

Act No. 87  
Public Acts of 1992  
Approved by the Governor  
June 4, 1992  
Filed with the Secretary of State  
June 4, 1992

**STATE OF MICHIGAN  
86TH LEGISLATURE  
REGULAR SESSION OF 1992**

Introduced by Rep. Dolan

# **ENROLLED HOUSE BILL No. 4895**

AN ACT to amend the title and sections 3, 4, 5, 22, 28, and 48 of Act No. 64 of the Public Acts of 1979, entitled as amended "An act to protect the public health and the natural resources of the state and to license and regulate persons engaged in generating, transporting, treating, storing, and disposing of hazardous waste; to provide for hazardous waste management facilities; to create a means for establishing hazardous waste site review boards; 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 treatment, storage, and disposal facilities; to establish a list and criteria of hazardous waste requiring treatment, storage, or disposal at approved treatment, storage, or disposal facilities; to establish a manifest system to track hazardous waste; to establish a hazardous waste service fund; to consider waste management and disposal needs of this state; and to prescribe remedies and penalties," section 3 as amended by Act No. 246 of the Public Acts of 1987, sections 4 and 5 as amended by Act No. 53 of the Public Acts of 1989, section 22 as amended by Act No. 228 of the Public Acts of 1987, and sections 28 and 48 as amended by Act No. 486 of the Public Acts of 1982, being sections 299.503, 299.504, 299.505, 299.522, 299.528, and 299.548 of the Michigan Compiled Laws; and to add section 15a.

*The People of the State of Michigan enact:*

Section 1. The title and sections 3, 4, 5, 22, 28, and 48 of Act No. 64 of the Public Acts of 1979, section 3 as amended by Act No. 246 of the Public Acts of 1987, sections 4 and 5 as amended by Act No. 53 of the Public Acts of 1989, section 22 as amended by Act No. 228 of the Public Acts of 1987, and sections 28 and 48 as amended by Act No. 486 of the Public Acts of 1982, being sections 299.503, 299.504, 299.505, 299.522, 299.528, and 299.548 of the Michigan Compiled Laws, are amended and section 15a is added to read as follows:

## **TITLE**

An act to protect the public health and the natural resources of the state and to license and regulate persons engaged in generating, transporting, treating, storing, and disposing of hazardous waste; to provide for hazardous waste management facilities; to create a means for establishing hazardous waste site review boards; to provide for the inspection and licensing of equipment; to prescribe the powers and duties of certain state agencies; to develop a plan to provide for the safe management and disposal of hazardous waste; to regulate the operation of and require corrective action regarding contaminants at treatment, storage, and disposal facilities; to establish a list and criteria of hazardous waste requiring treatment, storage, or disposal at approved treatment, storage, or disposal facilities; to establish a manifest system to track hazardous waste; to establish a hazardous waste service fund; to consider waste management and disposal needs of this state; and to prescribe remedies and penalties.

Sec. 3. (1) "Board" means a site review board created as provided in section 17.

(2) "Committee" means the hazardous waste policy committee created in section 8a.

(3) "Contaminant" means any of the following:

(a) Hazardous waste as defined in R 299.9203 of the Michigan administrative code.

(b) Any hazardous waste or hazardous constituent listed in appendix VIII of part 261 or appendix IX of part 264 of title 40 of the code of federal regulations.

(4) "Corrective action" means an action determined by the director or his or her designee to be necessary to protect the public health, safety, welfare, or the environment, and includes, but is not limited to, investigation, evaluation, cleanup, removal, remediation, monitoring, containment, isolation, treatment, storage, management, temporary relocation of people, and provision of alternative water supplies, or any corrective action allowed under title II of the solid waste disposal act, or regulations promulgated pursuant to that act.

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

(6) "Designated facility" means a hazardous waste treatment, storage, or disposal facility that has received a permit or has interim status under title II of the solid waste disposal act or has a permit from a state authorized under section 3006 of subtitle C of title II of the solid waste disposal act, 42 U.S.C. 6926, and which, if located in this state has an operating license issued under this act, has a legally binding agreement with the director that authorizes operation, or is subject to the requirements of section 22(5).

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

(8) "Disposal" means 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 may enter the environment, or be emitted into the air, or discharged into water, including groundwater.

(9) "Disposal facility" means a facility or a part of a facility where managed hazardous waste, as defined by rule, is intentionally placed into or on any land or water and at which hazardous waste will remain after closure.

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

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

(2) "Generator" means any person, by site, whose act or process, produces hazardous waste as identified or listed pursuant to section 27 or whose act first causes a hazardous waste to become subject to regulation under this act.

(3) "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 quantity; 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 solid or dissolved material in domestic sewage discharge, or solid or dissolved material in an irrigation return flow discharge, or industrial discharge which is a point source subject to permits under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, or is a source, special nuclear, or by-product material as defined by the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

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

(5) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, or an underground mine or cave.

(6) "Land treatment facility" means a treatment facility or part of a treatment facility at which hazardous waste is applied onto or incorporated into the soil surface. If waste will remain after closure, a facility described in this subsection is a disposal facility.

(7) "Limited storage facility" means a storage facility that meets all of the following conditions:

(a) Has a maximum storage capacity that does not exceed 25,000 gallons of hazardous waste.

(b) Storage occurs only in tanks or containers.

(c) Has not more than 200 containers on site that have a capacity of 55 gallons or less.

(d) Does not store hazardous waste on site for more than 90 days.

(e) Does not receive hazardous waste from a treatment, storage, or disposal facility.

(8) "Manifest" means a form approved by the director 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.

(9) "Manifest system" means the system 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.

(10) "Mechanism" means a letter of credit; a financial test which demonstrates the financial strength of the company owning a treatment, storage, or disposal facility or a parent company guaranteeing financial assurance for a subsidiary; or an insurance policy that will provide funds for closure or postclosure care of a treatment, storage, or disposal facility.

(11) "Municipal solid waste incinerator" means an incinerator that is owned or operated by any person, and meets all of the following requirements:

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

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

(c) The incinerator meets the requirements of this act and the rules promulgated under this act.

(d) The incinerator is not an industrial furnace as defined in 40 C.F.R. 260.10.

(12) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.

(13) "Municipality" means a city, village, township, or Indian tribe.

(14) "On site" means on the same or geographically contiguous property that may be divided by a public or private right of way if the entrance and exit between the pieces of property are at a crossroads intersection and access is by crossing rather than going along the right of way. On site property includes noncontiguous pieces of property owned by the same person but connected by a right of way that the owner controls and to which the public does not have access.

Sec. 5. (1) "Operator" means the person responsible for the overall operation of a disposal, treatment, or storage facility with approval of the director either by contract or license.

(2) "Person" means an individual; partnership; the state; trust; firm; joint stock company; federal agency; corporation, including a government corporation; association; municipality; commission; political subdivision of a state; any interstate body; and any other public body created by or pursuant to state law.

(3) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(4) "Solid waste" means that term as it is defined in the solid waste management act, Act No. 641 of the Public Acts of 1978, being sections 299.401 to 299.437 of the Michigan Compiled Laws.

(5) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(6) "Storage facility" means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to storage. A generator who accumulates managed hazardous waste, as defined by rule, on site in containers or tanks for less than 91 days or a period of time prescribed by rule is not a storage facility.

(7) "Surface impoundment" or "impoundment" means a treatment, storage, or disposal facility or part of a treatment, storage, or disposal facility that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, that is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and that is not an injection well. Surface impoundments include, but are not limited to, holding, storage, settling, and aeration pits, ponds, and lagoons.

(8) "Title II of the solid waste disposal act" means title II of Public Law 89-272, 42 U.S.C. 6901, 6902 to 6907, 6911, 6912 to 6914a, 6915 to 6916, 6921 to 6931, 6933 to 6939b, 6941, 6942 to 6949a, 6951 to 6956, 6961 to 6964, 6971 to 6979a, 6981 to 6987, 6991 to 6991i, and 6992 to 6992k.

(9) "Transporter" means a person engaged in the off site transportation of hazardous waste by air, rail, highway, or water.

(10) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste, to neutralize the waste, to recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous,

safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(11) "Treatment facility" means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to treatment.

(12) "Updated plan" means the updated state hazardous waste management plan prepared under section 9.

(13) "Vehicle" means a device used to transport hazardous waste. Each cargo carrying body is a separate transport vehicle.

Sec. 15a. (1) Beginning on the effective date of this section, the owner or operator, or both, of a facility specified in this subsection is subject to the corrective action requirements specified in this act and the rules promulgated under this act for all releases of a contaminant from any waste management unit at the facility, regardless of when the contaminant may have been placed in or released from the waste management unit. This requirement applies to a facility for which the owner or operator, or both, is applying for or has been issued a license under this act.

(2) Beginning on the effective date of this section, if the director, on the basis of any information, determines that there is or has been a release of a contaminant from any waste management unit at the facility, the director may order, or may enter a consent order with an owner or operator, or both, of a facility specified in subsection (1), requiring corrective action at the facility. A license, permit, or order issued or entered pursuant to this subsection shall contain all of the following:

(a) Schedules of compliance for corrective action if corrective action cannot be completed before the issuance of the license, permit, or order.

(b) Assurances of financial responsibility for completing the corrective action.

(c) Requirements that corrective action be taken beyond the facility boundary if the release of a contaminant has or may have migrated or otherwise has or may have been emitted beyond the facility boundary, unless the owner or operator of the facility demonstrates to the satisfaction of the director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake this corrective action.

(3) Beginning on the effective date of this section, the owner or operator, or both, of a facility specified in this subsection and not in subsection (1) is subject to the corrective action requirements specified in this act and the rules promulgated under this act for all releases of a hazardous waste from the facility, regardless of when the hazardous waste may have been placed in or released from the facility. This requirement applies to a facility for which the owner or operator, or both, is or was subject to the interim status requirements defined in title II of the solid waste disposal act, except for those facilities that have received formal written approval of the withdrawal of their United States environmental protection agency part A hazardous waste permit application from the director or the United States environmental protection agency.

(4) Beginning on the effective date of this section, if the director, on the basis of any information, determines that there is or has been a release of a hazardous waste, the director may order, or may enter a consent order with an owner or operator, or both, of a facility specified in subsection (3), requiring corrective action at the facility. An order issued or entered pursuant to this subsection shall contain both of the following:

(a) Schedules of compliance for corrective action.

(b) Assurances of financial responsibility for completing the corrective action.

Sec. 22. (1) Unless a person is complying with subsection (5) or a rule promulgated under section 26(4), a person shall not conduct, manage, maintain, or operate a treatment, storage, or 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 treatment, storage, or disposal facility, and other information considered necessary by the director including proof of financial responsibility. In addition, the application for the initial operating license after issuance of a construction permit shall contain all of the disclosure information called for in section 18(4) that was not provided as part of the construction permit application and any changes in or additions to the previously submitted disclosure information. In addition, the owner and operator shall certify that the disclosure listings previously submitted continue to be correct. An applicant for an operating license for a treatment, storage, or disposal facility that is a surface impoundment, landfill, or land treatment facility shall demonstrate financial responsibility for claims arising from nonsudden and accidental occurrences relating to the operation of the facility that cause injury to persons or property. 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 treatment, storage, or disposal facility has proceeded according to the plans approved by the director 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 treatment, storage, or disposal facilities that are permitted to operate pursuant to section 16, certification of the treatment, storage, or disposal facilities' capability of treating, storing, or disposing of hazardous waste in compliance with this act.

(4) The director shall establish a schedule for requiring each person subject to subsection (5) to submit an operating license application. The director may adjust this schedule as necessary. Each person subject to subsection (5) shall submit a complete operating license application within 180 days of the date requested to do so by the director.

(5) A person who owns or operates a treatment, storage, or disposal facility that is in existence on the effective date of an amendment of this act or of a rule promulgated under this act that renders all or portions of the facility subject to the operating license requirements of this section may continue to operate the facility or portions of the facility that are subject to the operating license until an operating license application is approved or denied if all of the following conditions have been met:

(a) A complete operating license application is submitted within 180 days of the date requested by the director under subsection (4).

(b) The person is in compliance with all rules promulgated under this act and with all other state laws.

(c) The person qualifies for interim status as defined in title II of the solid waste disposal act, is in compliance with interim status standards established by federal regulation under title II of the solid waste disposal act, and has not had interim status terminated.

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 the freedom of information act, 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 has 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 treatment, storage, or 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, treated, stored, or disposed of; air and water emission factors, rates and characterizations; emissions during malfunctions of equipment required under this act on treatment, storage, or disposal facilities; or the efficiency of air and water pollution control devices is not rendered as confidential information by this section.

(4) The director may release any information obtained under this act, including a record, permit application, or other information considered confidential pursuant to subsection (2), to the United States environmental protection agency, the United States agency for toxic substance disease registry, or other agency authorized to receive information, including confidential information, under title II of the solid waste disposal act.

Sec. 48. (1) If the director finds that a person is in violation of a permit, license, rule promulgated under this act, or requirement of this act including a corrective action requirement of this act, the director may issue an order requiring the person to comply with the permit, license, rule, or requirement of this act including a corrective action 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 including a corrective action requirement 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 instance of violation and, if the violation is continuous, 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 transports, treats, stores, disposes, or generates hazardous waste in violation of this act, or contrary to a permit, license, order, or rule issued or promulgated under this act, or who makes a false statement, representation, or certification in an application for, or form pertaining to a permit, license, or order or in a notice or report required by the terms and conditions of an issued permit, license, or order, 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 instance of violation and, if the violation is continuous, 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 for each instance of violation and, if the violation is continuous, for each day of violation, or by imprisonment for not more than 2 years, or both.

(3) Any person who knowingly stores, treats, transports, or disposes of any hazardous waste in violation of subsection (2) and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, and if his or her conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or if his or her conduct in the circumstances manifests an extreme indifference for human life, shall be subject, upon conviction, to a fine of not more than \$250,000.00 or imprisonment for not more than 2 years, or both, except that any person whose actions constitute an extreme indifference for human life shall, upon conviction, be subject to a fine of not more than \$250,000.00 or imprisonment for not more than 5 years, or both. A defendant that is not an individual and not a governmental entity shall be subject, upon conviction, to a fine of not more than \$1,000,000.00.

(4) For the purposes of subsection (3), a person's state of mind is knowing with respect to:

- (a) His or her conduct, if he or she is aware of the nature of his or her conduct.
- (b) An existing circumstance, if he or she is aware or believes that the circumstance exists.
- (c) A result of his or her conduct, if he or she is aware or believes that his or her conduct is substantially certain to cause danger of death or serious bodily injury.

(5) For purposes of subsection (3), in determining whether a defendant who is an individual knew that his or her conduct placed another person in imminent danger of death or serious bodily injury, both of the following apply:

- (a) The person is responsible only for actual awareness or actual belief that he or she possessed.
- (b) Knowledge possessed by a person other than the defendant but not by the defendant himself or herself may not be attributed to the defendant. However, in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(6) It is an affirmative defense to a prosecution under this act that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

- (a) An occupation, a business, or a profession.
- (b) Medical treatment or professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

(7) The defendant may establish an affirmative defense under subsection (6) by a preponderance of the evidence.

(8) For purposes of subsection (3), "serious bodily injury" means each of the following:

- (a) Bodily injury which involves a substantial risk of death.
- (b) Unconsciousness.
- (c) Extreme physical pain.
- (d) Protracted and obvious disfigurement.
- (e) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(9) 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.

(10) 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 award is appropriate.

(11) A person who has an interest which is or may be affected by a civil or administrative action commenced under this act shall have a right to intervene in that action.

This act is ordered to take immediate effect.

.....  
Clerk of the House of Representatives.

.....  
Secretary of the Senate.

Approved.....

.....  
Governor.