

HOUSE BILL No. 5495

February 6, 1992, Introduced by Reps. Robertson and Willis Bullard and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend sections 3, 5, 18, 19, 26, and 48 of Act No. 64 of the Public Acts of 1979, entitled as amended "Hazardous waste management act," section 3 as amended by Act No. 246 of the Public Acts of 1987, section 5 as amended by Act No. 53 of the Public Acts of 1989, section 18 as amended by Act No. 106 of the Public Acts of 1990, section 19 as amended by Act No. 228 of the Public Acts of 1987, and sections 26 and 48 as amended by Act No. 486 of the Public Acts of 1982, being sections 299.503, 299.505, 299.518, 299.519, 299.526, and 299.548 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3, 5, 18, 19, 26, and 48 of Act No. 64
2 of the Public Acts of 1979, section 3 as amended by Act No. 246
3 of the Public Acts of 1987, section 5 as amended by Act No. 53 of
4 the Public Acts of 1989, section 18 as amended by Act No. 106 of

1 the Public Acts of 1990, section 19 as amended by Act No. 228 of
2 the Public Acts of 1987, and sections 26 and 48 as amended by Act
3 No. 486 of the Public Acts of 1982, being sections 299.503,
4 299.505, 299.518, 299.519, 299.526, and 299.548 of the Michigan
5 Compiled Laws, are amended to read as follows:

6 Sec. 3. (1) "AQUIFER" MEANS A GEOLOGIC FORMATION, GROUP OF
7 GEOLOGIC FORMATIONS, OR PART OF A GEOLOGIC FORMATION CAPABLE OF
8 YIELDING A SIGNIFICANT AMOUNT OF GROUNDWATER TO WELLS OR SPRINGS.

9 (2) ~~-(1)-~~ "Board" means a site review board created as pro-
10 vided in section 17.

11 (3) ~~-(2)-~~ "Committee" means the hazardous waste policy com-
12 mittee created in section 8a.

13 (4) ~~-(3)-~~ "Department" means the department of natural
14 resources.

15 (5) ~~-(4)-~~ "Designated facility" means a hazardous waste
16 treatment, storage, or disposal facility which has received a
17 permit or has interim status under title II of the solid waste
18 disposal act or has a permit from a state authorized under sec-
19 tion 3006 OF SUBTITLE C of title II of the solid waste disposal
20 act, 42 U.S.C. 6926, and which, if located in Michigan, has an
21 operating license issued under this act, has a legally binding
22 agreement with the director which authorizes operation, or is
23 subject to the requirements of section 22(4), (5), and (6).

24 (6) ~~-(5)-~~ "Director" means the director of the department.

25 (7) ~~-(6)-~~ "Disposal" means the discharge, deposit, injec-
26 tion, dumping, spilling, leaking, or placing of a hazardous waste
27 into or on land or water in a manner that the hazardous waste or

1 a constituent of the hazardous waste may enter the environment,
2 or be emitted into the air, or discharged into water, including
3 groundwater.

4 (8) ~~-(7)-~~ "Disposal facility" means a facility or a part of
5 a facility where managed hazardous waste, as defined by rule, is
6 intentionally placed into or on any land or water and at which
7 hazardous waste will remain after closure.

8 (9) ~~-(8)-~~ "Failure mode assessment" means an analysis of the
9 potential major methods by which safe handling of hazardous
10 wastes may fail at a treatment, storage, or disposal facility.

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

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

20 (3) "Rule" means a rule promulgated pursuant to the adminis-
21 trative procedures act of 1969, Act No. 306 of the Public Acts of
22 1969, as amended, being sections 24.201 to 24.328 of the Michigan
23 Compiled Laws.

24 (4) "Solid waste" means that term as it is defined in the
25 solid waste management act, Act No. 641 of the Public Acts of
26 1978, being sections 299.401 to 299.437 of the Michigan Compiled
27 Laws.

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

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

10 (7) "Surface impoundment" or "impoundment" means a treat-
 11 ment, storage, or disposal facility or part of a treatment, stor-
 12 age, or disposal facility which is a natural topographic depres-
 13 sion, man-made excavation, or diked area formed primarily of
 14 earthen materials, although it may be lined with man-made materi-
 15 als, which is designed to hold an accumulation of liquid wastes
 16 or wastes containing free liquids, and which is not an injection
 17 well. Examples of surface impoundments are holding, storage,
 18 settling, and aeration pits, ponds, and lagoons.

19 (8) "Title II of the solid waste disposal act" means title
 20 II of Public Law 89-272, 42 U.S.C. 6901, 6902 to ~~6911, 6912 to~~
 21 ~~6931, 6933 to 6941, 6942 to 6979a, 6981 to 6987, and 6991 to~~
 22 ~~6991i~~ 6907, 6911, 6912 TO 6914a, 6915 TO 6916, 6921 TO 6931,
 23 6933 TO 6939b, 6941, 6942 TO 6949a, 6951 TO 6956, 6961 TO 6964,
 24 6971 TO 6979a, 6981 TO 6987, 6991 TO 6991i, AND 6992 TO 6992k.

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

1 (10) "Treatment" means any method, technique, or process,
2 including neutralization, designed to change the physical, chemi-
3 cal, or biological character or composition of any hazardous
4 waste, so as to neutralize the waste, so as to recover energy or
5 material resources from the waste, or so as to render the waste
6 nonhazardous or less hazardous, safer to transport, store, or
7 dispose of, amenable to recovery, amenable to storage, or reduced
8 in volume. Treatment includes any activity or processing
9 designed to change the physical form or chemical composition of
10 hazardous waste so as to render it nonhazardous.

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

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

16 (13) "USABLE AQUIFER" MEANS AN AQUIFER THAT IS CAPABLE OF
17 PROVIDING WATER IN SUFFICIENT QUANTITIES AND OF A QUALITY SUIT-
18 ABLE FOR UTILIZATION AS AN INDIVIDUAL, PUBLIC, INDUSTRIAL, OR
19 AGRICULTURAL WATER SOURCE. USABLE AQUIFER DOES NOT INCLUDE A
20 MINERAL WELL REGULATED PURSUANT TO THE MINERAL WELL ACT, ACT
21 NO. 315 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 319.211 TO
22 319.236 OF THE MICHIGAN COMPILED LAWS, OR AN OIL OR GAS POOL OR
23 FIELD REGULATED PURSUANT TO ACT NO. 61 OF THE PUBLIC ACTS OF
24 1939, BEING SECTIONS 319.1 TO 319.27 OF THE MICHIGAN COMPILED
25 LAWS.

1 (14) ~~(13)~~ "Vehicle" means a device used to transport
2 hazardous waste. Each cargo carrying body is a separate
3 transport vehicle.

4 Sec. 18. (1) Except as otherwise provided in section 21a, a
5 person shall not establish a treatment, storage, or disposal
6 facility without a construction permit from the director. A
7 person proposing the establishment of a treatment, storage, or
8 disposal facility subject to the construction permit requirement
9 of this act, but not including a limited storage facility, shall
10 make application for a construction permit to the director on a
11 form provided by the director or an authorized representative of
12 the director.

13 (2) If an amendment to this act or to the rules promulgated
14 under this act subjects activities lawfully being conducted at a
15 treatment, storage, or disposal facility at the time the amend-
16 ment takes effect to the operating license requirements of this
17 act solely because of the amendment, the activities carried out
18 at the facility prior to the effective date of the amendment
19 ~~shall~~ ARE not ~~be~~ subject to the construction permit require-
20 ments of this act, except for an expansion of the facility with
21 respect to such activities beyond its original authorized design
22 capacity or beyond the area specified in an original permit,
23 license, or other authorization or an alteration of the method of
24 hazardous waste treatment or disposal.

25 (3) The application for a construction permit shall contain
26 the name and residence of the applicant, the location of the
27 proposed treatment, storage, or disposal facility, and other

1 information specified in this section, by rule, or by federal
2 regulation issued under title II of the solid waste disposal
3 act. The application shall be accompanied by a construction
4 permit application fee. The fee shall be calculated as provided
5 in subsection (10) or may be based on the actual cost of con-
6 struction permit review according to procedures established by
7 rule. Construction permit application fees shall be deposited in
8 the general fund of the state. The application shall include a
9 copy of the actual published notice as described in subsection
10 (9) and a determination of existing hydrogeological characteris-
11 tics specified in a hydrogeological report and monitoring program
12 consistent with rules promulgated pursuant to this act, an envi-
13 ronmental assessment, an engineering plan, and the procedures for
14 closure and postclosure monitoring. The environmental assessment
15 shall include, at a minimum, an evaluation of the proposed
16 facility's impact on the air, water, and other natural resources
17 of the state; and also shall contain an environmental failure
18 mode assessment, WHICH SHALL INCLUDE AN ANALYSIS OF HOW PREEXIST-
19 ING GEOLOGIC FORMATIONS AT A PROPOSED SITE FOR A DISPOSAL FACIL-
20 ITY WOULD PROVIDE ADDITIONAL PROTECTION AGAINST THE CONTAMINATION
21 OF ANY USABLE AQUIFER.

22 (4) Except as otherwise provided in this subsection, the
23 construction permit application shall include a disclosure state-
24 ment ~~which~~ THAT includes all of the following:

25 (a) The full name and business address of all of the
26 following:

1 (i) The applicant.

2 (ii) The 5 persons holding the largest shares of the equity
3 in or debt liability of the proposed facility. The director may
4 waive all or any portion of this requirement for an applicant
5 that is a corporation with publicly traded stock.

6 (iii) The operator, if known.

7 (iv) If known, the 3 employees of the operator who will have
8 the most responsibility for the day-to-day operation of the
9 facility.

10 (v) Any other business entity listed in the definition of
11 person in section 5(2) in which any person required to be listed
12 in subparagraphs (i) to (iv) has at any time had 25% or more of
13 the equity in or debt liability of that business entity. The
14 director may waive all or any portion of this requirement for an
15 applicant that is a corporation with publicly traded stock.

16 (b) All convictions for criminal violations of any environ-
17 mental statute enacted by a federal, state, Canadian, or provin-
18 cial agency for each person required to be listed under ~~this~~
19 ~~subsection~~ SUBDIVISION (A). If debt liability is held by a
20 chartered lending institution, information required in this
21 ~~subsection~~ SUBDIVISION and ~~subsection (4)(c)~~ SUBDIVISION (C)
22 and (d) shall not be required from that institution.

23 (c) A listing of all environmental permits or licenses
24 issued by a federal, state, Canadian, or provincial agency held
25 by each person required to be listed under ~~this subsection~~
26 SUBDIVISION (A) that were permanently revoked because of
27 noncompliance.

1 (d) A listing of all ~~activities~~ INCIDENTS at property
2 owned or operated by each person required to be listed under
3 ~~this subsection~~ SUBDIVISION (A), if the incident resulted in a
4 threat or potential threat to the environment, and public funds
5 were used to finance an activity to mitigate the threat or poten-
6 tial threat to the environment, except if the public funds
7 expended to facilitate the mitigation of environmental contamina-
8 tion were voluntarily and expeditiously recovered from the appli-
9 cant or other listed person without litigation.

10 (5) If any information required to be included in the dis-
11 closure statement UNDER SUBSECTION (4) changes, or is suppl-
12 mented after the filing of the DISCLOSURE statement, the appli-
13 cant, permittee, or licensee shall provide that information to
14 the department in writing, within 30 days of the change or
15 addition.

16 (6) Notwithstanding any other provision of law, the director
17 may deny an application for a construction permit if there are
18 any listings pursuant to subsection (4)(b), (c), or (d) as origi-
19 nally disclosed or as supplemented.

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

26 (8) There is created within the state treasury a revolving
27 fund. When a site construction permit application is referred to

1 a site review board by the director, the applicant shall pay a
2 \$25,000.00 fee to be placed in this fund. The \$25,000.00 fee
3 shall be in addition to the application fee required under sub-
4 section (3). This fund shall cover the expenses of the site
5 review board members, the chairperson, a mediator, and any other
6 expenses necessary to the deliberations of the board. The direc-
7 tor or an authorized representative of the director shall admin-
8 ister the fund and authorize expenditures. The director or an
9 authorized representative of the director shall maintain records
10 to support any expenses charged to the fund. If expenses payable
11 from the fund exceed the \$25,000.00 fee paid by the applicant,
12 the additional expenses shall be paid from money appropriated by
13 the legislature to the revolving fund created in this
14 subsection. Any unexpended portion of an applicant's \$25,000.00
15 fee that is not expended to pay the expenses listed in this sub-
16 section shall be reimbursed to the applicant after the site
17 review board process is concluded.

18 (9) An application for a site construction permit ~~shall~~ IS
19 not ~~be~~ complete unless it includes a copy of a newspaper notice
20 which the applicant published at least 30 days prior to submittal
21 of the application in a newspaper having major circulation in the
22 municipality and the immediate vicinity of the proposed treat-
23 ment, storage, or disposal facility. The required published
24 notice shall contain a map indicating the location of the pro-
25 posed treatment, storage, or disposal facility and information on
26 the nature and size of the proposed facility. In addition, the

1 notice shall contain all of the following information provided by
2 the director or an authorized representative of the director:

3 (a) A description of the application review process.

4 (b) The location where the complete application package may
5 be reviewed.

6 (c) How copies of the complete application package may be
7 obtained.

8 (10) An applicant for a construction permit for a treatment,
9 storage, or disposal facility shall calculate the applicable con-
10 struction permit application fee required under subsection (3) by
11 totaling the following for each construction permit application:

12 (a) For a landfill, surface impoundment, land
13 treatment, or waste pile facility.....\$9,000.00

14 (b) For an incinerator or treatment facility other
15 than a treatment facility in subdivision (a).....\$7,200.00

16 (c) For a storage facility, other than storage that
17 is associated with treatment or disposal activities that
18 may be regulated under a single permit.....\$ 500.00

19 (d) For the permitted site size of a landfill, surface
20 impoundment, land treatment, or waste pile facility, except waste
21 piles meeting the requirements of 40 C.F.R. 264.250(c), the
22 following:

23 (i) Less than 5 acres..... \$100.00

24 (ii) 5 to 19 acres..... \$170.00

25 (iii) 20 to 79 acres..... \$240.00

1 (iv) 80 acres or more..... \$320.00

2 (e) For the permitted site size of a treatment or storage
3 facility, other than a facility listed in subdivision (d), the
4 following:

5 (i) Less than 5 acres..... \$ 50.00

6 (ii) 5 to 19 acres..... \$100.00

7 (iii) 20 to 79 acres..... \$100.00

8 (iv) 80 acres or more..... \$100.00

9 (f) For the projected waste volume per day for a landfill,
10 surface impoundment, land treatment, or waste pile facility,
11 except waste piles meeting the requirement of 40

12 C.F.R. 264.250(c), the following:

13 (i) Less than 50 cubic yards or 10,000 gallons..... \$ 60.00

14 (ii) 50 to 100 cubic yards or 10,000 to 20,000
15 gallons..... \$ 80.00

16 (iii) 101 to 700 cubic yards or 20,000 to 140,000
17 gallons..... \$100.00

18 (iv) More than 700 cubic yards or more than 140,000
19 gallons..... \$130.00

20 (g) For the projected waste volume per day for a treatment
21 or storage facility, other than a facility listed in
22 subdivision (f), the following:

23 (i) Less than 50 cubic yards or 10,000 gallons..... \$ 50.00

24 (ii) 50 to 100 cubic yards or 10,000 to 20,000
25 gallons..... \$100.00

26 (iii) 101 to 700 cubic yards or 20,000 to 140,000
27 gallons..... \$100.00

1 (iv) More than 700 cubic yards or more than 140,000
 2 gallons..... \$150.00

3 (h) For the hydrogeological characteristics of a landfill,
 4 surface impoundment, land treatment, or waste pile facility,
 5 except waste piles meeting the requirements of 40
 6 C.F.R. 264.250(c), the following:

7 (i) Natural clay..... \$ 40.00

8 (ii) Natural sand..... \$ 60.00

9 (iii) Compacted clay..... \$ 70.00

10 (iv) Artificially lined (other materials)..... \$100.00

11 (v) Any combination of the above..... \$100.00

12 (i) For the hydrogeological characteristics of sur-
 13 face water in a treatment or storage facility, other than
 14 a facility listed in subdivision (h)..... \$ 75.00

15 Sec. 19. (1) Upon receipt of a construction permit
 16 application ~~—~~ which complies with the requirements of
 17 section 18, the director or an authorized representative
 18 of the director shall DO ALL OF THE FOLLOWING:

19 (a) Immediately notify the permanent SITE REVIEW board
 20 members; ~~—~~ the municipality ~~—~~ and county in which the treat-
 21 ment, storage, or disposal facility is located or proposed to be
 22 located; a local soil erosion and sedimentation control agency
 23 appointed pursuant to the soil erosion and sedimentation control
 24 act of 1972, Act No. 347 of the Public Acts of 1972, as amended,
 25 being sections 282.101 to ~~282.117~~ 282.125 of the Michigan
 26 Compiled Laws; ~~—~~ each division within the department that has
 27 responsibility in land, air, or water management; a regional

1 planning agency established by executive directive of the
2 governor; and other appropriate agencies. The notice shall
3 describe the procedure by which the permit may be approved or
4 denied.

5 (b) Review the plans of the proposed treatment, storage, or
6 disposal facility to determine if the proposed operation complies
7 with this act and the rules promulgated under this act. The
8 review shall be made within the department. The review shall
9 include, but not be limited to, a review of air quality, water
10 quality, waste management, hydrogeology, and the applicant's dis-
11 closure statement. A written and signed review by each person
12 within the department reviewing the permit and plans shall be
13 received and recorded before a construction permit is referred to
14 the site review board or is denied by the director. THE DIRECTOR
15 SHALL NOT RECOMMEND APPROVAL OF A CONSTRUCTION PERMIT FOR A DIS-
16 POSAL FACILITY UNLESS THE DIRECTOR DETERMINES THAT PREEXISTING
17 GEOLOGIC FORMATIONS AT THE SITE OF THE PROPOSED DISPOSAL FACILITY
18 WOULD PROVIDE ADDITIONAL PROTECTION AGAINST THE CONTAMINATION OF
19 A USABLE AQUIFER. If the site review, plan review, and the
20 application meet the requirements of this act and the rules
21 promulgated under this act, the director shall refer the applica-
22 tion to the site review board for review. An expansion of a
23 treatment, storage, or disposal facility beyond the original
24 authorized design capacity or beyond the area specified in the
25 original permit, license, or other authorization or an alteration
26 of the method of hazardous waste treatment or disposal

1 constitutes a new proposal for which a new construction permit is
2 required.

3 (c) Coordinate and review all permits which the applicant is
4 required to obtain from the department in order to construct the
5 proposed treatment, storage, or disposal facility.

6 (d) Hold a public hearing within 60 days after receipt of a
7 complete construction permit application.

8 (2) The director shall refer an application to the site
9 review board or shall notify the applicant of the intent to deny
10 the construction permit application within 120 days after the
11 director receives an application meeting the requirements of sec-
12 tion 18.

13 (3) If the director refers an application to the site review
14 board, prior to the first board meeting the director shall pro-
15 vide each board member with a copy of the application, a staff
16 report including a summary of public comments, a responsiveness
17 summary, and a draft construction permit.

18 (4) If the director does not refer an application to the
19 site review board or does not notify the applicant of the intent
20 to deny the construction permit application within 120 days, the
21 construction permit application shall be submitted to the board
22 for action.

23 (5) If the director intends to deny the application, the
24 director shall commence a public participation process which is
25 equivalent to that required by the applicable provisions of title
26 II of the solid waste disposal act, or regulations promulgated
27 under that title. Upon completion of the public participation

1 process, the director shall review all the comments made during
2 that process and shall refer the application to the site review
3 board or deny the application. If the director refers the con-
4 struction permit application to the board, the director shall
5 proceed as described in section 20.

6 Sec. 26. (1) ~~Not later than January 25, 1980, the~~ THE
7 director shall submit to the legislature, after consultation and
8 participation with the department of public health, rules neces-
9 sary to implement and administer this act. ~~(2) Not more than 6~~
10 ~~months after the enactment into law of the 1982 amendatory act~~
11 ~~which added this subsection, the director shall submit to the~~
12 ~~legislature, after consultation with the department of public~~
13 ~~health, rules necessary to implement and administer this act as~~
14 ~~amended by the 1982 amendatory act which added this subsection.~~
15 The rules required to be submitted by this subsection shall
16 include, but not be limited to, requirements for generators,
17 transporters, and treatment, storage, and disposal facilities.

18 (2) ~~(3)~~ The director may promulgate rules which exempt
19 certain hazardous wastes and certain treatment, storage, or dis-
20 posal facilities from all or portions of the requirements of this
21 act, as necessary to obtain or maintain authorization from the
22 United States environmental protection agency under title II of
23 the solid waste disposal act, or upon a determination by the
24 director that a hazardous waste, or a treatment, storage, or dis-
25 posal facility, is adequately regulated under other state or fed-
26 eral law, and that scientific data supports a conclusion that an
27 exemption will not result in an impairment of the department's

1 ability to protect the public health and the environment.
2 However, an exemption granted pursuant to this subsection shall
3 not result in a level of regulation less stringent than that
4 required under title II of the solid waste disposal act.

5 (3) ~~(4)~~ If an amendment to this act or the rules promul-
6 gated under this act subjects a person to a new or different
7 licensing requirement of this act, the director shall promulgate
8 rules to facilitate orderly and reasonable compliance by that
9 person.

10 (4) ~~(5)~~ Changes in the definition of hazardous waste con-
11 tained in section 4 and the definition of treatment contained in
12 section 5 effected by ~~the 1982 amendatory act which added this~~
13 ~~subsection~~ ACT NO. 486 OF THE PUBLIC ACTS OF 1982 shall not
14 eliminate any exemption provided to any hazardous waste or to any
15 treatment, storage, or disposal facility under administrative
16 rules promulgated pursuant to this act before ~~the effective date~~
17 ~~of the 1982 amendatory act which added this subsection~~ MARCH 30,
18 1983. However, these exemptions may be modified or eliminated by
19 administrative rules promulgated subsequent to ~~the effective~~
20 ~~date of the 1982 amendatory act which added this subsection~~
21 MARCH 30, 1983 in order that the state may obtain authorization
22 from the United States environmental protection agency under
23 title II of the solid waste disposal act, or to provide adequate
24 protection to the public health or the environment.

25 (5) RULES PROMULGATED UNDER THIS SECTION THAT PERTAIN TO
26 STANDARDS FOR DISPOSAL FACILITIES AND LAND TREATMENT FACILITIES
27 SHALL BE REVIEWED BY THE DIRECTOR WITHIN 5 YEARS AFTER THE

1 EFFECTIVE DATE OF THE 1991 AMENDATORY ACT THAT ADDED THIS
2 SENTENCE AND THEREAFTER AT LEAST EVERY 5 YEARS AND SHALL BE
3 REVISED AS NECESSARY TO ENSURE MAXIMUM PROTECTION FOR THE PUBLIC
4 HEALTH AND THE ENVIRONMENT.

5 Sec. 48. (1) If the director finds that a person is in vio-
6 lation of a permit, license, rule promulgated under this act, or
7 requirement of this act, the director may issue an order requir-
8 ing the person to comply with the permit, license, rule, or
9 requirement of this act; TO RESTORE TO ITS CONDITION PRIOR TO THE
10 VIOLATION ANY SURFACE WATER, GROUNDWATER, AIR QUALITY, OR LAND
11 THAT IS DAMAGED AS A RESULT OF THE VIOLATION; AND TO PROVIDE A
12 TEMPORARY AND, IF NECESSARY, A PERMANENT WATER SUPPLY TO A PERSON
13 WHOSE WATER SUPPLY, AS A RESULT OF THE VIOLATION, IS UNFIT OR MAY
14 BECOME UNFIT FOR ITS USE PRIOR TO IMPAIRMENT AS AN INDIVIDUAL,
15 PUBLIC, INDUSTRIAL, OR AGRICULTURAL WATER SUPPLY AS DETERMINED BY
16 THE DEPARTMENT OF PUBLIC HEALTH OR A LOCAL HEALTH OFFICER. The
17 attorney general or a person may commence a civil action against
18 a person, the department, or a LOCAL health department certified
19 under section 45 for appropriate relief, including injunctive
20 relief for a violation of this act or a rule promulgated under
21 this act. An action under this subsection may be brought in the
22 circuit court for the county of Ingham or for the county in which
23 the defendant is located, resides, or is doing business. The
24 court has jurisdiction to restrain the violation; ~~and~~ to
25 require compliance, TO COMPEL A PERSON TO RESTORE TO ITS CONDI-
26 TION PRIOR TO THE VIOLATION ANY SURFACE WATER, GROUNDWATER, AIR
27 QUALITY, OR LAND DAMAGED AS A RESULT OF THE VIOLATION, AND TO

1 PROVIDE A TEMPORARY AND, IF NECESSARY, A PERMANENT WATER SUPPLY
2 TO A PERSON WHOSE WATER SUPPLY, AS A RESULT OF THE VIOLATION,
3 BECOMES OR MAY BECOME UNFIT FOR ITS USE PRIOR TO IMPAIRMENT AS AN
4 INDIVIDUAL, PUBLIC, INDUSTRIAL, OR AGRICULTURAL WATER SUPPLY AS
5 DETERMINED BY THE DEPARTMENT OF PUBLIC HEALTH OR A LOCAL HEALTH
6 OFFICER. In addition to any other relief granted under this sub-
7 section, the court may impose a civil fine of not more than
8 \$25,000.00 for each instance of violation and, if the violation
9 is continuous, for each day of continued noncompliance. A fine
10 collected under this subsection shall be deposited in the general
11 fund of the state. AS USED IN THIS SUBSECTION, "LOCAL HEALTH
12 OFFICER" MEANS THAT TERM AS DEFINED IN SECTION 1105 OF THE PUBLIC
13 HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SEC-
14 TION 333.1105 OF THE MICHIGAN COMPILED LAWS.

15 (2) A person who transports, treats, stores, disposes, or
16 generates hazardous waste in violation of this act, or contrary
17 to a permit, order, or rule issued or promulgated under this act,
18 or who makes a false statement, representation, or certification
19 in an application for ~~—~~ or form pertaining to a permit, or in a
20 notice or report required by the terms and conditions of an
21 issued permit, or a person who violates section 44(5), is guilty
22 of a misdemeanor, punishable by a fine of not more than
23 \$25,000.00 for each instance of violation and, if the violation
24 is continuous, for each day of violation, or imprisonment for not
25 more than 1 year, or both. If the conviction is for a violation
26 committed after a first conviction of the person under this
27 subsection, the person is guilty of a misdemeanor, punishable by

1 a fine of not more than \$50,000.00 for each instance of violation
2 and, if the violation is continuous, for each day of violation,
3 or by imprisonment for not more than 2 years, or both.

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

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

21 (a) His or her conduct, if he or she is aware of the nature
22 of his or her conduct.

23 (b) An existing circumstance, if he or she is aware or
24 believes that the circumstance exists.

25 (c) A result of his or her conduct, if he or she is aware or
26 believes that his or her conduct is substantially certain to
27 cause danger of death or serious bodily injury.

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

5 (a) The person is responsible only for actual awareness or
6 actual belief that he or she possessed.

7 (b) Knowledge possessed by a person other than the defendant
8 but not by the defendant himself or herself may not be attributed
9 to the defendant. However, in proving the defendant's possession
10 of actual knowledge, circumstantial evidence may be used, includ-
11 ing evidence that the defendant took affirmative steps to shield
12 himself or herself from relevant information.

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

17 (a) An occupation, a business, or a profession.

18 (b) Medical treatment or professionally approved methods and
19 such other person had been made aware of the risks involved prior
20 to giving consent.

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

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

25 (a) Bodily injury which involves a substantial risk of
26 death.

1 (b) Unconsciousness.

2 (c) Extreme physical pain.

3 (d) Protracted and obvious disfigurement.

4 (e) Protracted loss or impairment of the function of a
5 bodily member, organ, or mental faculty.

6 (9) In addition to a fine, the attorney general may bring an
7 action in a court of competent jurisdiction to recover the full
8 value of the damage done to the natural resources of this state
9 and the costs of surveillance and enforcement by the state
10 resulting from the violation. The damages and cost collected
11 under this subsection shall be deposited in the general fund when
12 the damages or costs result from impairment or destruction of the
13 fish, wildlife, or other natural resources of the state and shall
14 be used to restore, rehabilitate, or mitigate the damage to,
15 those resources in the affected area, and for the specific
16 resource to which the damages occurred.

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

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