APPLICATION FOR AN OPERATING LICENSE BY A COAL ASH**
22 **LANDFILL SHALL BE ACCOMPANIED BY A FEE OF \$13,000.00. ON THE**
23 **ANNIVERSARY OF THE ISSUANCE OF THE OPERATING LICENSE, WHILE THE**
24 **OPERATING LICENSE REMAINS IN EFFECT, THE COAL ASH LANDFILL OWNER OR**
25 **OPERATOR SHALL PAY THE DEPARTMENT A FEE OF \$13,000.00. IF THE**
26 **ANNIVERSARY OF THE ISSUANCE OF THE OPERATING LICENSE FALLS ON A**
27 **LEGAL HOLIDAY, THE ANNUAL FEE SHALL BE PAID ON THE NEXT BUSINESS**

1 DAY.

2 (11) AN APPLICATION FOR AN OPERATING LICENSE BY A COAL ASH
3 IMPOUNDMENT SHALL BE ACCOMPANIED BY A FEE OF \$13,000.00. ON THE
4 ANNIVERSARY OF THE ISSUANCE OF THE OPERATING LICENSE, WHILE THE
5 OPERATING LICENSE REMAINS IN EFFECT, THE COAL ASH IMPOUNDMENT OWNER
6 OR OPERATOR SHALL PAY THE DEPARTMENT A FEE OF \$13,000.00. IF THE
7 ANNIVERSARY OF THE ISSUANCE OF THE OPERATING LICENSE FALLS ON A
8 LEGAL HOLIDAY, THE ANNUAL FEE SHALL BE PAID ON THE NEXT BUSINESS
9 DAY.

10 (12) THE DEPARTMENT SHALL DEPOSIT THE FEES COLLECTED UNDER
11 SUBSECTIONS (10) AND (11) IN THE COAL ASH CARE FUND ESTABLISHED IN
12 SECTION 11550.

13 (13) UPON RECEIPT OF A LICENSE APPLICATION FOR EITHER A COAL
14 ASH IMPOUNDMENT OR A COAL ASH LANDFILL, THE DEPARTMENT SHALL DO ALL
15 OF THE FOLLOWING:

16 (A) IMMEDIATELY SEND NOTICE TO THE CLERK OF THE MUNICIPALITY
17 WHERE THE DISPOSAL AREA IS LOCATED AND THE DESIGNATED REGIONAL
18 SOLID WASTE MANAGEMENT PLANNING AGENCY.

19 (B) PUBLISH A NOTICE IN A NEWSPAPER HAVING MAJOR CIRCULATION
20 IN THE VICINITY OF THE DISPOSAL AREA.

21 (14) THE NOTICES UNDER SUBSECTION (13) SHALL MEET ALL OF THE
22 FOLLOWING REQUIREMENTS:

23 (A) INCLUDE A MAP INDICATING THE LOCATION OF THE DISPOSAL AREA
24 AND A DESCRIPTION OF THE DISPOSAL AREA.

25 (B) SPECIFY THE LOCATION WHERE THE COMPLETE APPLICATION
26 PACKAGE MAY BE REVIEWED AND WHERE COPIES MAY BE OBTAINED.

27 (C) INDICATE THAT THE DEPARTMENT WILL ACCEPT COMMENTS FOR 45

1 DAYS AFTER THE DATE OF PUBLICATION OF THE NOTICE.

2 (D) INDICATE IN THE NOTICE THAT THE DEPARTMENT SHALL HOLD A
3 PUBLIC HEARING IN THE AREA OF THE DISPOSAL AREA IF A WRITTEN
4 REQUEST IS SUBMITTED BY THE APPLICANT OR A MUNICIPALITY WITHIN 30
5 DAYS AFTER THE DATE OF PUBLICATION OF THE NOTICE, OR BY A PETITION
6 SUBMITTED TO THE DEPARTMENT CONTAINING A NUMBER OF SIGNATURES EQUAL
7 TO NOT LESS THAN 10% OF THE NUMBER OF REGISTERED VOTERS OF THE
8 MUNICIPALITY WHERE THE DISPOSAL AREA IS LOCATED WHO VOTED IN THE
9 LAST GUBERNATORIAL ELECTION.

10 (15) A PETITION REFERRED TO IN SUBSECTION (14) (D) SHALL BE
11 VALIDATED BY THE CLERK OF THE MUNICIPALITY. A PUBLIC HEARING
12 REFERRED TO IN SUBSECTION (14) (D) SHALL BE HELD AFTER THE
13 DEPARTMENT MAKES A PRELIMINARY REVIEW OF THE APPLICATION AND ALL
14 PERTINENT DATA AND BEFORE AN OPERATING LICENSE IS ISSUED OR DENIED.

15 (16) IF AN APPLICATION IS RETURNED TO THE APPLICANT AS
16 ADMINISTRATIVELY INCOMPLETE, THE DEPARTMENT SHALL REFUND THE ENTIRE
17 FEE. AN APPLICANT FOR A LICENSE, WITHIN 12 MONTHS AFTER A LICENSE
18 DENIAL OR WITHDRAWAL OF A LICENSE APPLICATION, MAY RESUBMIT THE
19 APPLICATION WITH THE ADDITIONAL INFORMATION AS NEEDED TO ADDRESS
20 THE REASONS FOR DENIAL, WITHOUT BEING REQUIRED TO PAY AN ADDITIONAL
21 APPLICATION FEE.

22 (17) ~~(10)~~ The operating license application for a solid waste
23 processing plant, solid waste transfer facility, other disposal
24 area, or combination of these entities shall be accompanied by a
25 fee equal to \$500.00.

26 (18) ~~(11)~~ The EXCEPT AS PROVIDED IN SUBSECTION (12), THE
27 department shall deposit operating license application fees

1 collected under this section in the perpetual care account of the
2 solid waste management fund established in section 11550.

3 (19) ~~(12)~~—A person who applies for an operating license for
4 more than 1 type of disposal area at the same facility shall pay a
5 fee equal to the sum of the applicable application fees listed in
6 this section.

7 SEC. 11512A. (1) THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO A
8 COAL ASH LANDFILL OR A COAL ASH IMPOUNDMENT UNLESS THE APPLICANT
9 HAS PROVIDED TO THE DEPARTMENT AN APPROVED HYDROGEOLOGICAL
10 MONITORING PROGRAM THAT DOES THE FOLLOWING:

11 (A) COMPLIES WITH R 299.4440 TO R 299.4445, IF APPLICABLE, AND
12 R 299.4905 TO R 299.4908 OF THE PART 115 RULES.

13 (B) INCLUDES A DETECTION MONITORING PROGRAM THAT MEETS THE
14 REQUIREMENTS OF SECTION 11511A(3).

15 (2) THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO A COAL ASH
16 LANDFILL UNLESS THE APPLICANT HAS PROVIDED TO THE DEPARTMENT A RUN-
17 ON AND RUN-OFF CONTROL SYSTEM PLAN THAT COMPLIES WITH 40 CFR
18 257.81(C)(1) AND WAS PREPARED AND SEALED BY A REGISTERED
19 PROFESSIONAL ENGINEER. THIS PLAN SHALL BE REVISED AT LEAST EVERY 5
20 YEARS IN COMPLIANCE WITH 40 CFR 257.81(C)(4).

21 (3) THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO A COAL ASH
22 IMPOUNDMENT UNLESS THE APPLICANT HAS PROVIDED TO THE DEPARTMENT AN
23 INFLOW DESIGN FLOOD CONTROL SYSTEM PLAN THAT COMPLIES WITH 40 CFR
24 257.82(C)(1) AND WAS PREPARED AND SEALED BY A REGISTERED
25 PROFESSIONAL ENGINEER. THIS PLAN SHALL BE REVISED AT LEAST EVERY 5
26 YEARS IN COMPLIANCE WITH 40 CFR 257.82(C)(4).

27 (4) THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO A COAL ASH

1 LANDFILL OR A COAL ASH IMPOUNDMENT UNLESS THAT LANDFILL OR
2 IMPOUNDMENT COMPLIES WITH SECTION 11519A(11) AND, IF APPLICABLE,
3 SECTION 11519A(13) OR A SCHEDULE, ISSUED BY THE DEPARTMENT, OF
4 REMEDIAL MEASURES, INCLUDING A SEQUENCE OF ACTIONS OR OPERATIONS,
5 THAT LEADS TO COMPLIANCE WITH THIS PART WITHIN A REASONABLE TIME
6 PERIOD BUT NOT MORE THAN 2 YEARS AFTER THE EFFECTIVE DATE OF THE
7 AMENDATORY ACT THAT ADDED THIS SUBSECTION.

8 (5) THE DEPARTMENT SHALL NOT ISSUE A LICENSE FOR A COAL ASH
9 IMPOUNDMENT THAT IS NOT A LOW-HAZARD-POTENTIAL COAL ASH IMPOUNDMENT
10 UNLESS THE APPLICANT HAS PROVIDED TO THE DEPARTMENT AN EMERGENCY
11 ACTION PLAN THAT COMPLIES WITH 40 CFR 257.74(A) (3) AND WAS PREPARED
12 AND SEALED BY A REGISTERED PROFESSIONAL ENGINEER.

13 Sec. 11513. (1) A person shall not accept for disposal solid
14 waste or municipal solid waste incinerator ash that is not
15 generated in the county in which the disposal area is located
16 unless the acceptance of solid waste or municipal solid waste
17 incinerator ash that is not generated in the county is explicitly
18 authorized in the approved county solid waste management plan.

19 (2) SUBSECTION (1) DOES NOT APPLY TO COAL ASH THAT IS ACCEPTED
20 FOR DISPOSAL AT A CAPTIVE FACILITY THAT, AFTER THE EFFECTIVE DATE
21 OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, ACCEPTS ONLY
22 NONHAZARDOUS INDUSTRIAL WASTE GENERATED ONLY BY THE OWNER OF THE
23 LANDFILL OR COAL ASH IMPOUNDMENT OR ITS CORPORATE AFFILIATES.

24 (3) The department shall take action to enforce this section
25 within 30 days of obtaining knowledge of a violation of this
26 section.

27 Sec. 11515. (1) Upon receipt of a license application, the

1 department or a health officer or an authorized representative of a
 2 health officer shall inspect the site and determine if the proposed
 3 operation complies with this part and the rules promulgated under
 4 this part.

5 (2) The department shall not license a landfill facility **OR**
 6 **COAL ASH IMPOUNDMENT** operating without an approved hydrogeologic
 7 monitoring program until the department receives a hydrogeologic
 8 monitoring program and the results of the program. The department
 9 shall use this information in conjunction with other information
 10 required by this part or the rules promulgated under this part to
 11 determine a course of action regarding licensing of the facility
 12 consistent with section 4005 of subtitle D of the solid waste
 13 disposal act, title II of Public Law 89-272, 42 U.S.C.—**USC** 6945,
 14 and with this part and the rules promulgated pursuant to this part.
 15 In deciding a course of action, the department shall consider, at a
 16 minimum, the health hazards, environmental degradation, and other
 17 public or private alternatives. The department may ~~revoke~~ **DO ANY OF**
 18 **THE FOLLOWING:**

19 (A) **REVOKE** a license. ~~or issue~~

20 (B) **DENY A LICENSE TO A COAL ASH IMPOUNDMENT THAT HAS NOT BEEN**
 21 **PREVIOUSLY LICENSED UNDER THIS PART.**

22 (C) **ISSUE** a timetable or schedule to provide for compliance
 23 for the ~~facility or operation,~~ **LANDFILL OR COAL ASH IMPOUNDMENT,**
 24 specifying a schedule of remedial measures, including a sequence of
 25 actions or operations, which leads to compliance with this part
 26 within a reasonable time period but not ~~later~~ **MORE** than ~~December 2,~~
 27 ~~1987.~~ **1 YEAR.**

1 Sec. 11516. (1) The department shall conduct a consistency
2 review before making a final decision on a license application. The
3 department shall notify the clerk of the municipality in which the
4 disposal area is located and the applicant of its approval or
5 denial of a license application within 10 days after the final
6 decision is made.

7 (2) An operating license shall expire 5 years after the date
8 of issuance. An operating license may be renewed before expiration
9 upon payment of a renewal application fee specified in section
10 11512(8) if the licensee is in compliance with this part and the
11 rules promulgated under this part.

12 (3) The issuance of the operating license under this part
13 empowers the department or a health officer or an authorized
14 representative of a health officer to enter at any reasonable time,
15 pursuant to law, in or upon private or public property licensed
16 under this part for the purpose of inspecting or investigating
17 conditions relating to the storage, processing, or disposal of any
18 material.

19 (4) Except as otherwise provided in this subsection, the
20 department shall not issue an operating license for a new disposal
21 area within a planning area unless a solid waste management plan
22 for that planning area has been approved pursuant to sections 11536
23 and 11537 and unless the disposal area complies with and is
24 consistent with the approved solid waste management plan. ~~The~~
25 ~~department may issue an operating license for a disposal area~~
26 ~~designed to receive ashes produced in connection with the~~
27 ~~combustion of fossil fuels for electrical power generation~~ **THIS**

1 **SUBSECTION DOES NOT PROHIBIT THE ISSUANCE OF A LICENSE FOR A**
2 **CAPTIVE FACILITY THAT IS A COAL ASH IMPOUNDMENT OR A COAL ASH**
3 **LANDFILL** in the absence of an approved county solid waste
4 management plan, upon receipt of a letter of approval from
5 whichever county or counties, group of municipalities, or regional
6 planning agency has prepared or is preparing the county solid waste
7 management plan for that planning area under section 11533 and from
8 the municipality in which the disposal area is to be located.

9 (5) Issuance of an operating license by the department
10 authorizes the licensee to accept waste for disposal in certified
11 portions of the disposal area for which a bond was established
12 under section 11523 and, for type II landfills, for which financial
13 assurance was demonstrated under section 11523a. If the
14 construction of a portion of a landfill licensed under this section
15 is not complete at the time of license application, the owner or
16 operator of the landfill shall submit a certification under the
17 seal of a licensed professional engineer verifying that the
18 construction of that portion of the landfill has proceeded
19 according to the approved plans at least 60 days prior to the
20 anticipated date of waste disposal in that portion of the landfill.
21 If the department does not deny the certification within 60 days of
22 receipt, the owner or operator may accept waste for disposal in the
23 certified portion. In the case of a denial, the department shall
24 issue a written statement stating the reasons why the construction
25 or certification is not consistent with this part or rules
26 promulgated under this part or the approved plans.

27 Sec. 11518. (1) At the time a disposal area that is a sanitary

1 landfill is licensed, an instrument that imposes a restrictive
2 covenant upon the land involved shall be executed by all of the
3 owners of the tract of land upon which the landfill is to be
4 located and the department. If the land involved is state owned,
5 the state administrative board shall execute the covenant on behalf
6 of the state. The instrument imposing the restrictive covenant
7 shall be filed for record by the department or a health officer in
8 the office of the register of deeds of the county, or counties, in
9 which the facility is located. The covenant shall state that the
10 land described in the covenant has been or will be used as a
11 landfill and that neither the property owners, their servants,
12 agents, or employees, nor any of their heirs, successors, lessees,
13 or assigns shall engage in filling, grading, excavating, drilling,
14 or mining on the property during the first 50 years following
15 completion of the landfill without authorization of the department.
16 In giving authorization, the department shall consider the original
17 design, type of operation, material deposited, and the stage of
18 decomposition of the fill. Special exemption from this section may
19 be granted by the department if the lands involved are federal
20 lands or if contracts existing between the landowner and the
21 licensee on January 11, 1979 are not renegotiable.

22 (2) This part does not prohibit the department from conveying,
23 leasing, or permitting the use of state land for a solid waste
24 disposal area or a resource recovery facility as provided by
25 applicable state law.

26 **(3) WHEN A DISPOSAL AREA THAT IS A COAL ASH IMPOUNDMENT IS**
27 **LICENSED UNDER THIS PART, AN INSTRUMENT THAT IMPOSES A RESTRICTIVE**

1 COVENANT UPON THE LAND INVOLVED SHALL BE EXECUTED BY ALL OF THE
2 OWNERS OF THE TRACT OF LAND UPON WHICH THE IMPOUNDMENT IS LOCATED
3 OR IS TO BE LOCATED AND THE DEPARTMENT. IF THE LAND INVOLVED IS
4 OWNED BY THIS STATE, THE STATE ADMINISTRATIVE BOARD SHALL EXECUTE
5 THE COVENANT ON BEHALF OF THIS STATE. THE INSTRUMENT IMPOSING THE
6 RESTRICTIVE COVENANT SHALL BE FILED FOR RECORD BY THE DEPARTMENT OR
7 A HEALTH OFFICER IN THE OFFICE OF THE REGISTER OF DEEDS OF THE
8 COUNTY, OR COUNTIES, IN WHICH THE DISPOSAL AREA IS LOCATED. THE
9 COVENANT SHALL STATE THAT THE LAND DESCRIBED IN THE COVENANT HAS
10 BEEN OR WILL BE USED AS A COAL ASH IMPOUNDMENT AND THAT NEITHER THE
11 PROPERTY OWNERS, THEIR SERVANTS, AGENTS, OR EMPLOYEES, NOR ANY OF
12 THEIR HEIRS, SUCCESSORS, LESSEES, OR ASSIGNS SHALL ENGAGE IN
13 FILLING, GRADING, EXCAVATING, DRILLING, OR MINING ON THE PROPERTY
14 DURING THE FIRST 50 YEARS FOLLOWING COMPLETION OF THE IMPOUNDMENT
15 WITHOUT AUTHORIZATION OF THE DEPARTMENT. IN GIVING AUTHORIZATION,
16 THE DEPARTMENT SHALL CONSIDER THE ORIGINAL DESIGN, TYPE OF
17 OPERATION, MATERIAL DEPOSITED, AND ANY REMOVAL OF THE MATERIALS AS
18 PART OF THE CLOSURE OF THE IMPOUNDMENT.

19 (4) AN INDUSTRIAL WASTE LANDFILL MAY ACCEPT INDUSTRIAL WASTE
20 OF DIFFERENT TYPES AND FROM DIFFERENT GENERATORS, BUT SHALL NOT
21 ACCEPT HAZARDOUS WASTE GENERATED BY CONDITIONALLY EXEMPT SMALL
22 QUANTITY GENERATORS.

23 SEC. 11519A. (1) EXISTING COAL ASH IMPOUNDMENTS SHALL COMPLY
24 WITH R 299.4311 OF THE PART 115 RULES.

25 (2) THE OWNER OR OPERATOR OF AN EXISTING COAL ASH IMPOUNDMENT
26 SHALL ENSURE THAT THE IMPOUNDMENT IS NOT IN VIOLATION OF PART 31 OR
27 PART 55 AND DOES NOT CREATE A NUISANCE.

1 (3) PLACEMENT OF COAL ASH AND ASSOCIATED LIQUIDS INTO AN
2 EXISTING COAL ASH IMPOUNDMENT OR COAL ASH IMPOUNDMENT LICENSED
3 UNDER THIS PART IS PERMITTED AND SHALL BE CONDUCTED CONSISTENT WITH
4 GOOD MANAGEMENT PRACTICES AS DEFINED IN THIS SECTION.

5 (4) A LICENSE ISSUED BY THE DEPARTMENT FOR THE OPERATION OF A
6 COAL ASH IMPOUNDMENT OR A COAL ASH LANDFILL SHALL INCLUDE THE
7 FOLLOWING REQUIREMENTS CONSISTENT WITH 40 CFR PART 257, SUBPART D:

8 (A) RECORDKEEPING AND MAINTAINING AN OPERATING RECORD.

9 (B) MAKING THE OPERATING RECORD PUBLIC VIA THE INTERNET.

10 (C) DUST CONTROL.

11 (D) RUN-ON/RUN-OFF CONTROL.

12 (E) REGULAR AND ANNUAL INSPECTIONS.

13 (F) GROUNDWATER MONITORING.

14 (G) CORRECTIVE ACTION.

15 (H) CLOSURE AND POSTCLOSURE CARE.

16 (5) THE OWNER OR OPERATOR OF A LICENSED COAL ASH LANDFILL OR
17 COAL ASH IMPOUNDMENT SHALL DO BOTH OF THE FOLLOWING:

18 (A) MAINTAIN A FUGITIVE DUST PLAN THAT COMPLIES WITH 40 CFR
19 257.80 (B) AND WAS PREPARED AND SEALED BY A REGISTERED PROFESSIONAL
20 ENGINEER.

21 (B) ONCE EACH YEAR, PREPARE OR HAVE PREPARED A FUGITIVE DUST
22 CONTROL REPORT IN COMPLIANCE WITH 40 CFR 257.80 (C).

23 (6) THE OWNER OR OPERATOR OF A LICENSED COAL ASH LANDFILL
24 SHALL COMPLY WITH THE INSPECTION REQUIREMENTS OF 40 CFR 257.84, AS
25 APPLICABLE.

26 (7) THE OWNER OR OPERATOR OF A LICENSED COAL ASH IMPOUNDMENT
27 SHALL COMPLY WITH BOTH OF THE FOLLOWING:

1 (A) THE INSPECTION REQUIREMENTS OF 40 CFR 257.83, AS
2 APPLICABLE.

3 (B) THE REQUIREMENTS OF 40 CFR 257.74(A) (2) RELATING TO
4 PERIODIC HAZARD POTENTIAL CLASSIFICATION ASSESSMENTS. THE
5 ASSESSMENT REPORTS SHALL BE PREPARED AND SEALED BY A REGISTERED
6 PROFESSIONAL ENGINEER.

7 (8) THE OWNER OR OPERATOR OF A LICENSED COAL ASH IMPOUNDMENT
8 SHALL DO ALL OF THE FOLLOWING:

9 (A) MAINTAIN ON SITE A HISTORY OF CONSTRUCTION THAT COMPLIES
10 WITH 40 CFR 257.74(C) (1) (i) TO (xi) .

11 (B) COMPLY WITH 40 CFR 257.74(D) REGARDING PERIODIC STRUCTURAL
12 STABILITY ASSESSMENTS. THE ASSESSMENT REPORTS SHALL BE CERTIFIED BY
13 A PROFESSIONAL ENGINEER PURSUANT TO R 299.4910(9) OF THE PART 115
14 RULES.

15 (C) COMPLY WITH 40 CFR 257.74(E) REGARDING PERIODIC SAFETY
16 FACTOR ASSESSMENTS. THE ASSESSMENT REPORTS SHALL BE CERTIFIED BY A
17 PROFESSIONAL ENGINEER PURSUANT TO R 299.4910(9) OF THE PART 115
18 RULES.

19 (9) THE OWNER OR OPERATOR OF A LICENSED COAL ASH IMPOUNDMENT
20 OR LICENSED COAL ASH LANDFILL SHALL MAINTAIN BOTH OF THE FOLLOWING:

21 (A) AN UP-TO-DATE OPERATING RECORD IN COMPLIANCE WITH 40 CFR
22 257.105.

23 (B) AN UP-TO-DATE PUBLICLY ACCESSIBLE INTERNET SITE IN
24 COMPLIANCE WITH 40 CFR 257.107.

25 (10) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
26 ACT THAT ADDED THIS SUBSECTION, THE OWNER OR OPERATOR OF AN
27 EXISTING COAL ASH LANDFILL SHALL ASSESS WHETHER THE LANDFILL IS

1 LOCATED IN AN UNSTABLE AREA AS DEFINED IN R 299.4409 OF THE PART
2 115 RULES. IF THE OWNER OR OPERATOR DETERMINES THAT THE LANDFILL OR
3 UNIT IS LOCATED IN AN UNSTABLE AREA, THE OWNER OR OPERATOR SHALL
4 CEASE PLACING COAL ASH INTO THE LANDFILL OR UNIT AND PROCEED TO
5 CLOSE THE LANDFILL OR UNIT IN COMPLIANCE WITH THIS PART AND THE
6 RULES PROMULGATED UNDER THIS PART.

7 (11) IF THE DETECTION MONITORING REQUIRED IN SECTIONS
8 11511A(3) AND 11512A(1) CONFIRMS A STATISTICALLY SIGNIFICANT
9 INCREASE OVER BACKGROUND FOR 1 OR MORE OF THE CONSTITUENTS LISTED
10 IN SECTION 11511A(3), THE OWNER AND OPERATOR OF A COAL ASH LANDFILL
11 OR COAL ASH IMPOUNDMENT SHALL COMPLY WITH R 299.4440 AND 299.4441
12 OF THE PART 115 RULES, INCLUDING, AS APPLICABLE, CONDUCTING
13 ASSESSMENT MONITORING AND PREPARATION OF A RESPONSE ACTION PLAN IN
14 COMPLIANCE WITH R 299.4442 OF THE PART 115 RULES. THE CONSTITUENTS
15 TO BE MONITORED IN THE ASSESSMENT MONITORING PROGRAM SHALL INCLUDE
16 THOSE LISTED IN SECTION 11511A(3) AND ALL OF THE FOLLOWING:

- 17 (A) ANTIMONY.
- 18 (B) ARSENIC.
- 19 (C) BARIUM.
- 20 (D) BERYLLIUM.
- 21 (E) CADMIUM.
- 22 (F) CHROMIUM.
- 23 (G) COBALT.
- 24 (H) COPPER.
- 25 (I) LEAD.7
- 26 (J) LITHIUM.
- 27 (K) NICKEL.

1 (I) MERCURY.

2 (M) MOLYBDENUM.

3 (N) SELENIUM.

4 (O) SILVER.

5 (P) THALLIUM.

6 (Q) VANADIUM.

7 (R) ZINC.

8 (S) RADIUM 226 AND 228 COMBINED.

9 (12) THE CONSTITUENTS LISTED IN THIS SECTION SHALL BE ANALYZED
10 BY METHODS SPECIFIED IN "STANDARD METHODS FOR THE EXAMINATION OF
11 WATER AND WASTEWATER, 19TH EDITION", PUBLISHED BY THE UNITED STATES
12 ENVIRONMENTAL PROTECTION AGENCY, OR BY OTHER METHODS APPROVED BY
13 THE DIRECTOR OR HIS OR HER DESIGNEE.

14 (13) IF THE OWNER OR OPERATOR OF A COAL ASH LANDFILL OR COAL
15 ASH IMPOUNDMENT IS OBLIGATED TO PREPARE A RESPONSE ACTION PLAN, THE
16 OWNER OR OPERATOR SHALL COMPLY WITH R 299.4442 TO R 299.4445 OF THE
17 PART 115 RULES, AS APPLICABLE.

18 (14) THE OWNER OR OPERATOR OF A COAL ASH LANDFILL SHALL PLACE
19 LANDFILL COVER MATERIALS THAT ARE DESCRIBED IN R 299.4304 OF THE
20 PART 115 RULES OVER THE ENTIRE SURFACE OF EACH PORTION OF THE FINAL
21 LIFT NOT MORE THAN 6 MONTHS AFTER THE FINAL PLACEMENT OF COAL ASH
22 WITHIN THE LANDFILL OR LANDFILL UNIT.

23 (15) THE OWNER OR OPERATOR OF A COAL ASH IMPOUNDMENT SHALL
24 BEGIN TO IMPLEMENT CLOSURE AS DESCRIBED IN R 299.4309(7) OF THE
25 PART 115 RULES NOT MORE THAN 6 MONTHS AFTER THE FINAL PLACEMENT OF
26 COAL ASH WITHIN THE IMPOUNDMENT AND SHALL DILIGENTLY PURSUE THE
27 CLOSURE. THE CLOSURE SHALL BE COMPLETED IN COMPLIANCE WITH 40 CFR

1 257.102(F) (1) AND (2) .

2 (16) COAL ASH IMPOUNDMENTS OR COAL ASH LANDFILLS MAY BE CLOSED
3 AS A TYPE III LANDFILL PURSUANT TO THE APPLICABLE RULES OR BY
4 REMOVAL OF COAL ASH FROM THE IMPOUNDMENT AS DESCRIBED IN THIS PART .

5 (17) IF A COAL ASH IMPOUNDMENT IS CLOSED BY THE DATE THAT IS 2
6 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
7 THIS SECTION AND THE DEPARTMENT ACCEPTS THE CERTIFICATION OF THE
8 CLOSURE, THE OWNER IS NOT REQUIRED TO PROVIDE FINANCIAL ASSURANCE
9 UNDER SECTION 11523 OR PAY INTO A PERPETUAL CARE FUND UNDER SECTION
10 11525 .

11 (18) CLOSURE BY REMOVAL OF COAL ASH UNDER SUBSECTION (14) IS
12 COMPLETE WHEN EITHER OF THE FOLLOWING REQUIREMENTS ARE MET:

13 (A) THE OWNER OR OPERATOR CERTIFIES COMPLIANCE WITH THE
14 REQUIREMENTS OF 40 CFR 257.102(C) .

15 (B) THE OWNER OR OPERATOR CERTIFIES THAT TESTING CONFIRMS THAT
16 CONSTITUENT CONCENTRATIONS REMAINING IN THE COAL ASH IMPOUNDMENT OR
17 LANDFILL UNIT AND ANY CONCENTRATIONS OF SOIL OR GROUNDWATER
18 AFFECTED BY RELEASES THEREFROM DO NOT EXCEED THE APPLICABLE
19 STANDARDS ADOPTED BY THE DEPARTMENT PURSUANT TO SECTION 20120A AND
20 THE DEPARTMENT ACCEPTS THE CERTIFICATION OR, IF THE CONSTITUENT
21 CONCENTRATIONS DO EXCEED THOSE STANDARDS, THE DEPARTMENT HAS
22 APPROVED A REMEDIAL ACTION PLAN CONSISTENT WITH R 299.4444 AND R
23 299.4445 OF THE PART 115 RULES .

24 (19) UPON COMPLETION OF THE CLOSURE BY REMOVAL UNDER
25 SUBSECTION (18), THE FINANCIAL ASSURANCE UNDER SECTION 11523 AND
26 PERPETUAL CARE FUND UNDER SECTION 11525 SHALL BE TERMINATED, THE
27 OWNER OR OPERATOR IS NOT REQUIRED TO PROVIDE FINANCIAL ASSURANCE OR

1 CONTRIBUTE TO A PERPETUAL CARE FUND, AND ANY CLAIM TO THE ASSURANCE
2 OR FUND BY THE DEPARTMENT IS TERMINATED AND RELEASED. THE
3 TERMINATION AND RELEASE DO NOT IMPAIR THE DEPARTMENT'S AUTHORITY TO
4 REQUIRE, WHETHER UPON COMPLETION OF CLOSURE UNDER SECTION
5 11519A(18) (B) OR SUBSEQUENTLY, FINANCIAL ASSURANCE FOR CORRECTIVE
6 ACTION AS PROVIDED UNDER THIS ACT.

7 Sec. 11523. (1) The department shall not issue a license to
8 operate a disposal area unless the applicant has filed, as a part
9 of the application for a license, evidence of the following
10 financial assurance:

11 (a) Financial assurance established for a type III landfill or
12 a preexisting unit at a type II landfill and until April 9, 1997,
13 existing and new type II landfills shall be in the form of a bond
14 in an amount equal to \$20,000.00 per acre of licensed landfill
15 within the solid waste boundary. However, the amount of the bond
16 shall not be less than \$20,000.00 or more than \$1,000,000.00. Each
17 bond shall provide assurance for the maintenance of the finished
18 landfill site for a period of 30 years after the landfill or any
19 approved portion is completed. In addition to this bond, a
20 perpetual care fund shall be maintained under section 11525.

21 (b) Financial assurance for a type II landfill that is an
22 existing unit or a new unit shall be in an amount equal to the
23 cost, in current dollars, of hiring a third party, to conduct
24 closure, postclosure maintenance and monitoring, and if necessary,
25 corrective action. An application for a type II landfill that is an
26 existing unit or new unit shall demonstrate financial assurance in
27 accordance with section 11523a.

1 (C) FINANCIAL ASSURANCE ESTABLISHED FOR AN EXISTING COAL ASH
2 IMPOUNDMENT SHALL BE IN THE FORM OF A BOND IN AN AMOUNT EQUAL TO
3 \$20,000.00 PER ACRE WITHIN THE IMPOUNDMENT BOUNDARY. HOWEVER, THE
4 AMOUNT OF THE BOND SHALL NOT BE LESS THAN \$20,000.00 OR MORE THAN
5 \$1,000,000.00. THE BOND SHALL PROVIDE ASSURANCE FOR THE MAINTENANCE
6 OF THE FINISHED COAL ASH IMPOUNDMENT FOR A PERIOD OF 30 YEARS AFTER
7 THE COAL ASH IMPOUNDMENT OR ANY APPROVED PORTION IS COMPLETED. IN
8 ADDITION TO THE BOND, A PERPETUAL CARE FUND SHALL BE MAINTAINED
9 UNDER SECTION 11525.

10 (D) ~~(e)~~—Financial assurance established for a solid waste
11 transfer facility, incinerator, processing plant, other solid waste
12 handling or disposal facility, or a combination of these utilized
13 in the disposal of solid waste shall be in the form of a bond in an
14 amount equal to 1/4 of 1% of the construction cost of the facility,
15 but shall not be less than \$4,000.00, and shall be continued in
16 effect for a period of 2 years after the disposal area is closed.

17 (2) The owner or operator of a landfill may post a cash bond
18 with the department instead of other bonding mechanisms to fulfill
19 the remaining financial assurance requirements of this section. An
20 owner or operator of a disposal area who elects to post cash as a
21 bond shall accrue interest on that bond at the annual rate of 6%,
22 to be accrued quarterly, except that the interest rate payable to
23 an owner or operator shall not exceed the rate of interest accrued
24 on the state common cash fund for the quarter in which an accrual
25 is determined. Interest shall be paid to the owner or operator upon
26 release of the bond by the department. Any interest greater than 6%
27 shall be deposited in the state treasury to the credit of the

1 general fund and shall be appropriated to the department to be used
2 by the department for administration of this part.

3 (3) An owner or operator of a disposal area that is not a
4 landfill who has accomplished closure in a manner approved by the
5 department and in accordance with this part and the rules
6 promulgated under this part, may request a 50% reduction in the
7 bond during the 2-year period after closure. At the end of the 2-
8 year period, the owner or operator may request that the department
9 terminate the bond. The department shall approve termination of the
10 bond within 60 days after the request is made if all waste and
11 waste residues have been removed from the disposal area and closure
12 is certified.

13 (4) The department may utilize a bond required under this
14 section for the closure and postclosure monitoring and maintenance
15 of a disposal area if the owner or operator fails to comply with
16 the closure and postclosure monitoring and maintenance requirements
17 of this part and the rules promulgated under this part to the
18 extent necessary to correct such violations. At least 7 days before
19 utilizing the bond, the department shall issue a notice of
20 violation or other order that alleges violation of this part or
21 rules promulgated under this part and provide an opportunity for a
22 hearing. This subsection does not apply to a perpetual care fund
23 bond.

24 (5) Under the terms of a surety bond, letter of credit,
25 insurance policy, or perpetual care fund bond, the issuing
26 institution shall notify both the department and the owner or
27 operator at least 120 days before the expiration date or any

1 cancellation of the bond. If the owner or operator does not extend
2 the effective date of the bond, or establish alternate financial
3 assurance within 90 days after receipt of an expiration or
4 cancellation notice from the issuing institution, all of the
5 following apply:

6 (a) The department may draw on the bond.

7 (b) In the case of a perpetual care fund bond, the issuing
8 institution shall deposit the proceeds into the standby trust or
9 escrow account unless the department agrees to the expiration or
10 cancellation of the perpetual care fund bond.

11 (6) The department shall not issue a construction permit or a
12 new license to operate a disposal area to an applicant that is the
13 subject of a bankruptcy action commenced under title 11 of the
14 United States Code, 11 USC 101 to 1532, or any other predecessor or
15 successor statute.

16 (7) A person required under this section to provide financial
17 assurance in the form of a bond for a landfill may request a
18 reduction in the bond based upon the amount of the perpetual care
19 fund established under section 11525. A person requesting a bond
20 reduction shall do so on a form consistent with this part and
21 provided by the department. The department shall grant this request
22 unless there are sufficient grounds for denial and those reasons
23 are provided in writing. The department shall grant or deny a
24 request for a reduction of the bond within 60 days after the
25 request is made. If the department grants a request for a reduced
26 bond, the department shall require a bond in an amount such that
27 for type III landfills, and type II landfills that are preexisting

1 units, the amount of the perpetual care fund plus the amount of the
2 reduced bond equals the maximum amount required in a perpetual care
3 fund in section 11525(2).

4 (8) The department shall release the bond required by this
5 section if the amount of the perpetual care fund exceeds the amount
6 of the financial assurance required under subsection (1).

7 (9) Prior to closure of a landfill, if money is disbursed from
8 the perpetual care fund, then the department may require a
9 corresponding increase in the amount of bonding required to be
10 provided if necessary to meet the requirements of this section.

11 (10) If an owner or operator of a disposal area fulfills the
12 financial assurance requirements of this part by obtaining a bond,
13 including, but not limited to, a perpetual care fund bond, and the
14 surety company, insurer, trustee, bank, or financial or other
15 institution that issued or holds the bond becomes the subject of a
16 bankruptcy action or has its authority to issue or hold the bond or
17 to act as an escrow agent or trustee suspended or revoked, the
18 owner or operator shall, within 60 days after receiving notice of
19 that event, establish alternate financial assurance under this
20 part.

21 Sec. 11523a. (1) Effective April 9, 1997, the department shall
22 not issue a license to operate a type II landfill unless the
23 applicant demonstrates that for any new unit or existing unit at
24 the facility, the combination of the perpetual care fund
25 established under section 11525, bonds, and the financial
26 capability of the applicant as evidenced by a financial test,
27 provides financial assurance in an amount not less than that

1 required by this section. An applicant may utilize a financial test
2 for an amount up to, but not exceeding, 70% of the closure,
3 postclosure, and corrective action cost estimate. **FOR APPLICATIONS**
4 **FOR A LICENSE TO OPERATE SUBMITTED TO THE DEPARTMENT AFTER THE DATE**
5 **THAT IS 2 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
6 **ADDED SECTION 11511A, AN APPLICANT THAT DEMONSTRATES THAT IT MEETS**
7 **THE REQUIREMENTS OF R 299.9709 OF THE MICHIGAN ADMINISTRATIVE CODE**
8 **MAY UTILIZE THE FINANCIAL TEST UNDER THAT RULE FOR AN AMOUNT NOT**
9 **EXCEEDING 95% OF THE CLOSURE, POSTCLOSURE, AND CORRECTIVE ACTION**
10 **COST ESTIMATE.**

11 (2) An applicant may demonstrate compliance with this section
12 by submitting evidence, with a form consistent with this part and
13 provided by the department, that the applicant has financial
14 assurance for any existing unit or new unit in an amount equal to
15 or greater than the sum of the following standardized costs:

16 (a) A standard closure cost estimate. The standard closure
17 cost estimate shall be based upon the sum of the following costs in
18 1996 dollars, adjusted for inflation and partial closures, if any,
19 as specified in subsections (4) and (5):

20 (i) A base cost of \$20,000.00 per acre to construct a
21 compacted soil final cover using on-site material.

22 (ii) A supplemental cost of \$20,000.00 per acre, to install a
23 synthetic cover liner, if required by rules under this part.

24 (iii) A supplemental cost of \$5,000.00 per acre, if low
25 permeability soil must be transported from off-site to construct
26 the final cover or if a bentonite geocomposite liner is used
27 instead of low permeability soil in a composite cover.

1 (iv) A supplemental cost of \$5,000.00 per acre, to construct a
2 passive gas collection system in the final cover, unless an active
3 gas collection system has been installed at the facility.

4 (b) A standard postclosure cost estimate. The standard
5 postclosure cost estimate shall be based upon the sum of the
6 following costs, adjusted for inflation as specified in section
7 11525(2):

8 (i) A final cover maintenance cost of \$200.00 per acre per
9 year.

10 (ii) A leachate disposal cost of \$100.00 per acre per year.

11 (iii) A leachate transportation cost of \$1,000.00 per acre per
12 year, if leachate is required to be transported off-site for
13 treatment.

14 (iv) A groundwater monitoring cost of \$1,000.00 per monitoring
15 well per year.

16 (v) A gas monitoring cost of \$100.00 per monitoring point per
17 year, for monitoring points used to detect landfill gas at or
18 beyond the facility property boundary.

19 (c) The corrective action cost estimate, if any. The
20 corrective action cost estimate shall be a detailed written
21 estimate, in current dollars, of the cost of hiring a third party
22 to perform corrective action in accordance with this part.

23 (3) Instead of using some or all of the standardized costs
24 specified in subsection (2), an applicant may estimate the site
25 specific costs of closure or postclosure maintenance and
26 monitoring. A site specific cost estimate shall be a written
27 estimate, in current dollars, of the cost of hiring a third party

1 to perform the activity. For the purposes of this subsection, a
2 parent corporation or a subsidiary of the owner or operator is not
3 a third party. Site specific cost estimates shall be based on the
4 following:

5 (a) For closure, the cost to close the largest area of the
6 landfill ever requiring a final cover at any time during the active
7 life, when the extent and manner of its operation would make
8 closure the most expensive, in accordance with the approved closure
9 plan. The closure cost estimate may not incorporate any salvage
10 value that may be realized by the sale of structures, land,
11 equipment, or other assets associated with the facility at the time
12 of final closure.

13 (b) For postclosure, the cost to conduct postclosure
14 maintenance and monitoring in accordance with the approved
15 postclosure plan for the entire postclosure period.

16 (4) The owner or operator of a landfill subject to this
17 section shall, during the active life of the landfill and during
18 the postclosure care period, annually adjust the financial
19 assurance cost estimates and corresponding amount of financial
20 assurance for inflation. Cost estimates shall be adjusted for
21 inflation by multiplying the cost estimate by an inflation factor
22 derived from the most recent United States ~~department~~ **DEPARTMENT** of
23 the ~~interior, bureau~~ **INTERIOR, BUREAU** of ~~reclamation~~ **RECLAMATION**
24 composite index published by the United States ~~department~~
25 **DEPARTMENT** of ~~commerce~~ **COMMERCE** or another index that is more
26 representative of the costs of closure and postclosure monitoring
27 and maintenance as determined appropriate by the department. The

1 owner or operator shall document the adjustment on a form
2 consistent with this part as prepared by the department and shall
3 place the documentation in the operating record of the facility.

4 (5) The owner or operator of a landfill subject to this
5 section may request that the department authorize a reduction in
6 the approved cost estimates and corresponding financial assurance
7 for the landfill by submitting a form consistent with this part and
8 provided by the department certifying completion of any of the
9 following activities:

10 (a) Partial closure of the landfill. The current closure cost
11 estimate for partially closed portions of a landfill unit may be
12 reduced by 80%, if the maximum waste slope on the unclosed portions
13 of the unit does not exceed 25%. The percentage of the cost
14 estimate reduction approved by the department for the partially
15 closed portion shall be reduced 1% for every 1% increase in the
16 slope of waste over 25% in the active portion. An owner or operator
17 requesting a reduction in financial assurance for partial closure
18 shall enclose with the request a certification under the seal of a
19 licensed professional engineer that certifies both of the
20 following:

21 (i) That a portion of the licensed landfill unit has reached
22 final grades and has had a final cover installed in compliance with
23 the approved closure plan and rules promulgated under this part.

24 (ii) The maximum slope of waste in the active portion of the
25 landfill unit at the time of partial closure.

26 (b) Final closure of the landfill. An owner or operator
27 requesting a cost estimate reduction for final closure shall submit

1 a certification under the seal of a licensed professional engineer
2 that closure of that landfill unit has been fully completed in
3 accordance with the approved closure plan for the landfill. Within
4 60 days of receiving a certification under this subsection, the
5 department shall perform a consistency review of the submitted
6 certification and do 1 of the following:

7 (i) Approve the certification and notify the owner or operator
8 that he or she may reduce the closure cost estimate to zero.

9 (ii) Disapprove the certification and provide the owner or
10 operator with a detailed written statement of the reasons why the
11 department has determined that closure certification has not been
12 conducted in accordance with this part, the rules promulgated under
13 this part, or an approved closure plan.

14 (c) Postclosure maintenance and monitoring. The owner or
15 operator of a landfill unit who has completed final closure of the
16 unit may request a reduction in the postclosure cost estimate and
17 corresponding financial assurance for 1 year or more of postclosure
18 maintenance and monitoring if the landfill has been monitored and
19 maintained in accordance with the approved postclosure plan. The
20 department shall, within 60 days of receiving a cost estimate
21 reduction request grant written approval or issue a written denial
22 stating the reason for denial. The department shall grant the
23 request and the owner or operator may reduce the postclosure cost
24 estimate to reflect the number of years remaining in the
25 postclosure period unless the department denies the request and the
26 written denial states that the owner or operator has not performed
27 the specific tasks consistent with this part, rules promulgated

1 under this part, and an approved plan.

2 (6) The owner or operator of a landfill subject to this
3 section may request a reduction in the amount of one or more of the
4 financial assurance mechanisms in place. If the combined value of
5 the remaining financial assurance mechanisms equals the amount
6 required under this section, the department shall approve the
7 request.

8 (7) An owner or operator requesting that the department
9 approve a financial assurance reduction under subsection (5) or (6)
10 shall do so on a form consistent with this part and provided by the
11 department. The department shall grant written approval or, within
12 60 days of receiving a financial assurance reduction request, issue
13 a written denial stating the reason for the denial.

14 Sec. 11523b. (1) The owner or operator of a landfill **OR COAL**
15 **ASH IMPOUNDMENT** may establish a trust fund or escrow account to
16 fulfill the requirements of sections 11523 and 11523a. The trust
17 fund or escrow account shall be executed on a form provided by the
18 department.

19 (2) Payments into a trust fund or escrow account shall be made
20 annually over the term of the first operating license issued after
21 the effective date of this section. The first payment into a trust
22 fund or escrow account shall be made prior to licensure and shall
23 be at least equal to the portion of the financial assurance
24 requirement to be covered by the trust fund or escrow account
25 divided by the term of the operating license. Subsequent payments
26 shall be equal to the remaining financial assurance requirement
27 divided by the number of years remaining until the license expires.

1 (3) If the owner or operator of a landfill **OR COAL ASH**
2 **IMPOUNDMENT** establishes a trust fund or escrow account after having
3 used one or more alternate forms of financial assurance, the
4 initial payment into the trust fund or escrow account shall be at
5 least the amount the fund would contain if the fund were
6 established initially and annual payments made according to
7 subsection (2).

8 (4) All earnings and interest from a trust fund or escrow
9 account shall be credited to the fund or account. However, the
10 custodian may be compensated for reasonable fees and costs for his
11 or her responsibilities as custodian. The custodian shall ensure
12 the filing of all required tax returns for which the trust fund or
13 escrow account is liable and shall disburse funds from earnings to
14 pay lawfully due taxes owed by the trust fund or escrow account,
15 without permission of the department.

16 (5) The custodian shall annually, 30 days preceding the
17 anniversary date of establishment of the fund, furnish to the owner
18 or operator and to the department a statement confirming the value
19 of the fund or account as of the end of that month.

20 (6) The owner or operator may request that the department
21 authorize the release of funds from a trust fund or escrow account.
22 The department shall grant the request if the owner or operator
23 demonstrates that the value of the fund or account exceeds the
24 owner's or operator's financial assurance obligation. A payment or
25 disbursement from the fund or account shall not be made without the
26 prior written approval of the department.

27 (7) The owner or operator shall receive all interest or

1 earnings from a trust fund or escrow account upon its termination.

2 (8) ~~For purposes of~~ **AS USED IN** this section, ~~the term~~
 3 "custodian" means the trustee of a trust fund or escrow agent of an
 4 escrow account.

5 Sec. 11525. (1) The owner or operator of a landfill **OR COAL**
 6 **ASH IMPOUNDMENT** shall establish and maintain a perpetual care fund
 7 for a period of 30 years after final closure of the landfill **OR**
 8 **COAL ASH IMPOUNDMENT** as specified in this section. A perpetual care
 9 fund may be established as a trust, an escrow account, or a
 10 perpetual care fund bond and may be used to demonstrate financial
 11 assurance for type II **AND TYPE III** landfills **AND COAL ASH**
 12 **IMPOUNDMENTS** under ~~section~~**SECTIONS** 11523 and ~~section~~11523a.

13 (2) Except as otherwise provided in this section, the owner or
 14 operator of a landfill shall increase the amount of his or her
 15 perpetual care fund 75 cents for each ton or portion of a ton or 25
 16 cents for each cubic yard or portion of a cubic yard of solid waste
 17 that is disposed of in the landfill after June 17, 1990 until the
 18 fund reaches the maximum required fund amount. As of July 1, 1996,
 19 the maximum required fund amount **FOR A LANDFILL OR COAL ASH**
 20 **IMPOUNDMENT** is \$1,156,000.00. This amount shall be annually
 21 adjusted for inflation and rounded to the nearest thousand. The
 22 department shall adjust the maximum required fund amount for
 23 inflation annually by multiplying the amount by an inflation factor
 24 derived from the most recent ~~bureau~~**UNITED STATES DEPARTMENT OF THE**
 25 **INTERIOR, BUREAU** of ~~reclamation~~**RECLAMATION** composite index
 26 published by the United States ~~department~~**DEPARTMENT** of ~~commerce~~
 27 **COMMERCE** or another index more representative of the costs of

1 closure and postclosure monitoring and maintenance as determined
 2 appropriate by the department. Increases to the amount of a
 3 perpetual care fund required under this subsection shall be
 4 calculated based on solid waste disposed of in the landfill as of
 5 the end of the state fiscal year and shall be made within 30 days
 6 after the end of each state fiscal year.

7 (3) The owner or operator of a landfill **OR COAL ASH**
 8 **IMPOUNDMENT** that is used for the disposal of the following
 9 materials shall increase the amount of the perpetual care fund 7.5
 10 cents for each ton or cubic yard or portion of a ton or cubic yard
 11 of the following materials that are disposed of in the landfill
 12 ~~after June 17, 1990:~~**OR COAL ASH IMPOUNDMENT AFTER THE EFFECTIVE**
 13 **DATE OF THE AMENDATORY ACT THAT ADDED SECTION 11511A UNTIL THE FUND**
 14 **REACHES THE MAXIMUM REQUIRED FUND AMOUNT UNDER SUBSECTION (2):**

15 (a) Coal ash, wood ash, or cement kiln dust that is disposed
 16 of in a landfill that is used only for the disposal of coal ash,
 17 wood ash, or cement kiln dust, or a combination of these materials,
 18 or that is permanently segregated in a landfill.

19 (b) Wastewater treatment sludge or sediments from wood pulp or
 20 paper producing industries that is disposed of in a landfill that
 21 is used only for the disposal of wastewater treatment sludge and
 22 sediments from wood pulp or paper producing industries, or that is
 23 permanently segregated in a landfill.

24 (c) Foundry sand or other material that is approved by the
 25 department for use as daily cover at an operating landfill, that is
 26 disposed of in a landfill that is used only for the disposal of
 27 foundry sand, or that is permanently segregated in a landfill.

1 (4) The owner or operator of a landfill that is used only for
2 the disposal of a mixture of 2 or more of the materials described
3 in subsection (3) (a) to (c) or in which a mixture of 2 or more of
4 these materials are permanently segregated shall increase the
5 amount of the perpetual care fund 7.5 cents for each ton or cubic
6 yard or portion of a ton or cubic yard of these materials that are
7 disposed of in the landfill after July 1, 1996.

8 (5) The amount of a perpetual care fund is not required to be
9 increased for materials that are regulated under part 631.

10 (6) The owner or operator of a landfill may increase the
11 amount of the perpetual care fund above the amount otherwise
12 required by this section at his or her discretion.

13 (7) The custodian of a perpetual care fund trust or escrow
14 account shall be a bank or other financial institution that has the
15 authority to act as a custodian and whose account operations are
16 regulated and examined by a federal or state agency. Until the
17 perpetual care fund trust or escrow account reaches the maximum
18 required fund amount, the custodian of a perpetual care fund trust
19 or escrow account shall credit any interest and earnings of the
20 perpetual care fund trust or escrow account to the perpetual care
21 fund trust or escrow account. After the perpetual care fund trust
22 or escrow account reaches the maximum required fund amount, any
23 interest and earnings shall be distributed as directed by the owner
24 or operator. The agreement governing the operation of the perpetual
25 care fund trust or escrow account shall be executed on a form
26 consistent with this part and provided by the department. The
27 custodian may be compensated from the fund for reasonable fees and

1 costs incurred for his or her responsibilities as custodian. The
2 custodian of a perpetual care fund trust or escrow account shall
3 make an accounting to the department within 30 days following the
4 close of each state fiscal year.

5 (8) The custodian of a perpetual care fund shall not disburse
6 any funds to the owner or operator of a landfill **OR COAL ASH**
7 **IMPOUNDMENT** for the purposes of the perpetual care fund except upon
8 the prior written approval of the department. However, the
9 custodian shall ensure the filing of all required tax returns for
10 which the perpetual care fund is liable and shall disburse funds to
11 pay lawfully due taxes owed by the perpetual care fund without
12 permission of the department. The owner or operator of the landfill
13 **OR COAL ASH IMPOUNDMENT** shall provide notice of requests for
14 disbursement and denials and approvals to the custodian of the
15 perpetual care fund. Requests for disbursement from a perpetual
16 care fund shall be submitted not more frequently than semiannually.
17 The owner or operator of a landfill **OR COAL ASH IMPOUNDMENT** may
18 request disbursement of funds from a perpetual care fund whenever
19 the amount of money in the fund exceeds the maximum required fund
20 amount. The department shall approve the disbursement if the total
21 amount of financial assurance maintained meets the requirements of
22 sections 11523 and 11523a. As used in this subsection, "maximum
23 required fund amount" means:

24 (a) For those landfills **OR COAL ASH IMPOUNDMENTS** containing
25 only those materials specified in subsection (3), an amount equal
26 to 1/2 of the maximum required fund amount specified in subsection
27 (2).

1 (b) For all other landfills, an amount equal to the maximum
2 required fund amount specified in subsection (2).

3 (9) If the owner or operator of a landfill **OR COAL ASH**
4 **IMPOUNDMENT** refuses or fails to conduct closure, postclosure
5 monitoring and maintenance, or corrective action as necessary to
6 protect the public health, safety, or welfare, or the environment
7 or fails to request the disbursement of money from a perpetual care
8 fund when necessary to protect the public health, safety, or
9 welfare, or the environment, or fails to pay the solid waste
10 management program administration fee or the surcharge required
11 under section 11525a, then the department may draw on the perpetual
12 care fund and may expend the money for closure, postclosure
13 monitoring and maintenance, and corrective action, as necessary.
14 The department may draw on a perpetual care fund for administrative
15 costs associated with actions taken under this subsection.

16 (10) Upon approval by the department of a request to terminate
17 financial assurance for a landfill **OR COAL ASH IMPOUNDMENT** under
18 section 11525b, any money in the perpetual care fund for that
19 landfill **OR COAL ASH IMPOUNDMENT** shall be disbursed by the
20 custodian to the owner of the landfill **OR COAL ASH IMPOUNDMENT**
21 unless a contract between the owner and the operator ~~of the~~
22 ~~landfill~~ provides otherwise.

23 (11) The owner of a landfill **OR COAL ASH IMPOUNDMENT** shall
24 provide notice to the custodian of the perpetual care fund for that
25 landfill **OR COAL ASH IMPOUNDMENT** if there is a change of ownership
26 of the landfill. The custodian shall maintain records of ownership
27 of a landfill **OR COAL ASH IMPOUNDMENT** during the period of

1 existence of the perpetual care fund.

2 (12) This section does not relieve an owner or operator of a
3 landfill **OR COAL ASH IMPOUNDMENT** of any liability that he or she
4 may have under this part or as otherwise provided by law.

5 (13) This section does not create a cause of action at law or
6 in equity against a custodian of a perpetual care fund other than
7 for errors or omissions related to investments, accountings,
8 disbursements, filings of required tax returns, and maintenance of
9 records required by this section or the applicable perpetual care
10 fund.

11 (14) As used in this section, "custodian" means the trustee or
12 escrow agent of any of the following:

13 (a) A perpetual care fund that is established as a trust or
14 escrow account.

15 (b) A standby trust or escrow account for a perpetual care
16 fund bond.

17 (15) A perpetual care fund that is established as a trust or
18 escrow account may be replaced with a perpetual care fund that is
19 established as a perpetual care fund bond that complies with this
20 section. Upon such replacement, the director shall authorize the
21 custodian of the trust or escrow account to disburse the money in
22 the trust or escrow account to the owner of the landfill **OR COAL**
23 **ASH IMPOUNDMENT** unless a contract between the owner and operator ~~of~~
24 ~~the landfill~~ specifies otherwise.

25 (16) An owner or operator of a landfill **OR COAL ASH**
26 **IMPOUNDMENT** who uses a perpetual care fund bond to satisfy the
27 requirements of this section shall also establish a standby trust

1 or escrow account. All payments made under the terms of the
2 perpetual care fund bond shall be deposited by the custodian
3 directly into the standby trust or escrow account in accordance
4 with instructions from the director. The standby trust or escrow
5 account must meet the requirements for a trust or escrow account
6 established as a perpetual care fund under subsection (1), except
7 that until the standby trust or escrow account is funded pursuant
8 to the requirements of this subsection, the following are not
9 required:

10 (a) Payments into the standby trust or escrow account as
11 specified in subsection (2).

12 (b) Annual accounting valuations as required in subsection
13 (7).

14 Sec. 11525a. (1) The owner or operator of a landfill **OR COAL**
15 **ASH IMPOUNDMENT** shall pay a surcharge as follows:

16 (a) ~~Except as provided in subdivision (b),~~ **FOR A LANDFILL OR**
17 **COAL ASH IMPOUNDMENT THAT IS NOT A CAPTIVE FACILITY**, 12 cents for
18 each cubic yard or portion of a cubic yard of solid waste or
19 municipal solid waste incinerator ash that is disposed of in the
20 landfill **OR COAL ASH IMPOUNDMENT** before October 1, 2019.

21 (b) For **A** type III landfills ~~LANDFILL OR COAL ASH IMPOUNDMENT~~
22 that are ~~IS A~~ captive facilities, ~~FACILITY~~, the following annual
23 amounts:

24 (i) For a captive facility that receives 100,000 or more cubic
25 yards of waste, \$3,000.00.

26 (ii) For a captive facility that receives 75,000 or more but
27 less than 100,000 cubic yards of waste, \$2,500.00.

1 (iii) For a captive facility that receives 50,000 or more but
2 less than 75,000 cubic yards of waste, \$2,000.00.

3 (iv) For a captive facility that receives 25,000 or more but
4 less than 50,000 cubic yards of waste, \$1,000.00.

5 (v) For a captive facility that receives less than 25,000
6 cubic yards of waste, \$500.00.

7 (2) The owner or operator of a landfill **OR COAL ASH**
8 **IMPOUNDMENT THAT IS NOT A CAPTIVE FACILITY** shall pay the surcharge
9 under subsection (1)(a) within 30 days after the end of each
10 quarter of the state fiscal year. The owner or operator of a type
11 III landfill **OR COAL ASH IMPOUNDMENT** that is a captive facility
12 shall pay the surcharge under subsection (1)(b) by January 31 of
13 each year.

14 (3) The owner or operator of a landfill **OR COAL ASH**
15 **IMPOUNDMENT** who is required to pay the surcharge under subsection
16 (1) shall pass through and collect the surcharge from any person
17 who generated the solid waste or who arranged for its delivery to
18 the solid waste hauler or transfer facility notwithstanding the
19 provisions of any contract or agreement to the contrary or the
20 absence of any contract or agreement.

21 (4) Surcharges collected under this section shall be forwarded
22 to the state treasurer for deposit in the solid waste staff account
23 of the solid waste management fund established in section 11550.

24 ~~— (5) As used in this section, "captive facility" means a~~
25 ~~landfill that accepts for disposal only nonhazardous industrial~~
26 ~~waste generated only by the owner of the landfill or a nonhazardous~~
27 ~~industrial waste landfill that is described in section 11525(3).~~

1 Sec. 11525b. (1) The owner or operator of a disposal area
2 shall provide continuous financial assurance coverage until
3 released from these requirements by the department under the
4 provisions of this part.

5 (2) The owner or operator of a landfill **OR COAL ASH**
6 **IMPOUNDMENT** who has completed postclosure maintenance and
7 monitoring ~~of the landfill~~ in accordance with this part, rules
8 promulgated under this part, and approved postclosure plan may
9 request that financial assurance required by sections 11523 and
10 11523a be terminated. A person requesting termination of bonding
11 and financial assurance shall submit to the department a statement
12 that the landfill **OR COAL ASH IMPOUNDMENT** has been monitored and
13 maintained in accordance with this part, rules promulgated under
14 this part, and the approved postclosure plan for the postclosure
15 period specified in section 11523 and shall certify that the
16 landfill **OR COAL ASH IMPOUNDMENT** is not subject to corrective
17 action under section 11515. Within 60 days of receiving a statement
18 under this subsection, the department shall perform a consistency
19 review of the submitted statement and do 1 of the following:

20 (a) Approve the statement, notify the owner or operator that
21 he or she is no longer required to maintain financial assurance,
22 return or release all financial assurance mechanisms, and, if the
23 perpetual care fund is established as a trust or escrow account,
24 notify the custodian of the perpetual care fund that money from the
25 fund shall be disbursed as provided in section 11525(10).

26 (b) Disapprove the statement and provide the owner or operator
27 with a detailed written statement of the reasons why the department

1 has determined that postclosure maintenance and monitoring and
2 corrective action, if any, have not been conducted in accordance
3 with this part, the rules promulgated under this part, or an
4 approved postclosure plan.

5 Sec. 11528. (1) A solid waste transporting unit used for
6 garbage, industrial or domestic sludges, or other moisture laden
7 materials not specifically covered by part 121 shall be watertight
8 and constructed, maintained, and operated to prevent littering.
9 Solid waste transporting units used for hauling other solid waste
10 shall be designed and operated to prevent littering or any other
11 nuisance.

12 (2) A solid waste hauler who violates this part or the rules
13 promulgated under this part is subject to the penalties provided in
14 this part.

15 (3) The department, a health officer, or a law enforcement
16 officer may order a solid waste transporting unit out of service if
17 the unit does not ~~satisfy~~ **COMPLY WITH** the requirements of this part
18 or the rules promulgated under this part. Continued use of a solid
19 waste transporting unit ordered out of service is a violation of
20 this part.

21 Sec. 11538. (1) Not later than September 11, 1979, the
22 director shall promulgate rules for the development, form, and
23 submission of initial solid waste management plans. The rules shall
24 require all of the following:

25 (a) The establishment of goals and objectives for prevention
26 of adverse effects on the public health and on the environment
27 resulting from improper solid waste collection, processing, or

1 disposal including protection of surface and groundwater quality,
2 air quality, and the land.

3 (b) An evaluation of waste problems by type and volume,
4 including residential and commercial solid waste, hazardous waste,
5 industrial sludges, pretreatment residues, municipal sewage sludge,
6 air pollution control residue, and other wastes from industrial or
7 municipal sources.

8 (c) An evaluation and selection of technically and
9 economically feasible solid waste management options, which may
10 include sanitary landfill, resource recovery systems, resource
11 conservation, or a combination of options.

12 (d) An inventory and description of all existing facilities
13 where solid waste is being treated, processed, or disposed of,
14 including a summary of the deficiencies, if any, of the facilities
15 in meeting current solid waste management needs.

16 (e) The encouragement and documentation as part of the solid
17 waste management plan, of all opportunities for participation and
18 involvement of the public, all affected agencies and parties, and
19 the private sector.

20 (f) That the solid waste management plan contain enforceable
21 mechanisms for implementing the plan, including identification of
22 the municipalities within the county responsible for the
23 enforcement and may contain a mechanism for the county and those
24 municipalities to assist the department and the state police in
25 implementing and conducting the inspection program established in
26 section 11526(2) and (3). This subdivision does not preclude the
27 private sector's participation in providing solid waste management

1 services consistent with the solid waste management plan for the
2 county.

3 (g) Current and projected population densities of each county
4 and identification of population centers and centers of solid waste
5 generation, including industrial wastes.

6 (h) That the solid waste management plan area has, and will
7 have during the plan period, access to a sufficient amount of
8 available and suitable land, accessible to transportation media, to
9 accommodate the development and operation of solid waste disposal
10 areas, or resource recovery facilities provided for in the plan.

11 (i) That the solid waste disposal areas or resource recovery
12 facilities provided for in the solid waste management plan are
13 capable of being developed and operated in compliance with state
14 law and rules of the department pertaining to protection of the
15 public health and the environment, considering the available land
16 in the plan area, and the technical feasibility of, and economic
17 costs associated with, the facilities.

18 (j) A timetable or schedule for implementing the solid waste
19 management plan.

20 (2) Each solid waste management plan shall identify specific
21 sites for solid waste disposal areas for a 5-year period after
22 approval of a plan or plan update. In calculating disposal need
23 requirements to measure compliance with this section, only those
24 existing waste stream volume reduction levels achieved through
25 source reduction, reuse, composting, recycling, or incineration, or
26 any combination of these reduction devices, that can currently be
27 demonstrated or that can be reasonably expected to be achieved

1 through currently active implementation efforts for proposed volume
2 reduction projects, may be assumed by the planning entity. In
3 addition, if the solid waste management plan does not also identify
4 specific sites for solid waste disposal areas for the remaining
5 portion of the entire planning period required by this part after
6 approval of a plan or plan update, the solid waste management plan
7 shall include an interim siting mechanism and an annual
8 certification process as described in subsections ~~(3)~~ **(4)** and ~~(4)~~.
9 **(5)**. In calculating the capacity of identified disposal areas to
10 determine if disposal needs are met for the entire required
11 planning period, full achievement of the solid waste management
12 plan's volume reduction goals may be assumed by the planning entity
13 if the plan identifies a detailed programmatic approach to
14 achieving these goals. If a siting mechanism is not included, and
15 disposal capacity falls to less than 5 years of capacity, a county
16 shall amend the solid waste management plan for that county to
17 resolve the shortfall.

18 **(3) AN EXISTING CAPTIVE TYPE III COAL ASH LANDFILL OR EXISTING**
19 **CAPTIVE COAL ASH IMPOUNDMENT, OR BOTH, IS CONSIDERED CONSISTENT**
20 **WITH AND INCLUDED IN THE SOLID WASTE MANAGEMENT PLAN FOR THE COUNTY**
21 **OR REGION IN WHICH THE DISPOSAL AREA IS LOCATED IF THE DISPOSAL**
22 **AREA CONTINUES TO ACCEPT WASTE GENERATED ONLY BY THE OWNER OF THE**
23 **DISPOSAL AREA AND MEETS ANY OF THE FOLLOWING REQUIREMENTS:**

24 **(A) WAS ISSUED A CONSTRUCTION PERMIT AND LICENSED FOR**
25 **OPERATION UNDER THIS PART.**

26 **(B) MET LOCAL LAND USE LAW REQUIREMENTS WHEN INITIALLY SITED**
27 **OR CONSTRUCTED.**

1 **(4)** ~~(3)~~—An interim siting mechanism shall include both a
2 process and a set of minimum siting criteria, both of which are not
3 subject to interpretation or discretionary acts by the planning
4 entity, and which if met by an applicant submitting a disposal area
5 proposal, will guarantee a finding of consistency with the plan.
6 The interim siting mechanism shall be operative upon the call of
7 the board of commissioners or shall automatically be operative
8 whenever the annual certification process shows that available
9 disposal capacity will provide for less than 66 months of disposal
10 needs. In the latter event, applications for a finding of
11 consistency from the proposers of disposal area capacity will be
12 received by the planning agency commencing on January 1 following
13 completion of the annual certification process. Once operative, an
14 interim siting mechanism will remain operative for at least 90 days
15 or until more than 66 months of disposal capacity is once again
16 available, either by the approval of a request for consistency or
17 by the adoption of a new annual certification process which
18 concludes that more than 66 months of disposal capacity is
19 available.

20 **(5)** ~~(4)~~—An annual certification process shall be concluded by
21 June 30 of each year, commencing on the first June 30 which is more
22 than 12 months after the department's approval of the solid waste
23 management plan or plan update. The certification process will
24 examine the remaining disposal area capacity available for solid
25 wastes generated within the planning area. In calculating disposal
26 need requirements to measure compliance with this section, only
27 those existing waste stream volume reduction levels achieved

1 through source reduction, reuse, composting, recycling, or
2 incineration, or any combination of these reduction devices, that
3 can currently be demonstrated or that can be reasonably expected to
4 be achieved through currently active implementation efforts for
5 proposed volume reduction projects, may be assumed. The annual
6 certification of disposal capacity shall be approved by the board
7 of commissioners. Failure to approve an annual certification by
8 June 30 is equivalent to a finding that less than a sufficient
9 amount of capacity is available and the interim siting mechanism
10 will then be operative on the first day of the following January.
11 As part of the department's responsibility to act on construction
12 permit applications, the department has final decision authority to
13 approve or disapprove capacity certifications and to determine
14 consistency of a proposed disposal area with the solid waste
15 management plan.

16 (6) ~~(5)~~—A board of commissioners may adopt a new certification
17 of disposal capacity at any time. A new certification of disposal
18 capacity shall supersede all previous certifications, and become
19 effective 30 days after adoption by the board of commissioners and
20 remain in effect until subsequent certifications are adopted.

21 (7) ~~(6)~~—In order for a disposal area to serve the disposal
22 needs of another county, state, or country, the service, including
23 the disposal of municipal solid waste incinerator ash, must be
24 explicitly authorized in the approved solid waste management plan
25 of the receiving county. With regard to intercounty service within
26 Michigan, the service must also be explicitly authorized in the
27 solid waste management plan of the exporting county.

1 **(8)** ~~(7)~~—A person shall not dispose of, store, or transport
2 solid waste in this state unless the person complies with the
3 requirements of this part.

4 **(9)** ~~(8)~~—An ordinance, law, rule, regulation, policy, or
5 practice of a municipality, county, or governmental authority
6 created by statute, which prohibits or regulates the location or
7 development of a solid waste disposal area, and which is not part
8 of or not consistent with the approved solid waste management plan
9 for the county, shall be considered in conflict with this part and
10 shall not be enforceable.

11 Sec. 11539. (1) The director shall not approve a plan update
12 unless:

13 (a) The plan contains an analysis or evaluation of the best
14 available information applicable to the plan area in regard to
15 recyclable materials and all of the following:

16 (i) The kind and volume of material in the plan area's waste
17 stream that may be recycled or composted.

18 (ii) How various factors do or may affect a recycling and
19 composting program in the plan area. Factors shall include an
20 evaluation of the existing solid waste collection system; materials
21 market; transportation networks; local composting and recycling
22 support groups, or both; institutional arrangements; the population
23 in the plan area; and other pertinent factors.

24 (iii) An identification of impediments to implementing a
25 recycling and composting program and recommended strategies for
26 removing or minimizing impediments.

27 (iv) How recycling and composting and other processing or

1 disposal methods could complement each other and an examination of
2 the feasibility of excluding site separated material and source
3 separated material from other processing or disposal methods.

4 (v) Identification and quantification of environmental,
5 economic, and other benefits that could result from the
6 implementation of a recycling and composting program.

7 (vi) The feasibility of source separation of materials that
8 contain potentially hazardous components at disposal areas. This
9 subparagraph applies only to plan updates that are due after
10 January 31, 1989.

11 (b) The plan either provides for recycling and composting
12 recyclable materials from the plan area's waste stream or
13 establishes that recycling and composting are not necessary or
14 feasible or is only necessary or feasible to a limited extent.

15 (c) A plan that proposes a recycling or composting program, or
16 both, details the major features of that program, including all of
17 the following:

18 (i) The kinds and volumes of recyclable materials that will be
19 recycled or composted.

20 (ii) Collection methods.

21 (iii) Measures that will ensure collection such as ordinances
22 or cooperative arrangements, or both.

23 (iv) Ordinances or regulations affecting the program.

24 (v) The role of counties and municipalities in implementing
25 the plan.

26 (vi) The involvement of existing recycling interests, solid
27 waste haulers, and the community.

- 1 (vii) Anticipated costs.
2 (viii) On-going program financing.
3 (ix) Equipment selection.
4 (x) Public and private sector involvement.
5 (xi) Site availability and selection.
6 (xii) Operating parameters such as pH and heat range.
7 (d) The plan includes an evaluation of how the planning entity
8 is meeting the state's waste reduction and recycling goals as
9 established pursuant to section 11541(4).

10 **(2) A DISPOSAL AREA PERMITTED, LICENSED, OR OTHERWISE IN**
11 **EXISTENCE ON THE DATE OF APPROVAL OF THE SOLID WASTE MANAGEMENT**
12 **PLAN FOR THE PLANNING AREA WHERE THE DISPOSAL AREA IS LOCATED SHALL**
13 **BE CONSIDERED TO BE CONSISTENT WITH THE PLAN AND INCLUDED IN THE**
14 **PLAN.**

15 **(3) ~~(2)~~**—The director may promulgate rules as may be necessary
16 to implement this section.

17 Sec. 11542. (1) Except as provided in subsection (5) and
18 except for municipal solid waste incinerator ash that is described
19 and used as provided in section 11506(6) (h), municipal solid waste
20 incinerator ash shall be disposed of in 1 of the following:

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

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

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

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

1 (A) A leachate collection system.

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

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

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

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

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

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

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

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

16 (A) A leachate collection system.

17 (B) A composite liner, as defined in R 299.4102 of the

18 ~~Michigan administrative code.~~ **PART 115 RULES.**

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

20 (D) A second composite liner.

21 (iv) If contaminants that may threaten the public health,
22 safety, or welfare, or the environment are found in the leachate
23 collection system described in subparagraph (iii) (C), the owner or
24 operator of the landfill shall determine the source and nature of
25 the contaminants and make repairs, to the extent practicable, that
26 will prevent the contaminants from entering the leachate collection
27 system. If the department determines that the source of the

1 contaminants is caused by a design failure of the landfill, the
2 department, notwithstanding an approved construction permit or
3 operating license, may require landfill cells at that landfill that
4 will be used for the disposal of municipal solid waste incinerator
5 ash, which are under construction or will be constructed in the
6 future at the landfill, to be constructed in conformance with
7 improved design standards approved by the department. However, this
8 subparagraph does not require the removal of liners or leak
9 detection and leachate collection systems that are already in place
10 in a landfill cell under construction.

11 (c) A landfill that is a monitorable unit, as defined in R
12 299.4104 of the ~~Michigan administrative code~~, **PART 115 RULES**, and
13 that meets all of the following requirements:

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

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

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

20 (A) A leachate collection system.

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

22 (C) Immediately below the synthetic liner, either 2 feet of
23 compacted clay with a maximum hydraulic conductivity of 1×10^{-7}
24 centimeters per second or a bentonite geocomposite liner, as
25 specified in R 299.4914 of the ~~Michigan administrative code~~. **PART**
26 **115 RULES**.

27 (D) At least 10 feet of either natural or compacted clay with

1 a maximum hydraulic conductivity of 1×10^{-7} centimeters per
2 second, or equivalent.

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

7 (e) A type II landfill, as described in R 299.4105 of the
8 ~~Michigan administrative code,~~ **PART 115 RULES** if both of the
9 following conditions apply:

10 (i) The ash was generated by a municipal solid waste
11 incinerator that is designed to burn at a temperature in excess of
12 2500 degrees Fahrenheit.

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

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

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

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

23 (c) An infiltration collection system.

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

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

27 (3) A landfill that receives municipal solid waste incinerator

1 ash under this section may be capped with a design approved by the
2 department that will prevent the migration of any hazardous
3 constituent into the groundwater or surface water at least as
4 effectively as the design requirements of subsection (2).

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

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

1 reused or recycled ash. A leaching procedure shall include testing
2 under both acidic and native conditions. If municipal solid waste
3 incinerator ash is processed in accordance with the requirements of
4 this subsection and the processed ash satisfies the testing
5 protocol approved by the department as provided by rule, the ash
6 may be disposed of in a municipal solid waste landfill, as defined
7 by R 299.4104 of the ~~Michigan administrative code~~, **PART 115 RULES**,
8 licensed under this part or may be used in any manner approved by
9 the department. If municipal solid waste incinerator ash is
10 processed as provided in this subsection, but does not ~~satisfy~~
11 **COMPLY WITH** the testing protocol approved by the department as
12 provided by rule, the ash shall be disposed of in accordance with
13 subsection (1).

14 (6) The disposal of municipal solid waste incinerator ash
15 within a landfill that is in compliance with subsection (1) does
16 not constitute a new proposal for which a new construction permit
17 is required under section 11509, if a construction permit has
18 previously been issued under section 11509 for the landfill and the
19 owner or operator of the landfill submits 6 copies of an operating
20 license amendment application to the department for approval
21 pursuant to part 13. The operating license amendment application
22 shall include revised plans and specifications for all facility
23 modifications including a leachate disposal plan, an erosion
24 control plan, and a dust control plan which shall be part of the
25 operating license amendment. The dust control plan shall contain
26 sufficient detail to ensure that dust emissions are controlled by
27 available control technologies that reduce dust emissions by a

1 reasonably achievable amount to the extent necessary to protect
2 human health and the environment. The dust control plan shall
3 provide for the ash to be wet during all times that the ash is
4 exposed to the atmosphere at the landfill or otherwise to be
5 covered by daily cover material; for dust emissions to be
6 controlled during dumping, grading, loading, and bulk transporting
7 of the ash at the landfill; and for dust emissions from access
8 roads within the landfill to be controlled. With the exception of a
9 landfill that is in existence on June 12, 1989 that the department
10 determines is otherwise in compliance with this section, the owner
11 or operator of the landfill shall obtain the operating license
12 amendment prior to initiating construction. Prior to operation, the
13 owner or operator of a landfill shall submit to the department
14 certification from a licensed professional engineer that the
15 landfill has been constructed in accordance with the approved plan
16 and specifications. When the copies are submitted to the
17 department, the owner or operator of the landfill shall send a copy
18 of the operating license amendment application to the municipality
19 where the landfill is located. At least 30 days prior to making a
20 final decision on the operating license amendment, the department
21 shall hold at least 1 public meeting in the vicinity of the
22 landfill to receive public comments. Prior to a public meeting, the
23 department shall publish notice of the meeting in a newspaper
24 serving the local area.

25 (7) The owner or operator of a municipal solid waste
26 incinerator or a disposal area that receives municipal solid waste
27 incinerator ash shall allow the department access to the facility

1 for the purpose of supervising the collection of samples or
2 obtaining samples of ash to test or to monitor air quality at the
3 facility.

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

6 Sec. 11550. (1) The solid waste management fund is created
7 within the state treasury. The state treasurer may receive money
8 from any source for deposit into the fund. The state treasurer
9 shall direct the investment of the fund. The state treasurer shall
10 credit to the fund interest and earnings from fund investments.

11 (2) Money in the solid waste management fund at the close of
12 the fiscal year shall remain in the fund and shall not lapse to the
13 general fund.

14 (3) The state treasurer shall establish, within the solid
15 waste management fund, a solid waste staff account and a perpetual
16 care account.

17 (4) Money shall be expended from the solid waste staff
18 account, upon appropriation, only for the following purposes:

19 (a) Preparing generally applicable guidance regarding the
20 solid waste permit and license program or its implementation or
21 enforcement.

22 (b) Reviewing and acting on any application for a permit or
23 license, permit or license revision, or permit or license renewal,
24 including the cost of public notice and public hearings.

25 (c) Performing an advisory analysis under section 11510(1).

26 (d) General administrative costs of running the permit and
27 license program, including permit and license tracking and data

1 entry.

2 (e) Inspection of licensed disposal areas and open dumps.

3 (f) Implementing and enforcing the conditions of any permit or
4 license.

5 (g) Groundwater monitoring audits at disposal areas which are
6 or have been licensed under this part.

7 (h) Reviewing and acting upon corrective action plans for
8 disposal areas which are or have been licensed under this part.

9 (i) Review of certifications of closure.

10 (j) Postclosure maintenance and monitoring inspections and
11 review.

12 (k) Review of bonds and financial assurance documentation at
13 disposal areas which are or have been licensed under this part.

14 (5) Money shall be expended from the perpetual care account,
15 **UPON APPROPRIATION**, only for the purpose of conducting the
16 following activities at disposal areas which are or have been
17 licensed under this part:

18 (a) Postclosure maintenance and monitoring at a disposal area
19 where the owner or operator is no longer required to do so.

20 (b) To conduct closure, or postclosure maintenance and
21 monitoring and corrective action if necessary, at a disposal area
22 where the owner or operator has failed to do so. Money shall be
23 expended from the account only after funds from any perpetual care
24 fund or other financial assurance mechanisms held by the owner or
25 operator have been expended and the department has used reasonable
26 efforts to obtain funding from other sources.

27 (6) By March 1 annually, the department shall prepare and

1 submit to the governor, the legislature, the chairs of the standing
2 committees of the senate and house of representatives with primary
3 responsibility for issues related to natural resources and the
4 environment, and the chairs of the subcommittees of the senate and
5 house appropriations committees with primary responsibility for
6 appropriations to the department a report that details the
7 activities of the previous fiscal year funded by the staff account
8 of the solid waste management fund. ~~established in this section.~~
9 This report shall include, at a minimum, all of the following as it
10 relates to the department:

11 (a) The number of full-time equated positions performing solid
12 waste management permitting, compliance, and enforcement
13 activities.

14 (b) All of the following information related to the
15 construction permit applications received under section 11509:

16 (i) The number of applications received by the department,
17 reported as the number of applications determined to be
18 administratively incomplete and the number determined to be
19 administratively complete.

20 (ii) The number of applications determined to be
21 administratively complete for which a final action was taken by the
22 department. The number of final actions shall be reported as the
23 number of applications approved, the number of applications denied,
24 and the number of applications withdrawn by the applicant.

25 (iii) The percentage and number of applications determined to
26 be administratively complete for which a final decision was made
27 within ~~120 days of receipt as~~ **THE PERIOD** required by section

1 ~~11511~~.PART 13.

2 (c) All of the following information related to the operating
3 license applications received under section 11512:

4 (i) The number of applications received by the department,
5 reported as the number of applications determined to be
6 administratively incomplete and the number determined to be
7 administratively complete.

8 (ii) The number of applications determined to be
9 administratively complete for which a final action was taken by the
10 department. The number of final actions shall be reported as the
11 number of applications approved, the number of applications denied,
12 and the number of applications withdrawn by the applicant.

13 (iii) The percentage and number of applications determined to
14 be administratively complete for which a final decision was made
15 within ~~90 days of receipt as~~ **THE PERIOD** required by ~~section~~

16 ~~11516~~.PART 13.

17 (d) The number of inspections conducted at licensed disposal
18 areas as required by section 11519.

19 (e) The number of letters of warning sent to licensed disposal
20 areas.

21 (f) The number of contested case hearings and civil actions
22 initiated and completed, the number of voluntary consent orders and
23 administrative orders entered or issued, and the amount of fines
24 and penalties collected through such actions or orders.

25 (g) For each enforcement action that includes a penalty, a
26 description of what corrective actions were required by the
27 enforcement action.

1 (h) The number of solid waste complaints received,
2 investigated, resolved, and not resolved by the department.

3 (i) The amount of revenue in the staff account of the solid
4 waste management fund **AND THE COAL ASH CARE FUND** at the end of the
5 fiscal year.

6 (7) **THE COAL ASH CARE FUND IS CREATED WITHIN THE STATE**
7 **TREASURY. THE STATE TREASURER MAY RECEIVE MONEY FROM ANY SOURCE FOR**
8 **DEPOSIT INTO THE FUND. THE STATE TREASURER SHALL DIRECT THE**
9 **INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT TO THE**
10 **FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS.**

11 (8) **MONEY SHALL BE EXPENDED FROM THE COAL ASH CARE FUND, UPON**
12 **APPROPRIATION, ONLY FOR THE FOLLOWING PURPOSES RELATING TO COAL ASH**
13 **IMPOUNDMENTS AND COAL ASH LANDFILLS:**

14 (A) **PREPARING GENERALLY APPLICABLE GUIDANCE REGARDING THE**
15 **SOLID WASTE PERMIT AND LICENSE PROGRAM OR ITS IMPLEMENTATION OR**
16 **ENFORCEMENT.**

17 (B) **REVIEWING AND ACTING ON ANY APPLICATION FOR A PERMIT OR**
18 **LICENSE, PERMIT OR LICENSE REVISION, OR PERMIT OR LICENSE RENEWAL,**
19 **INCLUDING THE COST OF PUBLIC NOTICE AND PUBLIC HEARINGS.**

20 (C) **PERFORMING AN ADVISORY ANALYSIS UNDER SECTION 11510(1).**

21 (D) **GENERAL ADMINISTRATIVE COSTS OF RUNNING THE PERMIT AND**
22 **LICENSE PROGRAM, INCLUDING PERMIT AND LICENSE TRACKING AND DATA**
23 **ENTRY.**

24 (E) **INSPECTION OF LICENSED DISPOSAL AREAS AND OPEN DUMPS.**

25 (F) **IMPLEMENTING AND ENFORCING THE CONDITIONS OF ANY PERMIT OR**
26 **LICENSE.**

27 (G) **GROUNDWATER MONITORING AUDITS AT DISPOSAL AREAS THAT ARE**

1 OR HAVE BEEN LICENSED UNDER THIS PART.

2 (H) REVIEWING AND ACTING UPON CORRECTIVE ACTION PLANS FOR
3 DISPOSAL AREAS THAT ARE OR HAVE BEEN LICENSED UNDER THIS PART.

4 (I) REVIEW OF CERTIFICATIONS OF CLOSURE.

5 (J) POSTCLOSURE MAINTENANCE AND MONITORING INSPECTIONS AND
6 REVIEW.

7 (K) REVIEW OF BONDS AND FINANCIAL ASSURANCE DOCUMENTATION AT
8 DISPOSAL AREAS THAT ARE OR HAVE BEEN LICENSED UNDER THIS PART.