

HOUSE BILL No. 6269

June 12, 2018, Introduced by Reps. Howell, LaFave, Rendon, Cole and Whiteford and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 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.

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

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

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

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

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

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

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

26 (b) The use, placement, or storage at the location of use does
27 not do any of the following:

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

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

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

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

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

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

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

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

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

26 (8) "Beneficial use by-product" means the following materials
27 if the materials are stored for beneficial use or are used

1 beneficially as specified and the requirements of section 11551(1)
2 are met:

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

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

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

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

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

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

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

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

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

20 (ii) Scrap paper.

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

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

26 (k) Lime softening residuals from the treatment and
27 conditioning of water for domestic use or from a community water

1 supply used for beneficial use 3 or 4.

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

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

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

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

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

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

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

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

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

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

10 **(12)** ~~(11)~~—"Cement kiln dust" means particulate matter
11 collected in air emission control devices serving Portland cement
12 kilns.

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

24 **(14)** ~~(13)~~—"Certified health department" means a city, county,
25 or district department of health that is specifically delegated
26 authority by the department to perform designated activities as
27 prescribed by this part.

1 (15) ~~(14)~~ "Coal ash", **SUBJECT TO SUBSECTION (16)**, means **ANY OF**
2 the ~~material~~ **FOLLOWING**:

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

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

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

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

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

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

20 **(17) "COAL ASH IMPOUNDMENT" MEANS A NATURAL TOPOGRAPHIC**
21 **DEPRESSION, MAN-MADE EXCAVATION, OR DIKED AREA THAT IS NOT A**
22 **LANDFILL AND THAT IS DESIGNED TO HOLD AN ACCUMULATION OF COAL ASH**
23 **AND LIQUIDS FOR TREATMENT, STORAGE, OR DISPOSAL. A COAL ASH**
24 **IMPOUNDMENT IN EXISTENCE BEFORE OCTOBER 14, 2015 THAT RECEIVES**
25 **WASTE AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED**
26 **THIS SUBSECTION, AND THAT DOES NOT HAVE A PERMIT PURSUANT TO PART**
27 **31, IS A WASTE PILE PURSUANT TO R 299.4129 OF THE MICHIGAN**

1 ADMINISTRATIVE CODE. A COAL ASH IMPOUNDMENT THAT HAS A PERMIT
2 PURSUANT TO PART 31 AND THAT DOES NOT RECEIVE COAL ASH AFTER THE
3 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION IS
4 NOT SUBJECT TO THIS PART.

5 (18) "COAL ASH LANDFILL" MEANS A LANDFILL THAT IS USED FOR THE
6 DISPOSAL OF COAL ASH AND MAY ALSO BE USED FOR THE DISPOSAL OF INERT
7 MATERIALS AND CONSTRUCTION MATERIAL USED FOR PURPOSES MEETING THE
8 DEFINITION OF BENEFICIAL USE 4.

9 (19) ~~(15)~~—"Coal bottom ash" means ash particles from the
10 combustion of coal that are too large to be carried in flue gases
11 and that collect on furnace walls or at the bottom of the furnace.

12 (20) ~~(16)~~—"Collection center" means a tract of land, building,
13 unit, or appurtenance or combination thereof that is used to
14 collect junk motor vehicles and farm implements under section
15 11530.

16 (21) ~~(17)~~—"Composting facility" means a facility where
17 composting of yard clippings or other organic materials occurs
18 using mechanical handling techniques such as physical turning,
19 windrowing, or aeration or using other management techniques
20 approved by the director.

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

27 (23) ~~(19)~~—"Corrective action" means the investigation,

1 assessment, cleanup, removal, containment, isolation, treatment, or
2 monitoring of constituents, as defined in a facility's approved
3 hydrogeological monitoring plan, released into the environment from
4 a disposal area, or the taking of other actions related to the
5 release as may be necessary to prevent, minimize, or mitigate
6 injury to the public health, safety, or welfare, the environment,
7 or natural resources that is consistent with 42 USC 6941 to 6949a
8 and regulations promulgated thereunder.

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

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

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

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

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

24 (a) A solid waste transfer facility.

25 (b) An incinerator.

26 (c) A sanitary landfill.

27 (d) A processing plant.

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

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

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

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

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

11 (c) Is separated from other waste.

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

13 (i) Hazardous material.

14 (ii) Liquid waste.

15 (iii) Pharmaceuticals.

16 (iv) Electronics.

17 (v) Batteries.

18 (vi) Light bulbs.

19 (vii) Pesticides.

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

22 (ix) Sharps.

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

26 (7) "Enforceable mechanism" means a legal method whereby this
27 state, a county, a municipality, or another person is authorized to

1 take action to guarantee compliance with an approved county solid
2 waste management plan. Enforceable mechanisms include contracts,
3 intergovernmental agreements, laws, ordinances, rules, and
4 regulations.

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

9 (9) "EXISTING COAL ASH IMPOUNDMENT" MEANS A COAL ASH
10 IMPOUNDMENT THAT HAS IN EFFECT A PERMIT PURSUANT TO PART 31, THAT
11 RECEIVED COAL ASH BEFORE OCTOBER 14, 2015, AND THAT, AS OF THE
12 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION,
13 HAS NOT INITIATED ELEMENTS OF CLOSURE THAT INCLUDE DEWATERING,
14 STABILIZING RESIDUALS, OR PLACEMENT OF AN ENGINEERED COVER OR
15 OTHERWISE CLOSED PURSUANT TO ITS PART 31 PERMIT OR PURSUANT TO R
16 299.4309 OF THE PART 115 RULES AND, THEREFORE, IS CAPABLE OF
17 RECEIVING COAL ASH IN THE FUTURE.

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

19 (A) A DISPOSAL AREA THAT HAS IN EFFECT A CONSTRUCTION PERMIT
20 UNDER THIS PART.

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

23 (C) AN INDUSTRIAL WASTE LANDFILL THAT WAS AUTHORIZED TO
24 OPERATE BY THE DIRECTOR OR BY COURT ORDER BEFORE OCTOBER 9, 1993.

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

27 (E) A COAL ASH IMPOUNDMENT WITH COAL ASH IN PLACE ON OR BEFORE

1 OCTOBER 14, 2015.

2 (11) "EXISTING LANDFILL UNIT" OR "EXISTING UNIT" MEANS ANY
3 LANDFILL UNIT THAT RECEIVED SOLID WASTE ON OR BEFORE OCTOBER 9,
4 1993.

5 (12) ~~(9)~~ "Farm" means that term as defined in section 2 of the
6 Michigan right to farm act, 1981 PA 93, MCL 286.472.

7 (13) ~~(10)~~ "Farm operation" means that term as defined in
8 section 2 of the Michigan right to farm act, 1981 PA 93, MCL
9 286.472.

10 (14) ~~(11)~~ "Financial assurance" means the mechanisms used to
11 demonstrate that the funds necessary to meet the cost of closure,
12 postclosure maintenance and monitoring, and corrective action will
13 be available whenever they are needed.

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

26 (16) ~~(13)~~ "Flue gas desulfurization material" means the
27 material recovered from air pollution control systems that capture

1 sulfur dioxide from the combustion of wood, coal, or fossil fuels,
2 or other combustible materials, if the other combustible materials
3 constitute less than 50% by weight of the total material combusted
4 and the department determines in writing that the other combustible
5 materials do not materially affect the character of the residue.
6 Flue gas desulfurization material includes synthetic gypsum.

7 **(17)** ~~(14)~~—"Food processing residuals" means any of the
8 following:

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

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

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

16 **(18)** ~~(15)~~—"Foundry sand" means silica sand used in the metal
17 casting process, including binding material or carbonaceous
18 additives, from ferrous or nonferrous foundries.

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

22 **(20)** ~~(17)~~—"Garbage" means rejected food wastes including waste
23 accumulation of animal, fruit, or vegetable matter used or intended
24 for food or that results from the preparation, use, cooking,
25 dealing in, or storing of meat, fish, fowl, fruit, or vegetable
26 matter.

27 Sec. 11504. (1) "Health officer" means a full-time

1 administrative officer of a certified health department.

2 (2) "INDUSTRIAL WASTE" MEANS SOLID WASTE THAT IS GENERATED BY
3 MANUFACTURING OR INDUSTRIAL PROCESSES AND THAT IS NOT A HAZARDOUS
4 WASTE REGULATED UNDER PART 111 OF THIS ACT.

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

9 (4) ~~(2)~~—"Inert material" means any of the following:

10 (a) Rock.

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

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

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

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

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

20 (c) Uncontaminated excavated soil or dredged sediment.

21 Excavated soil or dredged sediment is considered uncontaminated if
22 it does not contain more than de minimis amounts of solid waste and
23 1 of the following applies:

24 (i) The soil or sediment is not contaminated by a hazardous
25 substance as a result of human activity. Soil or sediment that
26 naturally contains elevated levels of hazardous substances above
27 unrestricted residential or any other part 201 generic soil cleanup

1 criteria is not considered contaminated for purposes of this
2 subdivision. A soil or sediment analysis is not required under this
3 subparagraph if, based on past land use, there is no reason to
4 believe that the soil or sediment is contaminated.

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

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

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

26 (e) Construction brick, masonry, pavement, or broken concrete
27 that is reused for fill, rip rap, slope stabilization, or other

1 construction, if all of the following conditions are met:

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

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

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

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

13 (g) Asphalt pavement or concrete pavement that meets all of
14 the following requirements:

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

16 (ii) Has been stockpiled or crushed for reuse as aggregate
17 material.

18 (iii) Does not include exposed reinforcement bars.

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

23 (i) Any material determined by the department under section
24 11553(5) or (6) to be an inert material, either for general use or
25 for a particular use.

26 (5) ~~(3)~~—"Insurance" means insurance that conforms to the
27 requirements of 40 CFR 258.74(d) provided by an insurer who has a

1 certificate of authority from the director of insurance and
2 financial services to sell this line of coverage. An applicant for
3 an operating license shall submit evidence of the required coverage
4 by submitting both of the following to the department:

5 (a) A certificate of insurance that uses wording approved by
6 the department.

7 (b) A certified true and complete copy of the insurance
8 policy.

9 (6) ~~(4)~~—"Landfill" means a disposal area that is a sanitary
10 landfill.

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

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

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

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

25 (8) ~~(5)~~—"Letter of credit" means an irrevocable letter of
26 credit that complies with 40 CFR 258.74(c).

27 (9) ~~(6)~~—"Lime kiln dust" means particulate matter collected in

1 air emission control devices serving lime kilns.

2 **(10)** ~~(7)~~—"Low-hazard industrial waste" means industrial
3 material that has a low potential for groundwater contamination
4 when managed in accordance with this part. The following materials
5 are low-hazard industrial wastes:

6 (a) Coal ash or wood ash.

7 (b) Cement kiln dust.

8 (c) Pulp and paper mill material.

9 (d) Scrap wood.

10 (e) Sludge from the treatment and conditioning of water for
11 domestic use.

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

14 (g) Sludge from the treatment and conditioning of water from a
15 community water supply.

16 (h) Foundry sand.

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

18 (j) Street cleanings.

19 (k) Asphalt shingles.

20 (l) New construction or production scrap drywall.

21 (m) Chipped or shredded tires.

22 (n) Copper slag.

23 (o) Copper stamp sands.

24 (p) Dredge material from nonremedial activities.

25 (q) Flue gas desulfurization material.

26 (r) Dewatered grinding slurry generated from public
27 transportation agency road projects.

1 (s) Any material determined by the department under section
2 11553(7) to be a low-hazard industrial waste.

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

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

11 (13) ~~(9)~~ "Mixed wood ash" means the material recovered from
12 air pollution control systems for, or the noncombusted residue
13 remaining after, the combustion of any combination of wood, scrap
14 wood, railroad ties, or tires, if railroad ties composed less than
15 35% by weight of the total combusted material and tires composed
16 less than 10% by weight of the total combusted material.

17 (14) ~~(10)~~ "Municipal solid waste incinerator" means an
18 incinerator that is owned or operated by any person, and meets all
19 of the following requirements:

20 (a) The incinerator receives solid waste from off site and
21 burns only household waste from single and multiple dwellings,
22 hotels, motels, and other residential sources, or this household
23 waste together with solid waste from commercial, institutional,
24 municipal, county, or industrial sources that, if disposed of,
25 would not be required to be placed in a disposal facility licensed
26 under part 111.

27 (b) The incinerator has established contractual requirements

1 or other notification or inspection procedures sufficient to ensure
2 that the incinerator receives and burns only waste referred to in
3 subdivision (a).

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

6 (d) The incinerator is not an industrial furnace as defined in
7 40 CFR 260.10.

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

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

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

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

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

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

25 **(C) A NEW COAL ASH IMPOUNDMENT, OR A LATERAL EXPANSION OF A**
26 **COAL ASH IMPOUNDMENT BEYOND THE PLACEMENT OF WASTE AS OF OCTOBER**
27 **14, 2015.**

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

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

10 (18) ~~(12)~~—"Nonresidential property" means property not used or
11 intended to be used for any of the following:

12 (a) A child day care center.

13 (b) An elementary school.

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

15 (d) A nursing home.

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

20 (19) "PART 115 RULES" MEANS R 299.4101 TO R 299.4922 OF THE
21 MICHIGAN ADMINISTRATIVE CODE AS IN EFFECT ON THE EFFECTIVE DATE OF
22 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.

23 (20) ~~(13)~~—"Perpetual care fund" means a trust or escrow
24 account or perpetual care fund bond provided for in section 11525.

25 (21) ~~(14)~~—"Perpetual care fund bond" means a surety bond, an
26 irrevocable letter of credit, or a combination of these instruments
27 in favor of and on a form approved by the department by which a

1 perpetual care fund is established.

2 **(22)** ~~(15)~~—"Pulp and paper mill ash" means the material
3 recovered from air pollution control systems for, or the
4 noncombusted residue remaining after, the combustion of any
5 combination of coal, wood, pulp and paper mill material, wood or
6 biomass fuel pellets, scrap wood, railroad ties, or tires, from a
7 boiler, power plant, or furnace at a pulp and paper mill, if
8 railroad ties composed less than 35% by weight of the total
9 combusted material and tires composed less than 10% by weight of
10 the total combusted material.

11 **(23)** ~~(16)~~—"Pulp and paper mill material" means all of the
12 following materials if generated at a facility that produces pulp
13 or paper:

14 (a) Wastewater treatment sludge, including wood fibers,
15 minerals, and microbial biomass.

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

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

18 (d) Scrap paper.

19 (e) Causticizing residues, including lime mud and grit and
20 green liquor dregs.

21 (f) Any material that the department determines has
22 characteristics that are similar to any of the materials listed in
23 subdivisions (a) to (e).

24 Sec. 11505. (1) "Recyclable materials" means source separated
25 materials, site separated materials, high grade paper, glass,
26 metal, plastic, aluminum, newspaper, corrugated paper, yard
27 clippings, and other materials that may be recycled or composted.

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

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

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

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

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

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

23 **(7) "SANITARY LANDFILL" MEANS A TYPE OF DISPOSAL AREA**
24 **CONSISTING OF 1 OR MORE LANDFILL UNITS AND THE ACTIVE WORK AREAS**
25 **ASSOCIATED WITH THOSE UNITS. SANITARY LANDFILLS ARE CLASSIFIED AS 1**
26 **OF THE FOLLOWING TYPES OF LANDFILLS:**

27 **(A) A TYPE II LANDFILL, WHICH IS A MUNICIPAL SOLID WASTE**

1 LANDFILL AND INCLUDES A MUNICIPAL SOLID WASTE INCINERATOR ASH
2 LANDFILL.

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

6 (i) CONSTRUCTION AND DEMOLITION WASTE LANDFILLS.

7 (ii) INDUSTRIAL WASTE LANDFILLS.

8 (iii) LANDFILLS THAT ACCEPT WASTE OTHER THAN HOUSEHOLD WASTE,
9 MUNICIPAL SOLID WASTE INCINERATOR ASH, OR HAZARDOUS WASTE FROM
10 CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS.

11 (iv) COAL ASH LANDFILLS.

12 (v) EXISTING COAL ASH IMPOUNDMENTS THAT WILL BE CLOSED AS A
13 LANDFILL PURSUANT TO R 299.4309 OF THE PART 115 RULES.

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

16 (a) Plywood, particle board, pressed board, oriented strand
17 board, fiberboard, resonated wood, or any other wood or wood
18 product mixed with glue, resins, or filler.

19 (b) Wood or wood product treated with creosote or
20 pentachlorophenol.

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

23 (9) "SHARPS" MEANS THAT TERM AS DEFINED IN SECTION 13807 OF
24 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.13807.

25 (10) ~~(9)~~"Site separated material" means glass, metal, wood,
26 paper products, plastics, rubber, textiles, garbage, or any other
27 material approved by the department that is separated from solid

1 waste for the purpose of recycling or conversion into raw materials
2 or new products.

3 **(11)** ~~(10)~~ "Slag" means the nonmetallic product resulting from
4 melting or smelting operations for iron or steel.

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

16 (2) The application for a construction permit shall contain
17 the name and residence of the applicant, the location of the
18 proposed disposal area, the design capacity of the disposal area,
19 and other information specified by rule. A person may apply to
20 construct more than 1 type of disposal area at the same facility
21 under a single permit. The application shall be accompanied by an
22 engineering plan and a construction permit application fee. A
23 construction permit application for a landfill shall be accompanied
24 by a fee in an amount that is the sum of all of the following fees,
25 as applicable:

26 (a) For a new sanitary landfill, a fee equal to the following
27 amount:

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

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

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

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

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

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

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

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

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

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

16 (iii) For an industrial waste landfill limited to low hazard
17 industrial waste, construction and demolition waste, or other
18 nonindustrial waste, \$250.00.

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

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

22 (3) The application for a construction permit for a solid
23 waste transfer facility, a solid waste processing plant, other
24 disposal area, or a combination of these, shall be accompanied by a
25 fee in the following amount:

26 (a) For a new facility for municipal solid waste, or a
27 combination of municipal solid waste and waste listed in

1 subdivision (b), \$1,000.00.

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

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

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

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

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

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

27 Sec. 11510. (1) Before the submission of a construction permit

1 application for a new disposal area, the applicant shall request a
2 health officer or the department to provide an advisory analysis of
3 the proposed disposal area. However, the applicant, not less than
4 15 days after the request, and notwithstanding an analysis result,
5 may file an application for a construction permit.

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

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

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

21 (c) Indicate in the public, departmental, and municipality
22 notice that the department shall hold a public hearing in the area
23 of the proposed disposal area if a written request is submitted by
24 the applicant or a municipality within 30 days after the date of
25 publication of the notice, or by a petition submitted to the
26 department containing a number of signatures equal to not less than
27 10% of the number of registered voters of the municipality where

1 the proposed disposal area is to be located who voted in the last
2 gubernatorial election. The petition shall be validated by the
3 clerk of the municipality. The public hearing shall be held after
4 the department makes a preliminary review of the application and
5 all pertinent data and before a construction permit is issued or
6 denied.

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

1 does not require a new construction permit.

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

25 **SEC. 11511A. (1) A NEW COAL ASH LANDFILL OR LATERAL EXPANSIONS**
26 **OF A COAL ASH LANDFILL SHALL COMPLY WITH THE REQUIREMENTS OF R**
27 **299.4304, R 299.4305, AND R 299.4307 TO R 299.4317 OF THE PART 115**

1 RULES, EXCEPT THAT THE MINIMUM DESIGN STANDARD FOR A NEW OR LATERAL
2 EXPANSION OF A COAL ASH LANDFILL PURSUANT TO R 299.4307(4) OF THE
3 PART 115 RULES SHALL BE SOLELY R 299.4307(4) (B) OF THE PART 115
4 RULES AND NOT R 299.4307(4) (A), (C), OR (D) OF THE PART 115 RULES.

5 (2) A NEW COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT OR A
6 LATERAL EXPANSION OF A COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT
7 SHALL COMPLY WITH THE LOCATION REQUIREMENTS OF R 299.4411 TO R
8 299.4413 AND R 299.4415 TO 299.4418 OF THE PART 115 RULES, EXCEPT
9 THAT A NEW COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT OR A LATERAL
10 EXPANSION OF A COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT SHALL
11 MAINTAIN A PERMANENT MINIMUM CLEARANCE FROM THE BOTTOM OF THE
12 PRIMARY LINER OF NOT LESS THAN 5 FEET TO THE NATURAL GROUNDWATER
13 LEVEL.

14 (3) THE DEPARTMENT SHALL NOT ISSUE A CONSTRUCTION PERMIT FOR A
15 NEW COAL ASH LANDFILL OR NEW COAL ASH IMPOUNDMENT OR A LATERAL
16 EXPANSION OF A COAL ASH LANDFILL OR COAL ASH IMPOUNDMENT UNLESS
17 BOTH OF THE FOLLOWING APPLY:

18 (A) THE LANDFILL, IMPOUNDMENT, OR EXPANSION, RESPECTIVELY,
19 COMPLIES WITH R 299.4306 OF THE PART 115 RULES.

20 (B) THE OWNER OR OPERATOR HAS PROVIDED TO THE DEPARTMENT A
21 DETECTION MONITORING PROGRAM IN A HYDROGEOLOGICAL MONITORING PLAN
22 THAT COMPLIES WITH R 299.4440 TO R 299.4445 AND R 299.4905 TO R
23 299.4908 OF THE PART 115 RULES, AS APPLICABLE. THE CONSTITUENTS
24 MONITORED IN THE DETECTION MONITORING PROGRAM SHALL INCLUDE ALL OF
25 THE FOLLOWING:

26 (i) BORON.

27 (ii) CALCIUM.

1 (iii) CHLORIDE.

2 (iv) FLUORIDE.

3 (v) IRON.

4 (vi) PH.

5 (vii) SULFATE.

6 (viii) TOTAL DISSOLVED SOLIDS.

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

12 Sec. 11512. (1) A person shall dispose of solid waste at a
13 disposal area licensed under this part unless a person is permitted
14 by state law or rules promulgated by the department to dispose of
15 the solid waste at the site of generation. **WASTE PLACEMENT IN
16 EXISTING LANDFILL UNITS SHALL BE CONSISTENT WITH PAST OPERATING
17 PRACTICES OR MODIFIED PRACTICES TO ENSURE GOOD MANAGEMENT.**

18 (2) Except as otherwise provided in this section or in section
19 11529, a person shall not conduct, manage, maintain, or operate a
20 disposal area within this state except as authorized by an
21 operating license issued by the department pursuant to part 13. In
22 addition, a person shall not conduct, manage, maintain, or operate
23 a disposal area contrary to an approved solid waste management
24 plan, or contrary to a permit, license, or final order issued under
25 this part. A person who intends to conduct, manage, maintain, or
26 operate a disposal area shall submit a license application to the
27 department through a certified health department. **EXISTING COAL ASH**

1 **IMPOUNDMENTS ARE EXEMPT FROM THE LICENSING REQUIREMENTS OF THIS**
2 **PART UNTIL 2 YEARS AFTER THE DATE OF THE AMENDATORY ACT THAT ADDED**
3 **SECTION 11511A.** If the disposal area is located in a county or city
4 that does not have a certified health department, the application
5 shall be made directly to the department. A person authorized by
6 this part to operate more than 1 type of disposal area at the same
7 facility may apply for a single license.

8 (3) The application for a license shall contain the name and
9 residence of the applicant, the location of the proposed or
10 existing disposal area, the type or types of disposal area
11 proposed, evidence of bonding, and other information required by
12 rule. In addition, an applicant for a type II landfill shall submit
13 evidence of financial assurance adequate to meet the requirements
14 of section 11523a, the maximum waste slope in the active portion,
15 an estimate of remaining permitted capacity, and documentation on
16 the amount of waste received at the disposal area during the
17 previous license period or expected to be received, whichever is
18 greater. The application shall be accompanied by a fee as specified
19 in subsections (7), (9), and (10).

20 (4) At the time of application for a license for a disposal
21 area, the applicant shall submit to a health officer or the
22 department a certification under the seal of a licensed
23 professional engineer verifying that the construction of the
24 disposal area has proceeded according to the approved plans. **ANY**
25 **APPLICANT FOR A LICENSE FOR AN EXISTING COAL ASH IMPOUNDMENT IS**
26 **EXEMPT FROM THE PRECEDING REQUIREMENT OF THIS SUBSECTION BUT, WHEN**
27 **APPLYING FOR A LICENSE, SHALL SUBMIT DOCUMENTATION IN THE**

1 **APPLICANT'S POSSESSION OR CONTROL REGARDING THE CONSTRUCTION OF THE**
2 **IMPOUNDMENT.** If construction of the disposal area or a portion of
3 the disposal area is not complete, the department shall require
4 additional construction certification of that portion of the
5 disposal area during intermediate progression of the operation, as
6 specified in section 11516(5).

7 (5) An applicant for an operating license, within 6 months
8 after a license denial, may resubmit the application, together with
9 additional information or corrections as are necessary to address
10 the reason for denial, without being required to pay an additional
11 application fee.

12 (6) In order to conduct tests and assess operational
13 capabilities, the owner or operator of a municipal solid waste
14 incinerator that is designed to burn at a temperature in excess of
15 2500 degrees Fahrenheit may operate the incinerator without an
16 operating license, upon notice to the department, for a period not
17 to exceed 60 days.

18 (7) The application for a type II landfill operating license
19 shall be accompanied by the following fee for the 5-year term of
20 the operating license, calculated in accordance with subsection
21 (8):

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

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

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

27 (d) Landfills receiving 500 tons per day or more, but less

1 than 1,000 tons per day, \$5,000.00.

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

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

6 (g) Landfills receiving greater than 3,000 tons per day,
7 \$30,000.00.

8 (8) Type II landfill application fees shall be based on the
9 average amount of waste projected to be received daily during the
10 license period. Application fees for license renewals shall be
11 based on the average amount of waste received in the previous
12 calendar year. Application fees shall be adjusted in the following
13 circumstances:

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

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

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

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

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

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

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

7 (10) **ON THE FIRST BUSINESS DAY OF EACH STATE FISCAL YEAR THAT**
8 **A COAL ASH LANDFILL HOLDS AN OPERATING LICENSE UNTIL IT ACHIEVES**
9 **CLOSURE UNDER SECTION 11519A(16), THE OWNER OR OPERATOR SHALL PAY**
10 **THE DEPARTMENT A FEE OF \$13,000.00. IF, AFTER THE EFFECTIVE DATE OF**
11 **THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, A COAL ASH LANDFILL**
12 **OBTAINS ITS FIRST OPERATING LICENSE, THE OWNER OR OPERATOR SHALL**
13 **PAY THE DEPARTMENT A FEE OF \$13,000.00 ON THE FIRST BUSINESS DAY**
14 **FOLLOWING RECEIPT OF ITS OPERATING LICENSE.**

15 (11) **ON THE FIRST BUSINESS DAY OF EACH STATE FISCAL YEAR THAT**
16 **A COAL ASH IMPOUNDMENT HOLDS AN OPERATING LICENSE UNTIL IT ACHIEVES**
17 **CLOSURE UNDER SECTION 11519A(16), THE OWNER OR OPERATOR SHALL PAY**
18 **TO THE DEPARTMENT A FEE OF \$13,000.00. IF, AFTER THE EFFECTIVE DATE**
19 **OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, A COAL ASH**
20 **IMPOUNDMENT OBTAINS ITS FIRST OPERATING LICENSE, THE OWNER OR**
21 **OPERATOR SHALL PAY THE DEPARTMENT A FEE OF \$13,000.00 ON THE FIRST**
22 **BUSINESS DAY FOLLOWING RECEIPT OF ITS OPERATING LICENSE.**

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

26 (13) **IF AN APPLICATION IS RETURNED TO THE APPLICANT AS**
27 **ADMINISTRATIVELY INCOMPLETE, THE DEPARTMENT SHALL REFUND THE ENTIRE**

1 FEE. IF A PERMIT IS DENIED OR AN APPLICATION IS WITHDRAWN, THE
2 DEPARTMENT SHALL REFUND 1/2 THE AMOUNT SPECIFIED IN SUBSECTION (9)
3 TO THE APPLICANT. AN APPLICANT FOR A LICENSE, WITHIN 12 MONTHS
4 AFTER A LICENSE DENIAL OR WITHDRAWAL OF A LICENSE APPLICATION, MAY
5 RESUBMIT THE APPLICATION AND THE REFUNDED PORTION OF THE FEE,
6 TOGETHER WITH THE ADDITIONAL INFORMATION AS NEEDED TO ADDRESS THE
7 REASONS FOR DENIAL, WITHOUT BEING REQUIRED TO PAY AN ADDITIONAL
8 APPLICATION FEE.

9 (14) ~~(10)~~—The operating license application for a solid waste
10 processing plant, solid waste transfer facility, other disposal
11 area, or combination of these entities shall be accompanied by a
12 fee equal to \$500.00.

13 (15) ~~(11)~~ ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (12), THE
14 department shall deposit operating license application fees
15 collected under this section in the perpetual care account of the
16 solid waste management fund established in section 11550.

17 (16) ~~(12)~~—A person who applies for an operating license for
18 more than 1 type of disposal area at the same facility shall pay a
19 fee equal to the sum of the applicable application fees listed in
20 this section.

21 SEC. 11512A. (1) THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO A
22 COAL ASH LANDFILL OR A COAL ASH IMPOUNDMENT UNLESS THE APPLICANT
23 HAS PROVIDED TO THE DEPARTMENT AN APPROVED HYDROGEOLOGICAL
24 MONITORING PROGRAM THAT COMPLIES WITH R 299.4440 TO R 299.4445, IF
25 APPLICABLE, AND R 299.4905 TO R 299.4908 OF THE PART 115 RULES.

26 (2) THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO A COAL ASH
27 LANDFILL UNLESS THE APPLICANT HAS PROVIDED TO THE DEPARTMENT A RUN-

1 ON AND RUN-OFF CONTROL SYSTEM PLAN THAT COMPLIES WITH 40 CFR
2 257.81(C) (1) AND WAS PREPARED AND SEALED BY A REGISTERED
3 PROFESSIONAL ENGINEER. THIS PLAN SHALL BE REVISED AT LEAST EVERY 5
4 YEARS IN COMPLIANCE WITH 40 CFR 257.81(C) (4) .

5 (3) THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO A COAL ASH
6 IMPOUNDMENT UNLESS THE APPLICANT HAS PROVIDED TO THE DEPARTMENT AN
7 INFLOW DESIGN FLOOD CONTROL SYSTEM PLAN THAT COMPLIES WITH 40 CFR
8 257.82(C) (1) AND WAS PREPARED AND SEALED BY A REGISTERED
9 PROFESSIONAL ENGINEER. THIS PLAN SHALL BE REVISED AT LEAST EVERY 5
10 YEARS IN COMPLIANCE WITH 40 CFR 257.82(C) (4) .

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

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

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

27 (3) The department shall take action to enforce this section

1 within 30 days of obtaining knowledge of a violation of this
2 section.

3 Sec. 11515. (1) Upon receipt of a license application, the
4 department or a health officer or an authorized representative of a
5 health officer shall inspect the site and determine if the proposed
6 operation complies with this part and the rules promulgated under
7 this part.

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

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

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

25 (C) **ISSUE** a timetable or schedule to provide for compliance
26 for the ~~facility or operation,~~ **LANDFILL OR COAL ASH IMPOUNDMENT,**
27 specifying a schedule of remedial measures, including a sequence of

1 actions or operations, which leads to compliance with this part
2 within a reasonable time period but not ~~later~~**MORE** than ~~December 2,~~
3 ~~1987.~~**1 YEAR.**

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

10 (2) An operating license shall expire 5 years after the date
11 of issuance. An operating license may be renewed before expiration
12 upon payment of a renewal application fee specified in section
13 11512(8) if the licensee is in compliance with this part and the
14 rules promulgated under this part.

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

22 (4) Except as otherwise provided in this subsection, the
23 department shall not issue an operating license for a new disposal
24 area within a planning area unless a solid waste management plan
25 for that planning area has been approved pursuant to sections 11536
26 and 11537 and unless the disposal area complies with and is
27 consistent with the approved solid waste management plan. ~~The~~

1 ~~department may issue an operating license for a disposal area~~
2 ~~designed to receive ashes produced in connection with the~~
3 ~~combustion of fossil fuels for electrical power generation~~ **THIS**
4 **SUBSECTION DOES NOT PROHIBIT THE ISSUANCE OF A LICENSE FOR A**
5 **CAPTIVE FACILITY THAT IS A COAL ASH IMPOUNDMENT OR A COAL ASH**
6 **LANDFILL** in the absence of an approved county solid waste
7 management plan, upon receipt of a letter of approval from
8 whichever county or counties, group of municipalities, or regional
9 planning agency has prepared or is preparing the county solid waste
10 management plan for that planning area under section 11533 and from
11 the municipality in which the disposal area is to be located.

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

1 or certification is not consistent with this part or rules
2 promulgated under this part or the approved plans.

3 Sec. 11518. (1) At the time a disposal area that is a sanitary
4 landfill is licensed, an instrument that imposes a restrictive
5 covenant upon the land involved shall be executed by all of the
6 owners of the tract of land upon which the landfill is to be
7 located and the department. If the land involved is state owned,
8 the state administrative board shall execute the covenant on behalf
9 of the state. The instrument imposing the restrictive covenant
10 shall be filed for record by the department or a health officer in
11 the office of the register of deeds of the county, or counties, in
12 which the facility is located. The covenant shall state that the
13 land described in the covenant has been or will be used as a
14 landfill and that neither the property owners, their servants,
15 agents, or employees, nor any of their heirs, successors, lessees,
16 or assigns shall engage in filling, grading, excavating, drilling,
17 or mining on the property during the first 50 years following
18 completion of the landfill without authorization of the department.
19 In giving authorization, the department shall consider the original
20 design, type of operation, material deposited, and the stage of
21 decomposition of the fill. Special exemption from this section may
22 be granted by the department if the lands involved are federal
23 lands or if contracts existing between the landowner and the
24 licensee on January 11, 1979 are not renegotiable.

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

1 applicable state law.

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

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

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

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

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

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

11 (A) RECORDKEEPING AND MAINTAINING AN OPERATING RECORD.

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

13 (C) DUST CONTROL.

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

15 (E) REGULAR AND ANNUAL INSPECTIONS.

16 (F) GROUNDWATER MONITORING.

17 (G) CORRECTIVE ACTION.

18 (H) CLOSURE AND POSTCLOSURE CARE.

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

21 (A) MAINTAIN A FUGITIVE DUST PLAN THAT COMPLIES WITH 40 CFR
22 257.80(B) AND WAS PREPARED AND SEALED BY A REGISTERED PROFESSIONAL
23 ENGINEER.

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

26 (6) THE OWNER OR OPERATOR OF A LICENSED COAL ASH LANDFILL
27 SHALL COMPLY WITH THE INSPECTION REQUIREMENTS OF 40 CFR 257.84, AS

1 APPLICABLE.

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

4 (A) THE INSPECTION REQUIREMENTS OF 40 CFR 257.83, AS
5 APPLICABLE.

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

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

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

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

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

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

24 (A) AN UP-TO-DATE OPERATING RECORD IN COMPLIANCE WITH 40 CFR
25 257.105.

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

1 (10) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
2 ACT THAT ADDED THIS SUBSECTION, THE OWNER OR OPERATOR OF AN
3 EXISTING COAL ASH LANDFILL SHALL ASSESS WHETHER THE LANDFILL IS
4 LOCATED IN AN UNSTABLE AREA AS DEFINED IN R 299.4409 OF THE PART
5 115 RULES. IF THE OWNER OR OPERATOR DETERMINES THAT THE LANDFILL OR
6 UNIT IS LOCATED IN AN UNSTABLE AREA, THE OWNER OR OPERATOR SHALL
7 CEASE PLACING COAL ASH INTO THE LANDFILL OR UNIT AND PROCEED TO
8 CLOSE THE LANDFILL OR UNIT IN COMPLIANCE WITH THIS PART AND THE
9 RULES PROMULGATED UNDER THIS PART.

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

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

- 1 (K) NICKEL.
- 2 (L) MERCURY.
- 3 (M) MOLYBDENUM.
- 4 (N) SELENIUM.
- 5 (O) SILVER.
- 6 (P) THALLIUM.
- 7 (Q) VANADIUM.
- 8 (R) ZINC.
- 9 (S) RADIUM 226 AND 228 COMBINED.

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

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

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

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

1 CLOSURE. THE CLOSURE SHALL BE COMPLETED IN COMPLIANCE WITH 40 CFR
2 257.102(F) (1) AND (2) .

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

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

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

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

16 (B) THE OWNER OR OPERATOR CERTIFIES THAT TESTING CONFIRMS THAT
17 CONSTITUENT CONCENTRATIONS REMAINING IN THE COAL ASH IMPOUNDMENT OR
18 LANDFILL UNIT AND ANY CONCENTRATIONS OF SOIL OR GROUNDWATER
19 AFFECTED BY RELEASES THEREFROM DO NOT EXCEED THE APPLICABLE
20 STANDARDS, ADOPTED BY THE DEPARTMENT PURSUANT TO SECTION 20120A AND
21 THE DEPARTMENT ACCEPTS THE CERTIFICATION OR, IF THE CONSTITUENT
22 CONCENTRATIONS DO EXCEED THOSE STANDARDS, THE DEPARTMENT HAS
23 APPROVED A REMEDIAL ACTION PLAN CONSISTENT WITH R 299.4444 AND R
24 299.4445 OF THE PART 115 RULES .

25 (19) UPON COMPLETION OF THE CLOSURE BY REMOVAL UNDER
26 SUBSECTION (18), THE FINANCIAL ASSURANCE UNDER SECTION 11523 AND
27 PERPETUAL CARE FUND UNDER SECTION 11525 SHALL BE TERMINATED, THE

1 **OWNER OR OPERATOR IS NOT REQUIRED TO PROVIDE FINANCIAL ASSURANCE OR**
2 **CONTRIBUTE TO A PERPETUAL CARE FUND, AND ANY CLAIM TO THE ASSURANCE**
3 **OR FUND BY THE DEPARTMENT IS TERMINATED AND RELEASED.**

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

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

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

25 **(C) FINANCIAL ASSURANCE ESTABLISHED FOR AN EXISTING COAL ASH**
26 **IMPOUNDMENT SHALL BE IN THE FORM OF A BOND IN AN AMOUNT EQUAL TO**
27 **\$20,000.00 PER ACRE WITHIN THE IMPOUNDMENT BOUNDARY. HOWEVER, THE**

1 AMOUNT OF THE BOND SHALL NOT BE LESS THAN \$20,000.00 OR MORE THAN
2 \$1,000,000.00. THE BOND SHALL PROVIDE ASSURANCE FOR THE MAINTENANCE
3 OF THE FINISHED COAL ASH IMPOUNDMENT FOR A PERIOD OF 30 YEARS AFTER
4 THE COAL ASH IMPOUNDMENT OR ANY APPROVED PORTION IS COMPLETED. IN
5 ADDITION TO THE BOND, A PERPETUAL CARE FUND SHALL BE MAINTAINED
6 UNDER SECTION 11525.

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

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

27 (3) An owner or operator of a disposal area that is not a

1 landfill who has accomplished closure in a manner approved by the
2 department and in accordance with this part and the rules
3 promulgated under this part, may request a 50% reduction in the
4 bond during the 2-year period after closure. At the end of the 2-
5 year period, the owner or operator may request that the department
6 terminate the bond. The department shall approve termination of the
7 bond within 60 days after the request is made if all waste and
8 waste residues have been removed from the disposal area and closure
9 is certified.

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

21 (5) Under the terms of a surety bond, letter of credit,
22 insurance policy, or perpetual care fund bond, the issuing
23 institution shall notify both the department and the owner or
24 operator at least 120 days before the expiration date or any
25 cancellation of the bond. If the owner or operator does not extend
26 the effective date of the bond, or establish alternate financial
27 assurance within 90 days after receipt of an expiration or

1 cancellation notice from the issuing institution, all of the
2 following apply:

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

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

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

13 (7) A person required under this section to provide financial
14 assurance in the form of a bond for a landfill may request a
15 reduction in the bond based upon the amount of the perpetual care
16 fund established under section 11525. A person requesting a bond
17 reduction shall do so on a form consistent with this part and
18 provided by the department. The department shall grant this request
19 unless there are sufficient grounds for denial and those reasons
20 are provided in writing. The department shall grant or deny a
21 request for a reduction of the bond within 60 days after the
22 request is made. If the department grants a request for a reduced
23 bond, the department shall require a bond in an amount such that
24 for type III landfills, and type II landfills that are preexisting
25 units, the amount of the perpetual care fund plus the amount of the
26 reduced bond equals the maximum amount required in a perpetual care
27 fund in section 11525(2).

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

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

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

18 Sec. 11523a. (1) Effective April 9, 1997, the department shall
19 not issue a license to operate a type II landfill unless the
20 applicant demonstrates that for any new unit or existing unit at
21 the facility, the combination of the perpetual care fund
22 established under section 11525, bonds, and the financial
23 capability of the applicant as evidenced by a financial test,
24 provides financial assurance in an amount not less than that
25 required by this section. ~~An applicant may utilize a financial test~~
26 ~~for an amount up to, but not exceeding 70% of the closure,~~
27 ~~postclosure, and corrective action cost estimate.~~

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

6 (a) A standard closure cost estimate. The standard closure
7 cost estimate shall be based upon the sum of the following costs in
8 1996 dollars, adjusted for inflation and partial closures, if any,
9 as specified in subsections (4) and (5):

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

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

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

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

21 (b) A standard postclosure cost estimate. The standard
22 postclosure cost estimate shall be based upon the sum of the
23 following costs, adjusted for inflation as specified in section
24 11525(2):

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

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

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

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

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

9 (c) The corrective action cost estimate, if any. The
10 corrective action cost estimate shall be a detailed written
11 estimate, in current dollars, of the cost of hiring a third party
12 to perform corrective action in accordance with this part.

13 (3) Instead of using some or all of the standardized costs
14 specified in subsection (2), an applicant may estimate the site
15 specific costs of closure or postclosure maintenance and
16 monitoring. A site specific cost estimate shall be a written
17 estimate, in current dollars, of the cost of hiring a third party
18 to perform the activity. For the purposes of this subsection, a
19 parent corporation or a subsidiary of the owner or operator is not
20 a third party. Site specific cost estimates shall be based on the
21 following:

22 (a) For closure, the cost to close the largest area of the
23 landfill ever requiring a final cover at any time during the active
24 life, when the extent and manner of its operation would make
25 closure the most expensive, in accordance with the approved closure
26 plan. The closure cost estimate may not incorporate any salvage
27 value that may be realized by the sale of structures, land,

1 equipment, or other assets associated with the facility at the time
2 of final closure.

3 (b) For postclosure, the cost to conduct postclosure
4 maintenance and monitoring in accordance with the approved
5 postclosure plan for the entire postclosure period.

6 (4) The owner or operator of a landfill subject to this
7 section shall, during the active life of the landfill and during
8 the postclosure care period, annually adjust the financial
9 assurance cost estimates and corresponding amount of financial
10 assurance for inflation. Cost estimates shall be adjusted for
11 inflation by multiplying the cost estimate by an inflation factor
12 derived from the most recent United States ~~department~~**DEPARTMENT** of
13 the ~~interior, bureau~~**INTERIOR, BUREAU** of ~~reclamation~~**RECLAMATION**
14 composite index published by the United States ~~department~~
15 **DEPARTMENT** of ~~commerce~~**COMMERCE** or another index that is more
16 representative of the costs of closure and postclosure monitoring
17 and maintenance as determined appropriate by the department. The
18 owner or operator shall document the adjustment on a form
19 consistent with this part as prepared by the department and shall
20 place the documentation in the operating record of the facility.

21 (5) The owner or operator of a landfill subject to this
22 section may request that the department authorize a reduction in
23 the approved cost estimates and corresponding financial assurance
24 for the landfill by submitting a form consistent with this part and
25 provided by the department certifying completion of any of the
26 following activities:

27 (a) Partial closure of the landfill. The current closure cost

1 estimate for partially closed portions of a landfill unit may be
2 reduced by 80%, if the maximum waste slope on the unclosed portions
3 of the unit does not exceed 25%. The percentage of the cost
4 estimate reduction approved by the department for the partially
5 closed portion shall be reduced 1% for every 1% increase in the
6 slope of waste over 25% in the active portion. An owner or operator
7 requesting a reduction in financial assurance for partial closure
8 shall enclose with the request a certification under the seal of a
9 licensed professional engineer that certifies both of the
10 following:

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

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

16 (b) Final closure of the landfill. An owner or operator
17 requesting a cost estimate reduction for final closure shall submit
18 a certification under the seal of a licensed professional engineer
19 that closure of that landfill unit has been fully completed in
20 accordance with the approved closure plan for the landfill. Within
21 60 days of receiving a certification under this subsection, the
22 department shall perform a consistency review of the submitted
23 certification and do 1 of the following:

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

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

1 department has determined that closure certification has not been
2 conducted in accordance with this part, the rules promulgated under
3 this part, or an approved closure plan.

4 (c) Postclosure maintenance and monitoring. The owner or
5 operator of a landfill unit who has completed final closure of the
6 unit may request a reduction in the postclosure cost estimate and
7 corresponding financial assurance for 1 year or more of postclosure
8 maintenance and monitoring if the landfill has been monitored and
9 maintained in accordance with the approved postclosure plan. The
10 department shall, within 60 days of receiving a cost estimate
11 reduction request grant written approval or issue a written denial
12 stating the reason for denial. The department shall grant the
13 request and the owner or operator may reduce the postclosure cost
14 estimate to reflect the number of years remaining in the
15 postclosure period unless the department denies the request and the
16 written denial states that the owner or operator has not performed
17 the specific tasks consistent with this part, rules promulgated
18 under this part, and an approved plan.

19 (6) The owner or operator of a landfill subject to this
20 section may request a reduction in the amount of one or more of the
21 financial assurance mechanisms in place. If the combined value of
22 the remaining financial assurance mechanisms equals the amount
23 required under this section, the department shall approve the
24 request.

25 (7) An owner or operator requesting that the department
26 approve a financial assurance reduction under subsection (5) or (6)
27 shall do so on a form consistent with this part and provided by the

1 department. The department shall grant written approval or, within
2 60 days of receiving a financial assurance reduction request, issue
3 a written denial stating the reason for the denial.

4 Sec. 11523b. (1) The owner or operator of a landfill **OR COAL**
5 **ASH IMPOUNDMENT** may establish a trust fund or escrow account to
6 fulfill the requirements of sections 11523 and 11523a. The trust
7 fund or escrow account shall be executed on a form provided by the
8 department.

9 (2) Payments into a trust fund or escrow account shall be made
10 annually over the term of the first operating license issued after
11 the effective date of this section. The first payment into a trust
12 fund or escrow account shall be made prior to licensure and shall
13 be at least equal to the portion of the financial assurance
14 requirement to be covered by the trust fund or escrow account
15 divided by the term of the operating license. Subsequent payments
16 shall be equal to the remaining financial assurance requirement
17 divided by the number of years remaining until the license expires.

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

25 (4) All earnings and interest from a trust fund or escrow
26 account shall be credited to the fund or account. However, the
27 custodian may be compensated for reasonable fees and costs for his

1 or her responsibilities as custodian. The custodian shall ensure
2 the filing of all required tax returns for which the trust fund or
3 escrow account is liable and shall disburse funds from earnings to
4 pay lawfully due taxes owed by the trust fund or escrow account,
5 without permission of the department.

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

10 (6) The owner or operator may request that the department
11 authorize the release of funds from a trust fund or escrow account.
12 The department shall grant the request if the owner or operator
13 demonstrates that the value of the fund or account exceeds the
14 owner's or operator's financial assurance obligation. A payment or
15 disbursement from the fund or account shall not be made without the
16 prior written approval of the department.

17 (7) The owner or operator shall receive all interest or
18 earnings from a trust fund or escrow account upon its termination.

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

22 Sec. 11525. (1) The owner or operator of a landfill **OR COAL**
23 **ASH IMPOUNDMENT** shall establish and maintain a perpetual care fund
24 for a period of 30 years after final closure of the landfill **OR**
25 **COAL ASH IMPOUNDMENT** as specified in this section. A perpetual care
26 fund may be established as a trust, an escrow account, or a
27 perpetual care fund bond and may be used to demonstrate financial

1 assurance for type II **AND TYPE III** landfills **AND COAL ASH**
2 **IMPOUNDMENTS** under ~~section~~**SECTIONS** 11523 and ~~section~~11523a.

3 (2) Except as otherwise provided in this section, the owner or
4 operator of a landfill shall increase the amount of his or her
5 perpetual care fund 75 cents for each ton or portion of a ton or 25
6 cents for each cubic yard or portion of a cubic yard of solid waste
7 that is disposed of in the landfill after June 17, 1990 until the
8 fund reaches the maximum required fund amount. As of July 1, 1996,
9 the maximum required fund amount **FOR A LANDFILL OR COAL ASH**
10 **IMPOUNDMENT** is \$1,156,000.00. This amount shall be annually
11 adjusted for inflation and rounded to the nearest thousand. The
12 department shall adjust the maximum required fund amount for
13 inflation annually by multiplying the amount by an inflation factor
14 derived from the most recent ~~bureau~~**UNITED STATES DEPARTMENT OF THE**
15 **INTERIOR, BUREAU** of ~~reclamation~~**RECLAMATION** composite index
16 published by the United States ~~department~~**DEPARTMENT** of ~~commerce~~
17 **COMMERCE** or another index more representative of the costs of
18 closure and postclosure monitoring and maintenance as determined
19 appropriate by the department. Increases to the amount of a
20 perpetual care fund required under this subsection shall be
21 calculated based on solid waste disposed of in the landfill as of
22 the end of the state fiscal year and shall be made within 30 days
23 after the end of each state fiscal year.

24 (3) The owner or operator of a landfill **OR COAL ASH**
25 **IMPOUNDMENT** that is used for the disposal of the following
26 materials shall increase the amount of the perpetual care fund 7.5
27 cents for each ton or cubic yard or portion of a ton or cubic yard

1 of the following materials that are disposed of in the landfill
2 ~~after June 17, 1990:~~ **OR COAL ASH IMPOUNDMENT AFTER THE EFFECTIVE**
3 **DATE OF THE AMENDATORY ACT THAT ADDED SECTION 11511A UNTIL THE FUND**
4 **REACHES THE MAXIMUM REQUIRED FUND AMOUNT UNDER SUBSECTION (2):**

5 (a) Coal ash, wood ash, or cement kiln dust that is disposed
6 of in a landfill that is used only for the disposal of coal ash,
7 wood ash, or cement kiln dust, or a combination of these materials,
8 or that is permanently segregated in a landfill.

9 (b) Wastewater treatment sludge or sediments from wood pulp or
10 paper producing industries that is disposed of in a landfill that
11 is used only for the disposal of wastewater treatment sludge and
12 sediments from wood pulp or paper producing industries, or that is
13 permanently segregated in a landfill.

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

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

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

27 (6) The owner or operator of a landfill may increase the

1 amount of the perpetual care fund above the amount otherwise
2 required by this section at his or her discretion.

3 (7) The custodian of a perpetual care fund trust or escrow
4 account shall be a bank or other financial institution that has the
5 authority to act as a custodian and whose account operations are
6 regulated and examined by a federal or state agency. Until the
7 perpetual care fund trust or escrow account reaches the maximum
8 required fund amount, the custodian of a perpetual care fund trust
9 or escrow account shall credit any interest and earnings of the
10 perpetual care fund trust or escrow account to the perpetual care
11 fund trust or escrow account. After the perpetual care fund trust
12 or escrow account reaches the maximum required fund amount, any
13 interest and earnings shall be distributed as directed by the owner
14 or operator. The agreement governing the operation of the perpetual
15 care fund trust or escrow account shall be executed on a form
16 consistent with this part and provided by the department. The
17 custodian may be compensated from the fund for reasonable fees and
18 costs incurred for his or her responsibilities as custodian. The
19 custodian of a perpetual care fund trust or escrow account shall
20 make an accounting to the department within 30 days following the
21 close of each state fiscal year.

22 (8) The custodian of a perpetual care fund shall not disburse
23 any funds to the owner or operator of a landfill **OR COAL ASH**
24 **IMPOUNDMENT** for the purposes of the perpetual care fund except upon
25 the prior written approval of the department. However, the
26 custodian shall ensure the filing of all required tax returns for
27 which the perpetual care fund is liable and shall disburse funds to

1 pay lawfully due taxes owed by the perpetual care fund without
2 permission of the department. The owner or operator of the landfill
3 **OR COAL ASH IMPOUNDMENT** shall provide notice of requests for
4 disbursement and denials and approvals to the custodian of the
5 perpetual care fund. Requests for disbursement from a perpetual
6 care fund shall be submitted not more frequently than semiannually.
7 The owner or operator of a landfill **OR COAL ASH IMPOUNDMENT** may
8 request disbursement of funds from a perpetual care fund whenever
9 the amount of money in the fund exceeds the maximum required fund
10 amount. The department shall approve the disbursement if the total
11 amount of financial assurance maintained meets the requirements of
12 sections 11523 and 11523a. As used in this subsection, "maximum
13 required fund amount" means:

14 (a) For those landfills **OR COAL ASH IMPOUNDMENTS** containing
15 only those materials specified in subsection (3), an amount equal
16 to 1/2 of the maximum required fund amount specified in subsection
17 (2).

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

20 (9) If the owner or operator of a landfill **OR COAL ASH**
21 **IMPOUNDMENT** refuses or fails to conduct closure, postclosure
22 monitoring and maintenance, or corrective action as necessary to
23 protect the public health, safety, or welfare, or the environment
24 or fails to request the disbursement of money from a perpetual care
25 fund when necessary to protect the public health, safety, or
26 welfare, or the environment, or fails to pay the solid waste
27 management program administration fee or the surcharge required

1 under section 11525a, then the department may draw on the perpetual
2 care fund and may expend the money for closure, postclosure
3 monitoring and maintenance, and corrective action, as necessary.

4 The department may draw on a perpetual care fund for administrative
5 costs associated with actions taken under this subsection.

6 (10) Upon approval by the department of a request to terminate
7 financial assurance for a landfill **OR COAL ASH IMPOUNDMENT** under
8 section 11525b, any money in the perpetual care fund for that
9 landfill **OR COAL ASH IMPOUNDMENT** shall be disbursed by the
10 custodian to the owner of the landfill **OR COAL ASH IMPOUNDMENT**
11 unless a contract between the owner and the operator ~~of the~~
12 ~~landfill~~ provides otherwise.

13 (11) The owner of a landfill **OR COAL ASH IMPOUNDMENT** shall
14 provide notice to the custodian of the perpetual care fund for that
15 landfill **OR COAL ASH IMPOUNDMENT** if there is a change of ownership
16 of the landfill. The custodian shall maintain records of ownership
17 of a landfill **OR COAL ASH IMPOUNDMENT** during the period of
18 existence of the perpetual care fund.

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

22 (13) This section does not create a cause of action at law or
23 in equity against a custodian of a perpetual care fund other than
24 for errors or omissions related to investments, accountings,
25 disbursements, filings of required tax returns, and maintenance of
26 records required by this section or the applicable perpetual care
27 fund.

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

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

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

7 (15) A perpetual care fund that is established as a trust or
8 escrow account may be replaced with a perpetual care fund that is
9 established as a perpetual care fund bond that complies with this
10 section. Upon such replacement, the director shall authorize the
11 custodian of the trust or escrow account to disburse the money in
12 the trust or escrow account to the owner of the landfill **OR COAL**
13 **ASH IMPOUNDMENT** unless a contract between the owner and operator of
14 ~~the landfill~~ specifies otherwise.

15 (16) An owner or operator of a landfill **OR COAL ASH**
16 **IMPOUNDMENT** who uses a perpetual care fund bond to satisfy the
17 requirements of this section shall also establish a standby trust
18 or escrow account. All payments made under the terms of the
19 perpetual care fund bond shall be deposited by the custodian
20 directly into the standby trust or escrow account in accordance
21 with instructions from the director. The standby trust or escrow
22 account must meet the requirements for a trust or escrow account
23 established as a perpetual care fund under subsection (1), except
24 that until the standby trust or escrow account is funded pursuant
25 to the requirements of this subsection, the following are not
26 required:

27 (a) Payments into the standby trust or escrow account as

1 specified in subsection (2).

2 (b) Annual accounting valuations as required in subsection
3 (7).

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

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

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

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

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

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

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

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

24 (2) The owner or operator of a landfill **OR COAL ASH**
25 **IMPOUNDMENT THAT IS NOT A CAPTIVE FACILITY** shall pay the surcharge
26 under subsection (1)(a) within 30 days after the end of each
27 quarter of the state fiscal year. The owner or operator of a type

1 III landfill **OR COAL ASH IMPOUNDMENT** that is a captive facility
2 shall pay the surcharge under subsection (1) (b) by January 31 of
3 each year.

4 (3) The owner or operator of a landfill **OR COAL ASH**
5 **IMPOUNDMENT** who is required to pay the surcharge under subsection
6 (1) shall pass through and collect the surcharge from any person
7 who generated the solid waste or who arranged for its delivery to
8 the solid waste hauler or transfer facility notwithstanding the
9 provisions of any contract or agreement to the contrary or the
10 absence of any contract or agreement.

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

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

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

22 (2) The owner or operator of a landfill **OR COAL ASH**
23 **IMPOUNDMENT** who has completed postclosure maintenance and
24 monitoring ~~of the landfill~~ in accordance with this part, rules
25 promulgated under this part, and approved postclosure plan may
26 request that financial assurance required by sections 11523 and
27 11523a be terminated. A person requesting termination of bonding

1 and financial assurance shall submit to the department a statement
2 that the landfill **OR COAL ASH IMPOUNDMENT** has been monitored and
3 maintained in accordance with this part, rules promulgated under
4 this part, and the approved postclosure plan for the postclosure
5 period specified in section 11523 and shall certify that the
6 landfill **OR COAL ASH IMPOUNDMENT** is not subject to corrective
7 action under section 11515. Within 60 days of receiving a statement
8 under this subsection, the department shall perform a consistency
9 review of the submitted statement and do 1 of the following:

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

16 (b) Disapprove the statement and provide the owner or operator
17 with a detailed written statement of the reasons why the department
18 has determined that postclosure maintenance and monitoring and
19 corrective action, if any, have not been conducted in accordance
20 with this part, the rules promulgated under this part, or an
21 approved postclosure plan.

22 Sec. 11528. (1) A solid waste transporting unit used for
23 garbage, industrial or domestic sludges, or other moisture laden
24 materials not specifically covered by part 121 shall be watertight
25 and constructed, maintained, and operated to prevent littering.
26 Solid waste transporting units used for hauling other solid waste
27 shall be designed and operated to prevent littering or any other

1 nuisance.

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

5 (3) The department, a health officer, or a law enforcement
6 officer may order a solid waste transporting unit out of service if
7 the unit does not ~~satisfy~~ **COMPLY WITH** the requirements of this part
8 or the rules promulgated under this part. Continued use of a solid
9 waste transporting unit ordered out of service is a violation of
10 this part.

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

15 (a) The establishment of goals and objectives for prevention
16 of adverse effects on the public health and on the environment
17 resulting from improper solid waste collection, processing, or
18 disposal including protection of surface and groundwater quality,
19 air quality, and the land.

20 (b) An evaluation of waste problems by type and volume,
21 including residential and commercial solid waste, hazardous waste,
22 industrial sludges, pretreatment residues, municipal sewage sludge,
23 air pollution control residue, and other wastes from industrial or
24 municipal sources.

25 (c) An evaluation and selection of technically and
26 economically feasible solid waste management options, which may
27 include sanitary landfill, resource recovery systems, resource

1 conservation, or a combination of options.

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

6 (e) The encouragement and documentation as part of the solid
7 waste management plan, of all opportunities for participation and
8 involvement of the public, all affected agencies and parties, and
9 the private sector.

10 (f) That the solid waste management plan contain enforceable
11 mechanisms for implementing the plan, including identification of
12 the municipalities within the county responsible for the
13 enforcement and may contain a mechanism for the county and those
14 municipalities to assist the department and the state police in
15 implementing and conducting the inspection program established in
16 section 11526(2) and (3). This subdivision does not preclude the
17 private sector's participation in providing solid waste management
18 services consistent with the solid waste management plan for the
19 county.

20 (g) Current and projected population densities of each county
21 and identification of population centers and centers of solid waste
22 generation, including industrial wastes.

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

1 (i) That the solid waste disposal areas or resource recovery
2 facilities provided for in the solid waste management plan are
3 capable of being developed and operated in compliance with state
4 law and rules of the department pertaining to protection of the
5 public health and the environment, considering the available land
6 in the plan area, and the technical feasibility of, and economic
7 costs associated with, the facilities.

8 (j) A timetable or schedule for implementing the solid waste
9 management plan.

10 (2) Each solid waste management plan shall identify specific
11 sites for solid waste disposal areas for a 5-year period after
12 approval of a plan or plan update. In calculating disposal need
13 requirements to measure compliance with this section, only those
14 existing waste stream volume reduction levels achieved through
15 source reduction, reuse, composting, recycling, or incineration, or
16 any combination of these reduction devices, that can currently be
17 demonstrated or that can be reasonably expected to be achieved
18 through currently active implementation efforts for proposed volume
19 reduction projects, may be assumed by the planning entity. In
20 addition, if the solid waste management plan does not also identify
21 specific sites for solid waste disposal areas for the remaining
22 portion of the entire planning period required by this part after
23 approval of a plan or plan update, the solid waste management plan
24 shall include an interim siting mechanism and an annual
25 certification process as described in subsections ~~(3)~~ **(4)** and ~~(4)~~.
26 **(5)**. In calculating the capacity of identified disposal areas to
27 determine if disposal needs are met for the entire required

1 planning period, full achievement of the solid waste management
2 plan's volume reduction goals may be assumed by the planning entity
3 if the plan identifies a detailed programmatic approach to
4 achieving these goals. If a siting mechanism is not included, and
5 disposal capacity falls to less than 5 years of capacity, a county
6 shall amend the solid waste management plan for that county to
7 resolve the shortfall.

8 **(3) AN EXISTING CAPTIVE TYPE III LANDFILL OR EXISTING CAPTIVE**
9 **COAL ASH IMPOUNDMENT, OR BOTH, IS CONSIDERED CONSISTENT WITH AND**
10 **INCLUDED IN THE SOLID WASTE MANAGEMENT PLAN FOR THE COUNTY OR**
11 **REGION IN WHICH THE DISPOSAL AREA IS LOCATED IF THE DISPOSAL AREA**
12 **CONTINUES TO ACCEPT WASTE GENERATED ONLY BY THE OWNER OF THE**
13 **LANDFILL OR COAL ASH IMPOUNDMENT AND THE DISPOSAL AREA MEETS ANY OF**
14 **THE FOLLOWING REQUIREMENTS:**

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

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

19 **(4)** ~~(3)~~—An interim siting mechanism shall include both a
20 process and a set of minimum siting criteria, both of which are not
21 subject to interpretation or discretionary acts by the planning
22 entity, and which if met by an applicant submitting a disposal area
23 proposal, will guarantee a finding of consistency with the plan.
24 The interim siting mechanism shall be operative upon the call of
25 the board of commissioners or shall automatically be operative
26 whenever the annual certification process shows that available
27 disposal capacity will provide for less than 66 months of disposal

1 needs. In the latter event, applications for a finding of
2 consistency from the proposers of disposal area capacity will be
3 received by the planning agency commencing on January 1 following
4 completion of the annual certification process. Once operative, an
5 interim siting mechanism will remain operative for at least 90 days
6 or until more than 66 months of disposal capacity is once again
7 available, either by the approval of a request for consistency or
8 by the adoption of a new annual certification process which
9 concludes that more than 66 months of disposal capacity is
10 available.

11 (5) ~~(4)~~—An annual certification process shall be concluded by
12 June 30 of each year, commencing on the first June 30 which is more
13 than 12 months after the department's approval of the solid waste
14 management plan or plan update. The certification process will
15 examine the remaining disposal area capacity available for solid
16 wastes generated within the planning area. In calculating disposal
17 need requirements to measure compliance with this section, only
18 those existing waste stream volume reduction levels achieved
19 through source reduction, reuse, composting, recycling, or
20 incineration, or any combination of these reduction devices, that
21 can currently be demonstrated or that can be reasonably expected to
22 be achieved through currently active implementation efforts for
23 proposed volume reduction projects, may be assumed. The annual
24 certification of disposal capacity shall be approved by the board
25 of commissioners. Failure to approve an annual certification by
26 June 30 is equivalent to a finding that less than a sufficient
27 amount of capacity is available and the interim siting mechanism

1 will then be operative on the first day of the following January.
2 As part of the department's responsibility to act on construction
3 permit applications, the department has final decision authority to
4 approve or disapprove capacity certifications and to determine
5 consistency of a proposed disposal area with the solid waste
6 management plan.

7 **(6)** ~~(5)~~—A board of commissioners may adopt a new certification
8 of disposal capacity at any time. A new certification of disposal
9 capacity shall supersede all previous certifications, and become
10 effective 30 days after adoption by the board of commissioners and
11 remain in effect until subsequent certifications are adopted.

12 **(7)** ~~(6)~~—In order for a disposal area to serve the disposal
13 needs of another county, state, or country, the service, including
14 the disposal of municipal solid waste incinerator ash, must be
15 explicitly authorized in the approved solid waste management plan
16 of the receiving county. With regard to intercounty service within
17 Michigan, the service must also be explicitly authorized in the
18 solid waste management plan of the exporting county.

19 **(8)** ~~(7)~~—A person shall not dispose of, store, or transport
20 solid waste in this state unless the person complies with the
21 requirements of this part.

22 **(9)** ~~(8)~~—An ordinance, law, rule, regulation, policy, or
23 practice of a municipality, county, or governmental authority
24 created by statute, which prohibits or regulates the location or
25 development of a solid waste disposal area, and which is not part
26 of or not consistent with the approved solid waste management plan
27 for the county, shall be considered in conflict with this part and

1 shall not be enforceable.

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

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

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

9 (ii) How various factors do or may affect a recycling and
10 composting program in the plan area. Factors shall include an
11 evaluation of the existing solid waste collection system; materials
12 market; transportation networks; local composting and recycling
13 support groups, or both; institutional arrangements; the population
14 in the plan area; and other pertinent factors.

15 (iii) An identification of impediments to implementing a
16 recycling and composting program and recommended strategies for
17 removing or minimizing impediments.

18 (iv) How recycling and composting and other processing or
19 disposal methods could complement each other and an examination of
20 the feasibility of excluding site separated material and source
21 separated material from other processing or disposal methods.

22 (v) Identification and quantification of environmental,
23 economic, and other benefits that could result from the
24 implementation of a recycling and composting program.

25 (vi) The feasibility of source separation of materials that
26 contain potentially hazardous components at disposal areas. This
27 subparagraph applies only to plan updates that are due after

1 January 31, 1989.

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

6 (c) A plan that proposes a recycling or composting program, or
7 both, details the major features of that program, including all of
8 the following:

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

11 (ii) Collection methods.

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

14 (iv) Ordinances or regulations affecting the program.

15 (v) The role of counties and municipalities in implementing
16 the plan.

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

19 (vii) Anticipated costs.

20 (viii) On-going program financing.

21 (ix) Equipment selection.

22 (x) Public and private sector involvement.

23 (xi) Site availability and selection.

24 (xii) Operating parameters such as pH and heat range.

25 (d) The plan includes an evaluation of how the planning entity
26 is meeting the state's waste reduction and recycling goals as
27 established pursuant to section 11541(4).

1 (2) A PERMITTED, LICENSED, OR OTHERWISE LAWFULLY OPERATING
2 DISPOSAL AREA THAT IS IN EXISTENCE ON THE DATE OF APPROVAL OF THE
3 SOLID WASTE MANAGEMENT PLAN FOR THE PLANNING AREA WHERE THE
4 DISPOSAL AREA IS LOCATED SHALL BE CONSIDERED TO BE CONSISTENT WITH
5 THE PLAN AND INCLUDED IN THE PLAN. HOWEVER, IF THE DISPOSAL AREA IS
6 SUBJECT TO AN ACTION FOR VIOLATION, OR A COURT ORDER PURSUANT TO
7 SECTION 11546 OR 11549, THE DISPOSAL AREA SHALL BE INCLUDED IN THE
8 PLAN ONLY IF THE DIRECTOR OR THE PLANNING AGENCY DETERMINES THAT IT
9 IS CONSISTENT WITH OR SHOULD BE INCLUDED IN THE PLAN.

10 (3) ~~(2)~~—The director may promulgate rules as may be necessary
11 to implement this section.

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

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

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

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

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

23 (A) A leachate collection system.

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

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

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

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

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

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

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

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

11 (A) A leachate collection system.

12 (B) A composite liner, as defined in R 299.4102 of the
13 ~~Michigan administrative code.~~ **PART 115 RULES.**

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

15 (D) A second composite liner.

16 (iv) If contaminants that may threaten the public health,
17 safety, or welfare, or the environment are found in the leachate
18 collection system described in subparagraph (iii) (C), the owner or
19 operator of the landfill shall determine the source and nature of
20 the contaminants and make repairs, to the extent practicable, that
21 will prevent the contaminants from entering the leachate collection
22 system. If the department determines that the source of the
23 contaminants is caused by a design failure of the landfill, the
24 department, notwithstanding an approved construction permit or
25 operating license, may require landfill cells at that landfill that
26 will be used for the disposal of municipal solid waste incinerator
27 ash, which are under construction or will be constructed in the

1 future at the landfill, to be constructed in conformance with
2 improved design standards approved by the department. However, this
3 subparagraph does not require the removal of liners or leak
4 detection and leachate collection systems that are already in place
5 in a landfill cell under construction.

6 (c) A landfill that is a monitorable unit, as defined in R
7 299.4104 of the ~~Michigan administrative code~~, **PART 115 RULES**, and
8 that meets all of the following requirements:

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

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

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

15 (A) A leachate collection system.

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

17 (C) Immediately below the synthetic liner, either 2 feet of
18 compacted clay with a maximum hydraulic conductivity of 1×10^{-7}
19 centimeters per second or a bentonite geocomposite liner, as
20 specified in R 299.4914 of the ~~Michigan administrative code~~. **PART**
21 **115 RULES**.

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

25 (d) A landfill with a design approved by the department that
26 will prevent the migration of any hazardous constituent into the
27 groundwater or surface water at least as effectively as the design

1 requirements of subdivisions (a) to (c).

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

5 (i) The ash was generated by a municipal solid waste
6 incinerator that is designed to burn at a temperature in excess of
7 2500 degrees Fahrenheit.

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

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

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

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

18 (c) An infiltration collection system.

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

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

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

27 (4) If leachate is collected from a landfill under this

1 section, the leachate shall be monitored and tested in accordance
2 with this part and the rules promulgated under this part.

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

1 may be disposed of in a municipal solid waste landfill, as defined
2 by R 299.4104 of the ~~Michigan administrative code~~, **PART 115 RULES**,
3 licensed under this part or may be used in any manner approved by
4 the department. If municipal solid waste incinerator ash is
5 processed as provided in this subsection, but does not ~~satisfy~~
6 **COMPLY WITH** the testing protocol approved by the department as
7 provided by rule, the ash shall be disposed of in accordance with
8 subsection (1).

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

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

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

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

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

6 (2) Money in the solid waste management fund at the close of
7 the fiscal year shall remain in the fund and shall not lapse to the
8 general fund.

9 (3) The state treasurer shall establish, within the solid
10 waste management fund, a solid waste staff account and a perpetual
11 care account.

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

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 which are

1 or have been licensed under this part.

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

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

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

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

22 (6) By March 1 annually, the department shall prepare and
23 submit to the governor, the legislature, the chairs of the standing
24 committees of the senate and house of representatives with primary
25 responsibility for issues related to natural resources and the
26 environment, and the chairs of the subcommittees of the senate and
27 house appropriations committees with primary responsibility for

1 appropriations to the department a report that details the
2 activities of the previous fiscal year funded by the staff account
3 of the solid waste management fund. ~~established in this section.~~
4 This report shall include, at a minimum, all of the following as it
5 relates to the department:

6 (a) The number of full-time equated positions performing solid
7 waste management permitting, compliance, and enforcement
8 activities.

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

11 (i) The number of applications received by the department,
12 reported as the number of applications determined to be
13 administratively incomplete and the number determined to be
14 administratively complete.

15 (ii) The number of applications determined to be
16 administratively complete for which a final action was taken by the
17 department. The number of final actions shall be reported as the
18 number of applications approved, the number of applications denied,
19 and the number of applications withdrawn by the applicant.

20 (iii) The percentage and number of applications determined to
21 be administratively complete for which a final decision was made
22 within ~~120 days of receipt as~~ **THE PERIOD** required by ~~section~~
23 ~~11511.~~ **PART 13.**

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

26 (i) The number of applications received by the department,
27 reported as the number of applications determined to be

1 administratively incomplete and the number determined to be
2 administratively complete.

3 (ii) The number of applications determined to be
4 administratively complete for which a final action was taken by the
5 department. The number of final actions shall be reported as the
6 number of applications approved, the number of applications denied,
7 and the number of applications withdrawn by the applicant.

8 (iii) The percentage and number of applications determined to
9 be administratively complete for which a final decision was made
10 within ~~90 days of receipt as~~ **THE PERIOD** required by section
11 ~~11516.~~ **PART 13.**

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

14 (e) The number of letters of warning sent to licensed disposal
15 areas.

16 (f) The number of contested case hearings and civil actions
17 initiated and completed, the number of voluntary consent orders and
18 administrative orders entered or issued, and the amount of fines
19 and penalties collected through such actions or orders.

20 (g) For each enforcement action that includes a penalty, a
21 description of what corrective actions were required by the
22 enforcement action.

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

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

1 (7) THE COAL ASH CARE FUND IS CREATED WITHIN THE STATE
2 TREASURY. THE STATE TREASURER MAY RECEIVE MONEY FROM ANY SOURCE FOR
3 DEPOSIT INTO THE FUND. THE STATE TREASURER SHALL DIRECT THE
4 INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT TO THE
5 FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS.

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

9 (A) PREPARING GENERALLY APPLICABLE GUIDANCE REGARDING THE
10 SOLID WASTE PERMIT AND LICENSE PROGRAM OR ITS IMPLEMENTATION OR
11 ENFORCEMENT.

12 (B) REVIEWING AND ACTING ON ANY APPLICATION FOR A PERMIT OR
13 LICENSE, PERMIT OR LICENSE REVISION, OR PERMIT OR LICENSE RENEWAL,
14 INCLUDING THE COST OF PUBLIC NOTICE AND PUBLIC HEARINGS.

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

16 (D) GENERAL ADMINISTRATIVE COSTS OF RUNNING THE PERMIT AND
17 LICENSE PROGRAM, INCLUDING PERMIT AND LICENSE TRACKING AND DATA
18 ENTRY.

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

20 (F) IMPLEMENTING AND ENFORCING THE CONDITIONS OF ANY PERMIT OR
21 LICENSE.

22 (G) GROUNDWATER MONITORING AUDITS AT DISPOSAL AREAS THAT ARE
23 OR HAVE BEEN LICENSED UNDER THIS PART.

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

26 (I) REVIEW OF CERTIFICATIONS OF CLOSURE.

27 (J) POSTCLOSURE MAINTENANCE AND MONITORING INSPECTIONS AND

1 REVIEW.

2 (K) REVIEW OF BONDS AND FINANCIAL ASSURANCE DOCUMENTATION AT

3 DISPOSAL AREAS THAT ARE OR HAVE BEEN LICENSED UNDER THIS PART.