

Act No. 64
Public Acts of 1979
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**STATE OF MICHIGAN
80TH LEGISLATURE
REGULAR SESSION OF 1979**

Introduced by Reps. Tomboulian, Harrison, Dongvillo, Mathieu, Anderson, Roy Smith, Mueller, Van Singel, Vanek, Defebaugh, Rocca, Armbruster, Barcia, Clodfelter, Raymond W. Hood, Buth, Joe Young, Jr., Alley, Watkins, DeBeaussaert, Lalonde, Terrell, Scott, Jondahl, Conroy, Ciaramitaro, Evans, Dutko, Forbes, Henry, McNamee, Binsfeld, Brotherton, Padden, Dodak, Legel, Hillegonds, Bennane, Geerlings, Gingrass, Stabenow and Bullard
Reps. Allbritten, Andrews, Ballantine, Bennett, Thomas H. Brown, Bryant, Burkhalter, Busch, Campbell, Cramton, Cropsey, Dillingham, Dressel, Fessler, Fitzpatrick, Gilmer, Gnodtke, Hadden, Hasper, Hellman, Hertel, Hoffman, Hollister, Jacobetti, Keith, Kelsey, Kilpatrick, Kirksey, Lincoln, Maynard, McCollough, Nash, O'Neill, Ostling, Randall, Sietsema, Siljander, Spaniola, Stacey, Symons, Trim, Varnum and Vaughn named co-sponsors

ENROLLED HOUSE BILL No. 4380

AN ACT to protect the public health and the natural resources of the state and to license and regulate persons engaged in removing and disposing of hazardous waste; to provide for hazardous waste management facilities; to create a hazardous waste site approval board; to provide for the inspection and licensing of equipment; to prescribe the powers and duties of certain state agencies; to develop a plan which provides for the safe management and disposal of hazardous waste; to regulate the operation of disposal facilities; to establish a list and criteria of hazardous waste requiring storage or disposal at approved disposal facilities; to establish a manifest system to track hazardous waste; to establish a disposal facility trust fund and a hazardous waste service fund; to consider waste management and disposal needs of this state; and to prescribe remedies and penalties.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "hazardous waste management act".

Sec. 2. For the purposes of this act the words and phrases defined in sections 3 to 5 have the meanings ascribed to them in those sections.

Sec. 3. (1) "Board" means the site approval board created in section 17.

(2) "Certificate of disposal" means a form provided by the department, used to certify that a hazardous waste has been treated or disposed of pursuant to this act. The certificate shall state the method of treatment or disposal used to destroy, neutralize, process, bury, or otherwise treat the hazardous waste.

(3) "Committee" means the state hazardous waste management planning committee created in section 8.

(4) "Department" means the department of natural resources.

(5) "Director" means the director of the department.

(6) "Disposal" means the incineration, long term storage, treatment, or the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste into or on land or water in a manner that the hazardous waste or a constituent of the hazardous waste enters the environment, is emitted into the air, or is discharged into water, including groundwater.

(7) "Disposal facility" means the location, equipment, or facility where hazardous wastes are disposed of, including a disposal facility associated with, within, or adjacent to facilities generating the waste.

(8) "Disposal facility trust fund" means a fund established in section 42 to provide maintenance of a disposal facility after determination of ownership has been established pursuant to section 41.

(9) "Failure mode assessment" means an analysis of the potential major methods by which safe handling of hazardous wastes may fail at a disposal facility.

Sec. 4. (1) "Generation" means the act or process of producing hazardous waste.

(2) "Hazardous waste" means waste or a combination of waste and other discarded material including solid, liquid, semisolid, or contained gaseous material which because of its quality; concentration; or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or increase in serious irreversible illness or serious incapacitating, but reversible illness, or pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed. Hazardous waste does not include material which is sold for recycling or treatment and stored for 1 year or less, or solid or dissolved material in domestic sewage discharge, or solid or dissolved material in an irrigation return flow discharge, authorized industrial discharge to a municipal treatment system, or industrial discharge which is a point source subject to permits under section 402 of the clean water act of 1977, 33 U.S.C. 1342, or is a source, special nuclear, or byproduct material as defined by the atomic energy act of 1954, 42 U.S.C. 2011 to 2282.

(3) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, treatment, recovery, recycling, and disposal of hazardous waste.

(4) "Long term storage" means the containment of hazardous waste for a period of greater than 1 year.

(5) "Manifest" means the form provided by the department used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(6) "Manifest system" means the system provided by the department used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(7) "Municipality" means a city, village, or township.

(8) "On site" means on the same or geographically contiguous property. Two or more pieces of property which are geographically contiguous and are divided by a public or private right of way are considered a single site.

Sec. 5. (1) "Operator" means the person operating a disposal facility with approval of the director either by contract or license.

(2) "Person" means an individual, sole proprietorship, partnership, association, or corporation; the state; an agency or department of the state; or a municipality or county of the state.

(3) "Plan" means the state hazardous waste management plan prepared under section 9.

(4) "Rule" means a rule promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(5) "Short term storage" means the containment of hazardous waste, on a temporary basis or for a period of not more than 1 year.

(6) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of hazardous waste, so as to neutralize the waste or so as to render the waste nonhazardous, safer for transport, amenable to recovery, amenable to storage, or reduced in volume.

(7) "Vehicle" means a device used to transport hazardous waste.

Sec. 6. After the effective date of this act, a person shall not dispose, store, or transport hazardous waste in this state without complying with the minimum requirements of this act.

Sec. 7. The department, the board, and the committee, in the conduct of their duties as prescribed under this act, shall assist in encouraging, developing, and implementing methods of hazardous waste management which are environmentally sound, which maximize the utilization of valuable resources, and

which encourage resource conservation, including source separation and waste reduction, and which are consistent with the plan to be provided by the department of public health pursuant to section 12103(d) of Act No. 368 of the Public Acts of 1978, being section 333.12103 of the Michigan Compiled Laws.

Sec. 8. (1) The state hazardous waste management planning committee is created in the department. The committee shall represent the diverse geographical areas of the state. Within 60 days after the effective date of this act, the governor shall appoint 14 members to the committee consisting of the following representatives:

(a) One representative each of city, county, and township government, 1 of whom may be a local health officer as defined in section 1105 (3) of Act No. 368 of the Public Acts of 1978, being section 333.1105 of the Michigan Compiled Laws.

(b) A hazardous waste hauler.

(c) A hazardous waste generator.

(d) A hazardous waste disposal facility operator.

(e) A member of an environmental group.

(f) A member of a conservation group.

(g) Three members of the general public.

(h) The director or a designated representative of the director.

(i) The director of commerce or a designated representative of the director of commerce.

(j) The director of public health or a designated representative of the director of public health.

(2) A vacancy occurring on the committee shall be filled in the same manner as the original appointment.

(3) The chairperson of the committee shall be elected by the committee.

(4) The committee by majority vote of the committee shall establish operating procedures. The operating procedures shall be made available for public review.

(5) Per diem compensation of the committee and the schedule for reimbursement of expenses shall be established annually by the legislature.

(6) In the conduct of its business, the committee shall solicit the advice of, and consult periodically with municipalities and other persons within this state for the purpose of receiving information or advice that may be helpful in the preparation of the plan.

(7) The committee shall disband after the final adoption of the plan by the commission of natural resources unless the committee is reconstituted as a provision of the plan.

Sec. 9. (1) Within 2 years after the effective date of this act, the committee shall prepare a state hazardous waste management plan.

(2) The plan shall:

(a) Provide for a reasonable geographic distribution of disposal facilities to meet existing and future needs.

(b) Be based upon location of generators, health and safety, economics of transporting, type of waste, and existing disposal facilities.

(c) Include necessary legislative, administrative, and economic mechanisms; a timetable to carry out the plan; and a consideration of the need for the committee to be reconstituted to act as an oversight body for the implementation of the plan or this act.

(3) The committee may instruct the department to complete studies as considered necessary for the completion of the plan. The studies shall include:

(a) An inventory and evaluation of the sources of hazardous waste generation within this state or from other states, including the types and quantities of the hazardous waste.

(b) An inventory and evaluation of current hazardous waste management practices and costs, including treatment and disposal, within this state.

(c) A projection or determination of future hazardous waste management needs based on an evaluation of existing capacities, treatment or disposal capabilities, manufacturing activity, limitations, and constraints. Projection of needs shall consider the types and sizes of disposal facilities, general locations within the state, management control systems, and an identified need for a state owned disposal facility.

(d) An investigation and analysis of methods, incentives, or technologies for source reduction, reuse, recycling, or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste.

(e) An investigation and analysis of methods and incentives to encourage interstate and international cooperation in the management of hazardous waste.

(f) An estimate of the public and private cost of disposing of hazardous waste.

(g) An investigation and analysis of alternate methods for treatment and disposal of hazardous waste.

(4) Upon completion of the plan, the committee shall publish a notice in a number of newspapers having major circulation within the state as determined by the committee and shall issue a statewide news release announcing the availability of the plan for inspection or purchase at cost by interested persons. The announcement shall indicate where and how the plan may be obtained or reviewed and shall indicate that not less than 3 public hearings shall be conducted at varying locations in the state before formal adoption. The first public hearing shall not be held until 60 days have elapsed from the date of the notice announcing the availability of the plan.

(5) After the public hearings, the committee shall prepare a written summary of the comments received, provide comments on the major concerns raised, make amendments to the plan, and shall recommend to the commission of natural resources whether the plan should be adopted.

Sec. 10. (1) The commission of natural resources with the advice of the director of public health shall adopt or reject the plan within 60 days or at the second scheduled commission meeting after receipt of the plan.

(2) If the commission rejects the plan, it shall indicate its reason for rejection and return the plan to the committee.

(3) The committee shall make the necessary changes and submit the plan to the commission of natural resources within 30 days after receipt of the rejection.

Sec. 11. The commission of natural resources shall make a final decision on the plan within 120 days after the commission first receives the plan. If the commission fails to formally adopt or reject the plan within 120 days, the plan shall be considered adopted.

Sec. 12. If the planning committee has not been reconstituted, every 5 years following the adoption of the plan the committee shall be reappointed in the same manner as provided in section 8 for the original appointment. The committee shall review the plan and amend the plan as considered necessary pursuant to the procedure provided in section 9. The committee also shall review the implementation of this act and submit to the legislature recommendations regarding the implementation of this act.

Sec. 13. Not more than 90 days after the final adoption of the plan by the commission of natural resources, the director shall submit to the legislature proposed rules to implement the plan created in section 9.

Sec. 14. The director may issue permits and licenses under this act for existing or proposed disposal facilities and other authorized operations included in this act before the adoption of the plan by the commission of natural resources.

Sec. 15. After the plan is adopted by the commission of natural resources, the director shall not issue a permit or license under this act for a disposal facility or operator until the director has made a determination that the action is consistent with the adopted hazardous waste management plan. This section shall not apply to a disposal facility granted a construction permit or a license under this act before the final adoption of the plan.

Sec. 16. A disposal facility in existence on the effective date of this act shall not be subject to a review of the board except for an expansion, enlargement, or alteration of the disposal facility beyond its original authorized design capacity or beyond the area specified in the operating license, original construction permit, or other authorization. The expansion, enlargement, or alteration of a disposal facility in existence on the effective date of this act constitutes a new proposal for which a construction permit is required.

Sec. 17. (1) The site approval board shall be established to review and grant or deny final approval for each site construction permit application recommended for approval by the department. A separate board shall be established in each municipality in which a disposal facility is proposed to be located which is the subject of a construction permit application. The members of the board who serve in the permanent positions shall serve on each board created. The members of the board who serve in temporary positions shall be appointed as provided in subsection (2). The members in temporary positions shall serve until the construction permit application subject to their review is approved, or until the construction permit application is rejected and is no longer subject to their review.

(2) The site approval board shall consist of 5 permanent positions and 4 temporary positions as follows:

(a) Three permanent positions shall be held by representatives of this state, 1 each from the department of public health, the department of state police, and the department of natural resources. A representative of this state shall be appointed by each of the directors of the respective departments and a vacancy shall be filled as necessary by the appropriate director. A representative of the state shall not serve for more than 2 years.

(b) Two members shall be public members appointed by the governor, with the advice and consent of the senate, to fill permanent positions on the board. One public member shall be a geologist and 1 a chemical engineer. Each shall be on the faculty of a state institution of higher education. To assist the governor in the selection of the public members, the respective professional organizations and township or municipal associations may submit a list of candidates to the governor for his or her information. A vacancy shall be filled for the unexpired term in the same manner as the original appointments. The term of the public members shall be 3 years.

(c) Two temporary positions shall be filled by residents of the municipality in which the disposal facility is primarily proposed to be located. The 2 temporary position members shall be appointed by the governing body of the municipality in which the disposal facility is primarily proposed to be located.

(d) Two of the temporary positions shall be filled by residents of the county where the disposal facility is proposed to be located, 1 of whom shall be a resident of the municipality where the disposal facility is proposed to be located, and shall be appointed by the county board of commissioners.

(3) The member of the board from the department shall be chairperson of the board and shall notify the local governing body of the municipality and county government of a construction permit application filed with the department, and shall instruct the municipality or county to appoint the necessary representatives to the board.

(4) Five of the 9 members of the board shall constitute a quorum for the transaction of business of the board and the concurrence of 5 members of the board shall constitute a legal action of the board. All meetings of the board shall be conducted pursuant to Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(5) The director shall make staff available to assist the board in carrying out its responsibilities.

Sec. 18. (1) A person shall not establish a disposal facility without a construction permit from the director. A person proposing the establishment of a disposal facility shall make application for a construction permit to the director on a form provided by the director.

(2) The application for a construction permit shall contain the name and residence of the applicant, the location of the proposed disposal facility, and other information as is necessary. The application shall be accompanied by a construction permit application fee. The director shall establish by rule, the scale for determining the initial construction permit application fee. The fee shall be based upon the cost to the department of reviewing the construction permit application. The scale shall be based on characteristics including site size, projected waste volume, nature of the waste, hydrogeological characteristics, and the type of facility. The permit fees shall be deposited in the general fund of the state. The application shall include a determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated by the director for groundwater quality standards, an environmental assessment, an engineering plan, and the procedures for closure and postclosure monitoring. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of the state; and also shall contain an environmental failure mode assessment.

(3) A person may indicate an interest in being placed on a department organized mailing list to be kept informed of any rules, plans, construction permit applications, contested case hearings, public hearings, or other information or procedures relating to the administration of this act. A charge may be requested by the department to cover the cost of the materials.

Sec. 19. (1) Upon receipt of a construction permit application, which complies with the requirements of section 18(2), the director or an authorized representative of the director shall:

(a) Immediately notify the permanent board members, the municipality, and county in which the disposal facility is located or proposed to be located; a local soil erosion and sedimentation control agency appointed pursuant to Act No. 347 of the Public Acts of 1972, as amended, being sections 282.101 to 282.117 of the Michigan Compiled Laws, each division within the department that has responsibility in land, air, or water management; a regional planning agency established by executive directive of the governor; and other appropriate agencies. The notice shall describe the procedure by which the permit may be approved or denied.

(b) Publish a notice in a newspaper having major circulation in the municipality and the immediate vicinity of the proposed disposal facility. The required published notice shall contain a map indicating the location of the proposed disposal facility and shall contain a description of the proposed action and the location where the complete application package may be reviewed and where copies may be obtained. The notice shall describe the procedure by which the permit may be granted.

(c) Review the plans of the proposed disposal facility to determine if the proposed operation complies with this act and the rules promulgated under this act. The review shall be made within the department. The review shall include but not be limited to air quality, water quality, waste management, and hydrogeology. A written and signed review by each person within the department reviewing the permit and plans shall be received and recorded before a construction permit is recommended for approval or is denied by the department. If the site review, plan review, and the application meet the requirements of this act and the rules promulgated under this act, the director shall recommend approval for a construction permit which may contain stipulations specifically applicable to the site and operation. An expansion, enlargement, or alteration of a disposal facility beyond the specified areas indicated in the original construction permit application constitutes a new proposal for which a new construction permit is required.

(d) The department also shall coordinate and review all permits necessary from the department in order to construct the proposed disposal facility.

(2) The director shall recommend approval or shall deny a construction permit application within 120 days after the director receives an application meeting the requirements of section 18. If the director does not recommend approval or does not deny a construction permit application within 120 days, the construction permit application shall be considered recommended for approval. If the director recommends approval, the director immediately shall notify the applicant and the chairperson of the board. The recommendation shall include a notice of intent to issue all departmental permits required for the construction pending approval by the board under section 21.

Sec. 20. (1) If, within 75 days after receipt of a construction permit application, the director has not rejected the application, the director shall notify the chairperson of the board, who immediately shall notify the representatives of the state and the public members on the board. The chairperson also shall notify the county and the municipality in which the proposed disposal facility is to be located for their appointment of the temporary positions to the board. Within 45 days after the notification, the county and the municipality shall select the temporary members. The board shall be created at that time and notification of the creation of the board shall be made to the chairperson.

(2) If the director recommends approval of a construction permit application within 75 days after its receipt, the director, at the time of approval, shall notify the chairperson of the board who shall immediately notify the representatives of the state to the board and the public members. The chairperson also shall notify the county and the municipality in which the proposed disposal facility is to be located for their appointment of the temporary members of the board. Within 45 days after the notification, the county and the municipality shall select the temporary members. The board shall be created at that time and notification shall be made to the chairperson.

(3) Within 10 days after creation of the board, the board shall meet to review and establish a timetable for the consideration of a proposed disposal facility. The timetable for a final action of the board shall not exceed 120 days after the date the board convenes.

(4) The board shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the proposed disposal facility, a description of the proposed action, and the location where the application for a construction permit may be reviewed and where copies may be obtained.

(ii) Identify the time, place, and location for the public hearing held to receive public comment and input on the application for a construction permit.

(b) Publish the notice not less than 30 days before the date of the public hearing.

(5) Comment and input on the proposed disposal facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the board for 15 days after the public hearing date.

(6) The board shall deliberate the impact of the proposed disposal facility on the municipality in which it is to be located and make a final determination on the construction permit application.

(7) The board shall consider, at a minimum:

(a) The risk and impact of accident during the transportation of hazardous waste.

(b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed disposal facility.

(c) The risk of fires or explosions from improper storage and disposal methods.

(d) The impact on the municipality where the proposed disposal facility is to be located in terms of the health, safety, cost, and consistency with local planning and existing development. The board also shall consider local ordinances, permits, or other requirements and their potential relationship to the proposed disposal facility.

(e) The nature of the probable environmental impact, including the specification of the predictable adverse effects on the following:

(i) The natural environment and ecology.

(ii) Public health and safety.

(iii) Scenic, historic, cultural, and recreational value.

(iv) Water and air quality, and wildlife.

(f) An evaluation of measures to mitigate adverse effects.

(8) The board also shall consider the concerns and objections submitted by the public. The board shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the disposal facility and operation at that site. The board also shall to the fullest extent practicable integrate by stipulation the provisions of the local ordinances, permits, or requirements.

(9) The board may seek the advice of any person in order to render a decision to approve or deny the construction permit application.

Sec. 21. (1) The board either shall approve or reject the construction permit application, and the director shall issue or deny the construction permit accordingly. The director also shall issue the permits described in the notice of intent under section 19(2). A local ordinance, permit requirement, or other requirement shall not prohibit the construction of a disposal facility.

(2) If the board rejects a construction permit application, the board shall state its reason in writing and indicate the necessary changes to make the application acceptable, if a new application is made.

Sec. 22. (1) A person shall not conduct, manage, maintain, or operate a disposal facility within this state without an operating license from the director.

(2) The application for an operating license shall contain the name and residence of the applicant, the location of the proposed or existing disposal facility, and other information considered necessary by the director including proof of financial capability. The application shall be accompanied by a fee of \$500.00. The license fees shall be deposited in the general fund of the state.

(3) The applicant also shall submit to the director a certification under the seal of a registered professional engineer verifying that the construction of the disposal facility has proceeded according to the plans approved by the department and, if applicable, the approved construction permit. The director shall require additional certification periodically during the operation or to verify proper closure of the site. The director shall require from those disposal facilities which are permitted to operate pursuant to section 16, certification of the disposal facilities' capability of disposing of hazardous waste in compliance with this act.

Sec. 23. Upon receipt of an operating license application meeting the requirements of section 22, the director or an authorized representative of the director shall inspect the site and determine if the proposed operation complies with this act, the rules promulgated under this act, and the stipulations included in the approved disposal facility construction permit. The inspection shall be filed in writing by the director before issuing an operating license and shall be made available for public review.

Sec. 24. The director shall make a final decision on an operating license application within 90 days after the director receives the application. The operating license may contain stipulations specifically applicable to site and operation. A local ordinance, permit, or other requirement shall not prohibit the operation of a licensed disposal facility.

Sec. 25. The director shall coordinate and integrate the provisions of this act for purposes of administration and enforcement with appropriate state and federal law including the clean air act, Public Law 88-206, 77 Stat. 392; the federal water pollution control act, 33 U.S.C. 1251 to 1376; the safe drinking water act, Public Law 93-523, 88 Stat. 1660; the toxic substances control act, 15 U.S.C. 2601 to 2629; the resource conservation and recovery act of 1976, 42 U.S.C. 6901 to 6987; Act No. 245 of the Public Acts of

1929, as amended, being sections 323.1 to 323.13 of the Michigan Compiled Laws; Act No. 641 of the Public Acts of 1978, as amended, being sections 299.401 to 299.437 of the Michigan Compiled Laws; Act No. 399 of the Public Acts of 1976, being sections 325.1001 to 325.1023 of the Michigan Compiled Laws; Act No. 136 of the Public Acts of 1969, being sections 323.271 to 323.280 of the Michigan Compiled Laws; Act No. 348 of the Public Acts of 1965, as amended, being sections 336.11 to 336.36 of the Michigan Compiled Laws; Act No. 366 of the Public Acts of 1974, as amended, being sections 299.301 to 299.321 of the Michigan Compiled Laws; Act No. 116 of the Public Acts of 1978, being sections 286.181 to 286.194 of the Michigan Compiled Laws; and Act No. 207 of the Public Acts of 1941, as amended, being sections 29.1 to 29.25 of the Michigan Compiled Laws. The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this act.

Sec. 26. Not more than 6 months after this act is enacted into law, the director shall submit to the legislature, after consultation and participation with the department of public health, rules necessary to implement and administer this act.

Sec. 27. (1) Not later than 6 months after this act is enacted into law, the director shall submit to the legislature proposed rules listing hazardous waste and other criteria as required by this act. The rules shall state the criteria for identifying the characteristics of hazardous waste and for listing the types of hazardous waste, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors including flammability, corrosiveness, and other hazardous characteristics. The department shall by rule revise the criteria and listing as necessary.

(2) Before the director establishes the list, the department shall hold not less than 3 public hearings in different municipalities in the state. To ensure consistency between federal and state requirements, this act, the rules promulgated by the department, and the list shall be construed to conform as closely as possible to requirements established under the resource conservation and recovery act of 1976, 42 U.S.C. 6901 to 6987.

Sec. 28. (1) Except as provided in subsections (2) and (3), information obtained by the department under this act shall be a public record as provided in Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) A person regulated under this act may designate a record, permit application, other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents, as being only for the confidential use of the department and the board. The department shall notify the regulated person of a request for public records under section 5 of Act No. 442 of the Public Acts of 1976, as amended, being section 15.235 of the Michigan Compiled Laws, whose scope includes information designated as confidential. The person regulated under this act shall have 30 days after the receipt of the notice to demonstrate to the director that the information designated as confidential should not be disclosed because the information is a trade secret or secret process, or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained, and make available information not otherwise publicly available. The director shall grant the request for the information unless the person regulated under this act has made a satisfactory demonstration to the director that the information should not be disclosed. If there is a dispute between the owner or operator of a disposal facility and the person requesting information under Act No. 442 of the Public Acts of 1976, as amended, the commission of natural resources shall make the decision to grant or deny the request. When the commission of natural resources makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after the decision is made.

(3) Data on the quantity or composition of hazardous waste generated, transported, or disposed of; air and water emission factors; rates and characterizations; emissions during malfunctions of equipment required under this act on disposal facilities; or the efficiency of air and water pollution control devices is not rendered as confidential information by this section.

Sec. 29. (1) A person shall not engage in the business of transporting hazardous waste within this state without a hazardous waste hauler's license from the department. A vehicle used to transport hazardous wastes for disposal shall be licensed under this act. An application for a hazardous waste hauler's license shall be made on a form provided by the department.

(2) An application for a hazardous waste hauler license shall be accompanied by:

(a) A business license application fee of \$500.00 of which \$100.00 shall be retained as a processing of the application fee. The remaining business license application fee and the vehicle license application fee as required in subdivision (b) shall be refunded if the application is denied by the department.

(b) A vehicle license application fee of \$200.00 for each vehicle used by the hazardous waste hauler to transport or carry hazardous waste.

(c) Evidence of an inspection certification as may be required by the state fire marshal pursuant to Act No. 207 of the Public Acts of 1941, as amended.

(d) Proof of financial capability as defined by rule of the department.

(3) The license fees shall be deposited in the general fund of the state.

Sec. 30. Upon submission of the hazardous waste hauler's license application, the department shall examine the application to insure that it is complete and accompanied by those items required by section 29, and shall conduct an inspection to verify that the equipment, location, and methods of the applicant are adequate to effectuate service under this act and the rules promulgated under this act. The department shall establish, by rule, the inspection standards and requirements. Upon approval of the application, the director shall issue a business license and a vehicle license for each vehicle associated with the service. A business or vehicle license is not transferable from a business or vehicle to another business or vehicle. A vehicle used to transport or carry hazardous waste shall carry a license of the department which may be inspected by the director, an authorized representative of the director, or a peace officer.

Sec. 31. (1) A license issued pursuant to section 30 shall expire 1 year after the date of issuance. Application for renewal of a license may be made 60 days before expiration. The fee for renewal shall be the same as for an original license.

(2) A hazardous waste hauler license issued under this act shall be revoked if the holder of the license uses a disposal facility or vehicle to store, transport, or dispose of hazardous waste contrary to this act or the rules promulgated under this act, and certification is not obtained pursuant to Act No. 207 of the Public Acts of 1941, as amended.

Sec. 32. A municipality shall not prohibit the transportation of hazardous waste through the municipality or prevent the ingress and egress into a licensed disposal facility.

Sec. 33. (1) A hazardous waste generator shall provide a separate manifest to the hauler for each load of hazardous waste transported to property which is not on site where it was generated. The generator shall include on the manifest details as specified by the director and shall at least include sufficient qualitative and quantitative analysis and physical description to evaluate toxicity and methods of transportation, storage, and disposal. The manifest also shall include safety precautions as necessary for each load of waste. The generator shall submit to the director a copy of the manifest within a period of 10 days after the end of the month for each load of waste transported within that month.

(2) The generator shall certify that the information contained on the manifest is factual.

(3) The specified destination shall be a disposal facility approved by the director for receipt of the particular waste identified in the manifest.

Sec. 34. (1) The hazardous waste hauler shall certify acceptance of waste for transportation and shall deliver the hazardous waste and accompanying manifest only to the destination specified by the generator on the manifest.

(2) The hazardous waste hauler shall keep a copy of the manifest for a period of 3 years, and shall make it available for review and inspection by the director, an authorized representative of the director, the director of public health, an authorized representative of the director of public health, or a peace officer.

Sec. 35. The disposal facility owner or operator shall accept delivery of hazardous waste only if delivery is accompanied by a manifest properly certified by both the generator and the hauler and the disposal facility is the destination indicated on the manifest. The disposal facility owner or operator also shall:

(a) Certify on the manifest receipt of the hazardous waste and return a copy of the manifest to the department within a period of 10 days after the end of the month for all hazardous waste received within that month.

(b) Keep permanent records pursuant to the rules promulgated by the department.

(c) Compile a periodic report of hazardous waste disposed of as required by the department under rules promulgated by the department.

(d) Return the certificate of disposal to the generator and the hauler within 10 days after disposal.

(e) Make manifest copies and reports readily available for review and inspection by the director or a designated representative of the director, the director of public health or a designated representative of the director of public health, or a law enforcement officer.

Sec. 36. (1) The director shall allow the transportation of hazardous wastes to an out of state hazardous waste disposal facility if it is approved by the regulatory agency of that state.

(2) The director shall promulgate rules to provide the requirements for short term storage.

Sec. 37. (1) A generator of hazardous waste shall do the following:

(a) Compile and maintain information and records regarding the quantities of hazardous waste generated, characteristics and composition of the hazardous waste, and the disposition of hazardous waste generated.

(b) Utilize proper labeling and containerization of hazardous waste as required by the department.

(c) Utilize a manifest for each shipment of hazardous waste transported to property that is not on site and assure that the disposal facility to which the waste is designated is a licensed disposal facility permitted under this act or permitted under another state or federal law.

(d) Provide the information on the manifest as required under section 33(1), to each person transporting or disposing of hazardous waste.

(e) Keep all records and copies of manifests readily available for review and inspection by the authorized representative of the department or the authorized representative of the department of public health.

(f) Retain all records and manifest copies for not less than 3 years or as required by the department.

(g) Compile and submit a periodic report of hazardous waste generated, stored, transferred, treated, disposed of, or transported for treatment, storage, or disposal as required by the department.

(2) A generator who also operates a disposal facility shall keep records of all hazardous waste produced and disposed. The generator shall submit a report to the department within a period of 10 days after the end of each month for all waste produced and disposed.

Sec. 38. A generator who has complied with sections 33 and 37 and who has contracted for the disposal of hazardous wastes with a disposal facility licensed under this act is relieved from liability for those wastes upon receipt of a certificate of disposal from the disposal facility.

Sec. 39. Before allowing the operation of a landfill disposal site for hazardous waste, an instrument imposing a restrictive covenant upon the land involved shall be executed by all of the owners of the tract of land upon which the landfill is to be located, and by the director. The instrument imposing the restrictive covenant shall be filed for record by the department in the office of the register of deeds in the county in which the disposal facility is located. The covenant shall state that the land has been or may be used as a landfill for disposal of hazardous waste and that neither the property owners, agents, or employees, nor any of their heirs, successors, lessees, or assignees shall engage in filling, grading, excavating, building, drilling, or mining on the property following completion of the landfill without authorization of the director. In giving authorization, the director shall consider, at a minimum, the original design, type of operation, hazardous waste deposited, and the state of decomposition of the fill.

Sec. 40. (1) The owner or operator of a disposal facility shall submit a closure and a postclosure monitoring and maintenance plan to the director as part of the application for a construction permit under section 18. At a minimum, the closure plan shall include a description of how the facility shall be closed, possible uses of the land after closure, anticipated time until closure, estimated time for closure, and each anticipated partial closure. Those facilities described in section 16 shall submit a closure and postclosure plan with their operating license application.

(2) The director shall promulgate rules regarding notification before closure, length of time permitted for closure of the disposal facility, removal and decontamination of equipment, security, groundwater and leachate monitoring system, sampling analysis and reporting requirements, and any other pertinent requirements.

Sec. 41. (1) An owner or operator of a hazardous waste disposal facility shall file as a part of the application for a license to operate, a surety bond or other suitable instrument, or establish a secured trust fund to cover the cost of closing, monitoring, and long term maintenance of the disposal facility after its capacity is reached or operations have otherwise terminated. The bond, instrument, or fund shall be based upon a reasonable estimate of the cost required to adequately close, monitor, and maintain the site for a period of 15 years or less, as approved by the director. Failure to maintain the bond, instrument, or fund constitutes a violation of this act.

(2) Following the expiration of the time stipulated in subsection (1), a determination of responsibility of the owner or operator of a disposal facility shall be accomplished by a process established by rules of the

director. If the director determines that the site does not have a foreseeable alternative use, the owner of the site may transfer ownership of the site to the state and the state shall assume the responsibility for the long term care of the site. After the site is transferred to the state, all claims for injuries occurring after the transfer to persons, property, or the environment brought against the waste generator or the disposal facility owner or operator become the liability of the state. The director shall not accept transfer of the site without the approval of the state administrative board as provided in Act No. 2 of the Public Acts of 1921, as amended, being sections 17.1 to 17.11 of the Michigan Compiled Laws. If a determination is made that the site is suitable for further use, the director shall make the necessary authorization on the restrictive covenant as required in section 39.

Sec. 42. There is created in the state treasury a disposal facility trust fund. Each owner or operator of a disposal facility shall periodically pay to the department a surcharge fee as determined by rule of the department. The rules of the department shall provide for the collection of not more than \$2,000,000.00 each year after the effective date of this act. Each owner or operator of a disposal facility operating during that year shall pay his or her pro rata share of the amount to be collected, as provided in this section. The fees shall be deposited in the state treasury to the credit of the disposal facility trust fund. When the state treasurer certifies to the department that the balance in the disposal facility trust fund exceeds \$30,000,000.00, fees shall not be collected until the state treasurer certifies to the department that the balance in the disposal facility trust fund is less than \$20,000,000.00. The department shall promulgate rules establishing the method of payment from the disposal facility trust fund for payment of all costs of long term care of a disposal facility accruing after the responsibility of the owner has been terminated as provided in section 41.

Sec. 43. (1) There is created within the state treasury a hazardous waste service fund of not less than \$1,000,000.00 to be financed by appropriations for use in hazardous waste emergencies as defined by rule of the department. The director or an authorized representative of the director shall administer the fund and authorize expenditures upon a finding of actual or potential environmental damage caused by hazardous waste. After an expenditure from the fund, the state immediately shall request the attorney general to begin proceedings to recover the expenditure from the fund from the person responsible for the hazardous waste emergency. If the owner of the property refuses to pay expenses incurred, the expenses shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the laws of the state.

(2) The department shall promulgate rules to establish the method of payment from the fund.

Sec. 44. (1) The director or an authorized representative shall inspect and file a written report not less than 4 times per year for each licensed disposal facility.

(2) A person may register with the director a complaint or allegation of improper action or violation of this act, a rule, or a condition of the license to operate a disposal facility or transporting vehicle.

(3) Upon receipt of a complaint or allegation from a municipality the director shall make a record of the complaint and shall order an inspection of the disposal facility, transporting vehicle, or other location of alleged violation to investigate the complaint or allegation within not more than 5 business days after receipt of the complaint or allegation. If a complaint or allegation is of a highly serious nature, as determined by the director, the facility or transporting vehicle shall be inspected as quickly as possible.

(4) Following an investigation of a complaint or allegation under subsection (3), the director shall make a written report to the municipality within 15 days.

(5) A person who has knowledge that hazardous waste is being treated, disposed of, or stored in violation of this act, or that an emergency situation involving hazardous waste exists, shall notify the department, the department of public health, and the state toxic substance control commission.

Sec. 45. (1) The department may certify a city, county, or district health department to administer and enforce portions of this act. Certification procedures shall be established by the department by rule. The director may rescind certification upon the request of the certified city, county, or district health department, or after reasonable notice and hearing, if the director finds that a certified health department is not administering and enforcing this act as required.

(2) In order for a certified health department to carry out the responsibilities authorized under this act, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to each certified health department. A certified health department shall be eligible to receive 100% of its reasonable costs as determined by the department based on criteria established by rule. The director shall promulgate rules for distribution of the appropriated funds.

Sec. 46. If the director, an authorized representative of the director, or a law enforcement official has probable cause to believe that a person is violating this act or a rule promulgated under this act, the director or law enforcement official may search without a warrant a vehicle or equipment which is possessed, used, or operated by that person. The director, an authorized representative of the director, or a law enforcement official may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose contrary to this act or a rule promulgated under this act. The department shall request that the attorney general petition the circuit court for the county of Ingham or the county where the violation occurred for permission to preserve the property as evidence to prosecute the violation or alternatively shall file an appropriate action to condemn the property.

Sec. 47. The director, after consultation with the director of public health or a designated representative of the director of public health, upon receipt of information that the storage, transportation, treatment, or disposal of hazardous waste may present an imminent and substantial hazard to the health of persons or to the natural resources, shall order the owner or operator to take immediate corrective action. A determination of an instance of imminent and substantial hazard to the health of persons shall be made by the director of public health. The action the department may take includes the following:

(a) Issuing an order directing the operator of the disposal facility, or the custodian of the hazardous waste which constitutes the hazard, to take the steps necessary to prevent the act or eliminate the practice which constitutes the hazard. The order may include permanent or temporary cessation of the operation of a disposal facility. In issuing an order calling for corrective action, the department shall specify the precise nature of the corrective action necessary and the specific time limits for performing the corrective action. If corrective action is not completed within the time limit specified and pursuant to the department's requirements, the director shall issue a cease and desist order for the disposal facility or a person transporting hazardous waste, and initiate action to revoke the operating or hauler's license and take appropriate action.

(b) Requesting that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing by the department that a person has engaged in the prohibited act or practice.

(c) The director may revoke a permit, license, or construction permit after reasonable notice and hearing pursuant to Act No. 306 of the Public Acts of 1969, as amended, if the director finds that a disposal facility or transporting vehicle is not, or has not been, constructed or operated pursuant to the approved plans or this act and the rules promulgated under this act, or the conditions of a license or construction permit.

(d) An order issued under this section by the director may be issued without prior notice or hearing and shall be complied with immediately. An order issued under this section shall not remain in effect more than 7 days without affording the owner or operator or custodian an opportunity for a hearing.

Sec. 48. (1) If the department finds that a person is in violation of a permit, license, rule promulgated under this act, or requirement of this act, the department may issue an order requiring the person to comply with the permit, license, rule, or requirement of this act. The attorney general or a person may commence a civil action against a person, the department, or a health department certified under section 45 for appropriate relief, including injunctive relief for a violation of this act or a rule promulgated under this act. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than \$25,000.00 for each day of continued noncompliance. A fine collected under this subsection shall be deposited in the general fund of the state.

(2) A person who knowingly transports, disposes, or generates hazardous waste in violation of this act, or contrary to a permit, order, or rule issued or promulgated under this act, or who knowingly makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice or report required by the terms and conditions of an issued permit, or a person who violates section 44(5), is guilty of a misdemeanor, punishable by a fine of not more than \$25,000.00 for each day of violation, or imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, the person is guilty of a misdemeanor, punishable by a fine of not more than \$50,000.00 per day of violation, or by imprisonment for not more than 2 years, or both.

(3) In addition to a fine, the attorney general may bring an action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation. The damages and cost collected under this subsection shall be deposited in the general fund when the damages or costs result from impairment or destruction of the fish, wildlife or other natural resources of the state and shall be used to restore,

rehabilitate, or mitigate the damage to, those resources in the affected area, and for the specific resource to which the damages occurred.

(4) The court, in issuing a final order in an action brought under this act, may award costs of litigation, including reasonable attorney and expert witness fees to a party, if the court determines that the ward is appropriate.

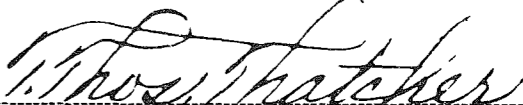
Sec. 49. The department shall encourage interstate and international cooperation for the improved management of hazardous waste; for improved, and so far as is practicable, uniform state laws relating to the management of hazardous waste; and compacts between this and other states for the improved management of hazardous waste.

Sec. 50. (1) The state toxic substance control commission, created by Act No. 116 of the Public Acts of 1978, shall have primary enforcement authority to protect the public health and the air, water, and other natural resources of this state in the event of a toxic substance emergency as defined in Act No. 116 of the Public Acts of 1978. All officers and agencies of the executive branch of state government shall cooperate with the state toxic substance control commission and shall provide all information which the state toxic substance control commission requires to carry out its duties to protect the public health and natural resources. A person holding a license or permit under this act shall upon request immediately provide relevant information required to be submitted to the state toxic substance control commission pursuant to Act No. 116 of the Public Acts of 1978. Failure of a person holding a license or permit under this act to provide relevant information to the state toxic substance control commission promptly upon receipt of a written request constitutes grounds for the immediate revocation or suspension of a license or permit by the department.

(2) A person holding a permit or license pursuant to this act, and a department of state government having evidence supporting reasonable belief that an abnormality or irregularity in human or animal health or behavior exists which could be caused by a toxic substance stored, transported, treated, or disposed of under this act shall promptly report the information to the state toxic substance control commission.

Sec. 51. This act shall take effect January 1, 1980.

This act is ordered to take immediate effect.


Clerk of the House of Representatives.


Secretary of the Senate.

Approved _____

Governor.