



SENATE BILL No. 161

January 26, 1993, Introduced by Senators POLLACK, BERRYMAN, CHERRY, STABENOW and KELLY and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend the title of Act No. 64 of the Public Acts of 1979, entitled as amended "Hazardous waste management act," as amended, being sections 299.501 to 299.551 of the Michigan Compiled Laws; and to add sections 18a, 52, 52a, 52b, 52c, 52d, 52e, 52f, 52g, 52h, 52i, 52j, 52k, 52l, and 52m.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title of Act No. 64 of the Public Acts of
2 1979, as amended, being sections 299.501 to 299.551 of the
3 Michigan Compiled Laws, is amended and sections 18a, 52, 52a,
4 52b, 52c, 52d, 52e, 52f, 52g, 52h, 52i, 52j, 52k, 52l, and 52m
5 are added to read as follows:

1

TITLE

2 An act to protect the public health and the natural
3 resources of the state and to license and regulate persons
4 engaged in generating, transporting, treating, storing, and dis-
5 posing of hazardous waste; to provide for hazardous waste manage-
6 ment facilities; to create a means for establishing hazardous
7 waste site review boards; to provide for the inspection and
8 licensing of equipment; to prescribe the powers and duties of
9 certain state agencies; to develop a plan to provide for the safe
10 management and disposal of hazardous waste; to regulate the oper-
11 ation of and require corrective action regarding contaminants at
12 treatment, storage, and disposal facilities; TO PROVIDE ACCESS TO
13 CERTAIN INFORMATION; to establish a list and criteria of hazard-
14 ous waste requiring treatment, storage, or disposal at approved
15 treatment, storage, or disposal facilities; to establish a mani-
16 fest system to track hazardous waste; to establish a hazardous
17 waste service fund; to consider waste management and disposal
18 needs of this state; and to prescribe remedies and penalties.

19

PART I

20 SEC. 18A. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
21 ACT, BEGINNING ON JANUARY 1, 1992, FOR A PERIOD OF 5 YEARS OR
22 UNTIL THERE IS A 50% REDUCTION IN THE TOTAL AMOUNT OF BY-PRODUCTS
23 GENERATED IN THIS STATE AS COMPILED FROM THE FIRST ANNUAL REPORTS
24 REQUIRED UNDER SECTION 52C, THE DIRECTOR SHALL NOT ISSUE A CON-
25 STRUCTION PERMIT OR AN OPERATING LICENSE FOR A DISPOSAL FACILITY
26 OR A TREATMENT FACILITY THAT UTILIZES INCINERATION IN THE

1 PROCESSING OF HAZARDOUS WASTE, INCLUDING A BOILER OR AN
2 INDUSTRIAL FURNACE.

3 (2) WITHIN 5 YEARS OF THE EFFECTIVE DATE OF THIS SECTION,
4 THE DEPARTMENT SHALL REPORT TO THE LEGISLATURE AND THE GOVERNOR
5 ON THE STATE'S NEEDS RELATING TO DISPOSAL FACILITIES AND TREAT-
6 MENT FACILITIES DESCRIBED IN SUBSECTION (1), AND IF THE NEED FOR
7 ADDITIONAL CAPACITY CANNOT BE DOCUMENTED THE MORATORIUM DESCRIBED
8 IN SUBSECTION (1) SHALL BE EXTENDED FOR 5 YEARS.

9 (3) AS USED IN THIS SECTION, "TITLE III" HAS THE MEANING
10 GIVEN THAT TERM IN PART II OF THIS ACT.

11 PART II TOXICS USE REDUCTION PART

12 SEC. 52. (1) THE LEGISLATURE FINDS AND DECLARES THAT THE
13 INHERENT LIMITATIONS OF THE TRADITIONAL SYSTEM OF POLLUTION CON-
14 TROL SHOULD BE ADDRESSED BY A NEW EMPHASIS ON POLLUTION PREVEN-
15 TION, INCLUDING ALL OF THE FOLLOWING:

16 (A) THE REDUCTION OF THE USE OF HAZARDOUS SUBSTANCES IN
17 INDUSTRIAL AND MANUFACTURING PROCESSES, AND THE REDUCTION IN GEN-
18 ERATION OF HAZARDOUS SUBSTANCES AS NONPRODUCT OUTPUT.

19 (B) A RIGOROUS ACCOUNTING OF THE USE OF HAZARDOUS
20 SUBSTANCES.

21 (C) A MULTIMEDIA APPROACH TO THE REGULATION OF HAZARDOUS
22 SUBSTANCES AT EACH STEP OF A PROCESS TO IDENTIFY THE POINTS AND
23 THE PROCEDURES BY WHICH POLLUTION CAN BE PREVENTED.

24 (2) THE LEGISLATURE ALSO FINDS AND DECLARES ALL OF THE
25 FOLLOWING:

26 (A) POLLUTION PREVENTION MAY BE ACHIEVED THROUGH A MORE
27 EFFICIENT AND RATIONAL USE OF HAZARDOUS SUBSTANCES, BY

1 SUBSTITUTING LESS HAZARDOUS SUBSTANCES, OR BY THE DEVELOPMENT OF
2 PROCESSES THAT ARE LESS PRONE TO PRODUCE POLLUTION.

3 (B) A SOUNDLY PLANNED POLLUTION PREVENTION PROGRAM MAY BE
4 IMPLEMENTED WITHOUT ADVERSELY AFFECTING THE STATE'S ECONOMIC
5 HEALTH OR THE LIVELIHOOD OF THOSE EMPLOYED BY INDUSTRIES THAT USE
6 AND DISCHARGE HAZARDOUS SUBSTANCES.

7 (C) ONE OF THE MOST IMPORTANT MEANS OF ENCOURAGING THE
8 REDUCED USAGE AND PRODUCTION OF HAZARDOUS SUBSTANCES IS TO
9 ENCOURAGE DIRECT DIALOGUE BETWEEN INDUSTRIAL MANAGERS AND CON-
10 CERNED CITIZENS, WORKERS, AND CONSUMERS REGARDING TOXIC CHEMICAL
11 USAGE AND THE AVAILABLE ALTERNATIVES.

12 SEC. 52A. AS USED IN THIS PART:

13 (A) "BY-PRODUCT" MEANS ANY TOXIC SUBSTANCE, OTHER THAN A
14 PRODUCT, THAT ENTERS A WASTE STREAM OR OTHERWISE IS RELEASED TO
15 THE ENVIRONMENT FROM A PRODUCTION UNIT, INCLUDING FUGITIVE EMIS-
16 SIONS AND HAZARDOUS SECONDARY MATERIALS, PRIOR TO RECYCLING,
17 TREATMENT, DISPOSAL, HANDLING, OR RELEASE.

18 (B) "CLEAN AIR ACT" MEANS CHAPTER 360, 69 STAT. 322, 42
19 U.S.C. 7401 TO 7431, 7470 TO 7479, 7491 TO 7492, 7501 TO 7509a,
20 7511 TO 7515, 7521 TO 7525, 7541 TO 7545, 7547 TO 7550, 7552 TO
21 7554, 7571 TO 7574, 7581 TO 7590, 7601 TO 7612, 7614 TO 7617,
22 7619 TO 7622, 7624 TO 7627, 7641 TO 7642, 7651 TO 7651o, 7661 TO
23 7661f, AND 7671 TO 7671q.

24 (C) "COVERED FACILITY" INCLUDES:

25 (i) TITLE III FACILITIES REQUIRED TO REPORT UNDER
26 SECTION 313 OF THAT ACT.

1 (ii) LARGE QUANTITY GENERATORS REGULATED UNDER THE RESOURCE
2 CONSERVATION AND RECOVERY ACT OF 1976, PUBLIC LAW 94-580.

3 (iii) MAJOR SOURCES AS DEFINED IN THE CLEAN AIR ACT.

4 (iv) ADDITIONAL CATEGORIES OF FACILITIES ADDED BY THE
5 DEPARTMENT TO THE DEFINITION OF REPORTING FACILITIES BY RULE
6 UNDER 1 OR BOTH OF THE FOLLOWING STANDARDS:

7 (A) TO MAKE THE REPORTING FACILITIES CONSISTENT WITH THE
8 FACILITIES REPORTING UNDER FEDERAL LAW.

9 (B) THE DEPARTMENT FINDS THAT A CATEGORY OF FACILITIES NOT
10 INCLUDED IN THIS DEFINITION IS USING OR RELEASING SIGNIFICANT
11 QUANTITIES OF TOXIC SUBSTANCES.

12 (D) "FACILITY" MEANS BUILDINGS, EQUIPMENT, STRUCTURES, AND
13 OTHER ITEMS THAT ARE LOCATED ON A SINGLE SITE OR CONTIGUOUS OR
14 ADJACENT SITES AND ARE OWNED OR OPERATED BY THE SAME PERSON, OR
15 BY A PERSON WHICH CONTROLS, IS CONTROLLED BY, OR UNDER COMMON
16 CONTROL WITH, THE PERSON. FACILITY INCLUDES ANY FEDERAL GOVERN-
17 MENTAL FACILITY AND A FACILITY USED IN THE TRANSPORTATION OF
18 TOXIC SUBSTANCES AND STORAGE INCIDENT TO TRANSPORTATION, INCLUD-
19 ING A FACILITY USED IN THE TRANSPORTATION OF NATURAL GAS.

20 (E) "HAZARDOUS SECONDARY MATERIALS" MEANS A SECONDARY MATE-
21 RIAL, REGARDLESS OF WHETHER OR HOW IT IS REGULATED, THAT WOULD BE
22 REQUIRED TO BE MANAGED AS A HAZARDOUS WASTE OR OTHER ENVIRONMEN-
23 TAL POLLUTANT OR CONTAMINANT BUT FOR THE FACT THAT IT IS NOT
24 RELEASED OR DISCARDED.

25 (F) "PRODUCT" MEANS A GOOD, AN INTERMEDIATE GOOD, A FAMILY
26 OF SIMILAR OR INTERCHANGEABLE GOODS, OR A SERVICE ACTIVITY OF THE
27 TYPE THAT IS COMMONLY SOLD IN COMMERCE. PRODUCT MAY INCLUDE A

1 FINAL SALABLE HAZARDOUS SUBSTANCE THAT IS USABLE WITHOUT FURTHER
2 TREATMENT OR PROCESSING AND THAT IS USED AS A COMMODITY IN THE
3 SAME FORM IN WHICH IT IS PRODUCED. PRODUCT DOES NOT INCLUDE A
4 HAZARDOUS WASTE TRANSFERRED FOR TREATMENT, RECYCLING, OR
5 DISPOSAL.

6 (G) "PRODUCTION UNIT" MEANS A PRODUCTION PROCESS, LINE,
7 METHOD, ACTIVITY, OR TECHNIQUE, OR COMBINATION OR SERIES THEREOF,
8 THAT IS INTEGRAL TO AND NECESSARY FOR THE PRODUCTION OF A
9 PRODUCT. PRODUCTION UNIT DOES NOT INCLUDE WASTE ACTIVITIES AND
10 OUT-OF-PROCESS RECYCLING THAT IS NOT AN INTEGRAL PART OF AND DED-
11 ICATED TO PRODUCTION UNITS. PRODUCTION UNIT MAY INCLUDE STORAGE
12 OF RAW MATERIALS, MAINTENANCE, AND FINISHED GOODS HANDLING.

13 (H) "RELEASE" HAS THE MEANING GIVEN THE TERM UNDER TITLE
14 III.

15 (I) "SECONDARY MATERIALS" MEANS BOTH OF THE FOLLOWING:

16 (i) ANY INTENTIONAL OR UNINTENTIONAL BY-PRODUCT, PROCESS
17 RESIDUE, OR OTHER NONPRODUCT OUTPUT THAT RESULTS FROM MANUFACTUR-
18 ING, EXTRACTION, SERVICING, OR OTHER PROCESSING, INCLUDING POLLU-
19 TION CONTROL, OR USE OF MATERIALS, AND THAT IS RECYCLED OUTSIDE
20 OF THE BOUNDARIES OF THE ORIGINAL PRODUCTION UNIT.

21 (ii) ANY MATERIAL THAT IS SPENT, CONTAMINATED, OR BEYOND ITS
22 USEFUL LIFE AND IS RECYCLED AND WOULD BE A SOLID WASTE OR ENVI-
23 RONMENTAL POLLUTANT BUT FOR THE FACT THAT IT IS NOT RELEASED OR
24 DISCARDED.

25 (J) "THRESHOLD QUANTITY OF A TOXIC SUBSTANCE" MEANS QUANTITY
26 OF A TOXIC SUBSTANCE FOR WHICH A FACILITY IS REQUIRED TO REPORT
27 UNDER TITLE III OR FOR TOXIC SUBSTANCES FOR WHICH THE FACILITY

1 HAS EFFLUENT LIMITS OR MONITORING REQUIREMENTS UNDER ACT NO. 245
2 OF THE PUBLIC ACTS OF 1929, BEING SECTIONS 323.1 TO 323.13 OF THE
3 MICHIGAN COMPILED LAWS, OR FOR WHICH THE FACILITY HAS THE EMIS-
4 SION LIMITS OR MONITORING LIMITS UNDER THE CLEAN AIR ACT OR THE
5 AIR POLLUTION ACT, ACT NO. 348 OF THE PUBLIC ACTS OF 1965, BEING
6 SECTIONS 336.11 TO 336.36 OF THE MICHIGAN COMPILED LAWS, OR ANY
7 PERMIT ISSUED UNDER ANY OF THOSE ACTS. THE THRESHOLD QUANTITY
8 SHALL BE THE MINIMUM DETECTION LIMIT FOR THAT SUBSTANCE.

9 (K) "TITLE III" MEANS THE EMERGENCY PLANNING AND COMMUNITY
10 RIGHT-TO-KNOW ACT OF 1986, TITLE III OF PUBLIC LAW 99-499, 42
11 U.S.C. 11001 TO 11005, 11021 TO 11023, AND 11041 TO 11050.

12 (L) "TOXIC SUBSTANCES" OR "TOXICS" MEANS SUBSTANCES FOR
13 WHICH REPORTING IS REQUIRED UNDER TITLE III; SUBSTANCES REGULATED
14 UNDER SECTIONS 101(14) AND 102 OF TITLE I OF THE COMPREHENSIVE
15 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980,
16 PUBLIC LAW 96-510, 42 U.S.C. 101 AND 102; AND SUBSTANCES INCLUDED
17 ON THE MICHIGAN CRITICAL MATERIALS REGISTER.

18 (M) "TOXICS USE REDUCTION" MEANS ANY CHANGE IN A PRACTICE,
19 PROCESS, OR ACTIVITY INVOLVED IN A PRODUCTION UNIT THAT REDUCES
20 OR ELIMINATES THE USE OF ANY HAZARDOUS SUBSTANCE, OR THE AMOUNT
21 OF ANY TOXIC SUBSTANCE ENTERING ANY WASTE STREAM OR OTHERWISE
22 RELEASED TO THE ENVIRONMENT, INCLUDING FUGITIVE EMISSIONS AND
23 HAZARDOUS SECONDARY MATERIALS, PRIOR TO RECYCLING, TREATMENT,
24 DISPOSAL, HANDLING, OR RELEASE, WITHOUT CREATING OR INCREASING
25 RISKS OF CONCERN TO PUBLIC HEALTH, WORKERS, CONSUMERS, OR THE
26 ENVIRONMENT. TOXIC USE REDUCTION INCLUDES EQUIPMENT OR
27 TECHNOLOGY MODIFICATIONS, CHANGES IN PROCESSES OR PROCEDURES,

1 REFORMULATION OR REDESIGN OF PRODUCTS, SUBSTITUTION OF RAW
2 MATERIALS, AND IMPROVEMENTS IN HOUSEKEEPING, MAINTENANCE, TRAIN-
3 ING, OR INVENTORY CONTROL. TOXICS USE REDUCTION DOES NOT INCLUDE
4 EITHER OF THE FOLLOWING:

5 (i) WASTE ACTIVITIES OR ANY OTHER PRACTICE THAT ALTERS THE
6 PHYSICAL, CHEMICAL, OR BIOLOGICAL CHARACTERISTICS, OR THE VOLUME,
7 OF A HAZARDOUS SUBSTANCE THROUGH A PROCESS OR ACTIVITY THAT IS
8 NOT INTEGRAL TO AND NECESSARY FOR THE PRODUCTION OF A PRODUCT OR
9 THE PROVIDING OF A SERVICE.

10 (ii) THE USE OF BY-PRODUCT AS HAZARDOUS SECONDARY MATERIAL
11 OR AS PRODUCT.

12 (N) "WASTE ACTIVITIES" INCLUDES ANY OF THE FOLLOWING:

13 (i) THE CLEANUP, COMBUSTION, CONTROL, DISPOSAL, EXCHANGE,
14 HANDLING, MANAGEMENT, RECOVERY, SEGREGATION, STORAGE, TREATMENT,
15 TRANSFER, OR TRANSPORTATION OF WASTE, INCLUDING AIR AND WATER
16 BY-PRODUCTS AND POLLUTANTS.

17 (ii) POLLUTION CONTROL.

18 (iii) CONTAINMENT OR MANAGEMENT OF WORKPLACE HAZARDS OR
19 SPILLS.

20 (iv) ON-SITE AND OFF SITE RECYCLING WITHOUT THE USE OF
21 IN-PROCESS, IN-LINE, OR CLOSED-LOOP RECYCLING METHODS ACCORDING
22 TO STANDARD ENGINEERING PRACTICES THAT IS NOT INTEGRAL TO AND
23 NECESSARY FOR THE PRODUCTION OF THE PRODUCT WITHIN THE ORIGINAL
24 PRODUCTION UNIT.

25 (v) A RESPONSE TO THE RELEASE OF HAZARDOUS MATERIALS.

1 SEC. 52B. (1) IT IS THE GOAL OF THIS STATE TO REDUCE TOXIC
2 SUBSTANCE BY-PRODUCTS BY 50% WITHIN 5 YEARS AFTER THE EFFECTIVE
3 DATE OF THIS PART.

4 (2) THE MEASUREMENT FOR THE BASE YEAR SHALL BE DETERMINED BY
5 THE DEPARTMENT THROUGH THE ANALYSIS OF INFORMATION PROVIDED BY
6 REPORTING FACILITIES IN THE FIRST ANNUAL REPORT REQUIRED TO BE
7 FILED UNDER SECTION 52C.

8 (3) THE DEPARTMENT SHALL ANALYZE TOXIC SUBSTANCE USE AND
9 RELEASE REDUCTION DATA AND TRENDS TO DETERMINE IF THE 50% REDUC-
10 TION GOAL IN THE SECTION IS MET.

11 SEC. 52C. (1) THE OWNER OR OPERATOR OF A COVERED FACILITY
12 SHALL COMPLETE AN ANNUAL REPORT FOR EACH TOXIC SUBSTANCE MANUFAC-
13 TURED, PROCESSED, OR OTHERWISE USED AT THE FACILITY IN QUANTITIES
14 EQUAL TO OR EXCEEDING THE APPLICABLE THRESHOLD QUANTITIES. THE
15 REPORT SHALL BE SUBMITTED TO THE DIRECTOR ON OR BEFORE JULY 1 OF
16 EACH YEAR AND SHALL CONTAIN DATA ON THE PRECEDING CALENDAR YEAR.

17 (2) AN ANNUAL REPORT SHALL IDENTIFY EACH TOXIC SUBSTANCE
18 REPORTED UNDER SUBSECTION (1) AND SHALL INCLUDE THE FOLLOWING
19 INFORMATION FOR EACH TOXIC SUBSTANCE:

20 (A) A COMPILATION OF ANNUAL INPUT, ACCUMULATION, AND OUTPUT
21 QUANTITIES OF THE TOXIC SUBSTANCE AT THE FACILITY, INCLUDING THE
22 QUANTITIES PRODUCED, USED, GENERATED AS AN ON-SITE OR OFF-SITE
23 BY-PRODUCT, CONSUMED, RECYCLED ON-SITE BUT OUT-OF-PROCESS, TRANS-
24 FERRED AS PRODUCT, OR TRANSFERRED AS A CONSTITUENT IN PRODUCTS.

25 (B) FOR EACH PRODUCTION UNIT OF THE FACILITY:

26 (i) THE AMOUNT OF THE TOXIC SUBSTANCE USED PER UNIT OF
27 PRODUCT AND GENERATED AS BY-PRODUCT PER UNIT OF PRODUCT.

1 (ii) THE ANNUAL REDUCTION OR INCREASE IN THE AMOUNT PRESENT
2 IN THE PRODUCT PER UNIT OF PRODUCT.

3 (iii) A DESCRIPTION OF THE PRODUCTION UNIT, INCLUDING THE
4 PRODUCTION PROCESS, PRODUCT, AND UNIT OF PRODUCT.

5 (iv) THE AMOUNTS MANUFACTURED, OR OTHERWISE CREATED, AND
6 USED, EXPRESSED AS A RANGE.

7 (C) TWO- AND 5-YEAR GOALS FOR REDUCTION IN EACH AMOUNT
8 REPORTED UNDER SUBDIVISION (B)(i), AND THE AMOUNTS MANUFACTURED,
9 PROCESSED, OTHERWISE USED, AND GENERATED AS BY-PRODUCT AT THE
10 FACILITY.

11 (D) IDENTIFICATION OF THE TYPE OF TOXICS USE REDUCTION TECH-
12 NIQUE, OR OTHER FACTOR, THAT REDUCED BY 10% OR MORE FROM THE PRE-
13 VIOUS YEAR ANY AMOUNT REPORTED UNDER SUBDIVISION (B)(i) OR (ii)
14 FOR A PRODUCTION UNIT.

15 (3) IF FOR A CALENDAR YEAR THE OWNER OR OPERATOR OF A COV-
16 ERED FACILITY SUBMITS AN ANNUAL REPORT UNDER SUBSECTION (1) THAT
17 REPORTS OMISSIONS OF A TOXIC SUBSTANCE CONTAINED IN A REPORT FOR
18 THE FACILITY FOR THE CALENDAR YEAR PRECEDING THE CALENDAR YEAR
19 BEING REPORTED ON, THE OWNER OR OPERATOR OF THE FACILITY SHALL
20 IDENTIFY IN THE REPORT ANY SUBSTANCE THAT IS A REPLACEMENT FOR
21 THE OMITTED TOXIC SUBSTANCE AND STATE WHETHER THE SUBSTANCE IS A
22 TOXIC SUBSTANCE.

23 (4) EACH ANNUAL REPORT SUBMITTED UNDER SUBSECTION (1) SHALL
24 CONTAIN A CERTIFICATION SIGNED BY THE OWNER OR OPERATOR OF THE
25 COVERED FACILITY. A CERTIFICATION SHALL STATE THAT, SUBJECT TO
26 THE PENALTY OF PERJURY, THE OWNER OR OPERATOR HAS READ THE REPORT
27 AND ANY PLAN REQUIRED UNDER THIS PART AND THEY ARE, TO THE

1 PERSON'S BEST KNOWLEDGE AND BELIEF, TRUE, COMPLETE, ACCURATE, AND
2 PREPARED UNDER A PROPER DATA ACCOUNTING AND PLANNING SYSTEM.

3 (5) THE USE OF FORMS AND FORMATS USED PURSUANT TO TITLE III
4 SHALL BE ACCEPTABLE BY THE DEPARTMENT IN MEETING APPLICABLE
5 REQUIREMENTS OF THIS ACT, WHENEVER FEASIBLE.

6 SEC. 52D. (1) THE OWNER OR OPERATOR OF A COVERED FACILITY
7 SHALL COMPLETE A BIENNIAL TOXICS USE REDUCTION PLAN FOR THE PUR-
8 POSE OF REDUCING THE USE OF THRESHOLD QUANTITIES OF TOXIC SUB-
9 STANCES AT THE FACILITY.

10 (2) EACH TOXICS USE REDUCTION PLAN SHALL INCLUDE ALL OF THE
11 FOLLOWING:

12 (A) A STATEMENT OF MANAGEMENT POLICY REGARDING TOXICS USE
13 REDUCTION.

14 (B) TOXICS USE REDUCTION GOALS, AS DESCRIBED IN
15 SECTION 52B.

16 (C) A CURRENT AND PROJECTED ANALYSIS OF EACH PRODUCTION
17 UNIT, INCLUDING MATERIALS ACCOUNTING AND A FULL COST ASSESSMENT
18 OF DIRECT AND INDIRECT ECONOMIC IMPACTS, INCLUDING LIABILITIES,
19 ASSOCIATED WITH EACH TOXIC SUBSTANCE.

20 (D) AN EVALUATION OF OPTIONS FOR REDUCING THE USE OF TOXIC
21 SUBSTANCES IN EACH PRODUCTION UNIT, INCLUDING BOTH OF THE
22 FOLLOWING:

23 (i) A COMPREHENSIVE SEARCH FOR TOXICS USE REDUCTION OPTIONS,
24 INCLUDING SUBSTITUTION OF RAW MATERIALS, REFORMULATION OR REDE-
25 SIGN OF PRODUCTS, PRODUCTION UNIT MODIFICATIONS, IMPROVEMENTS IN
26 OPERATION OR MAINTENANCE, AND IN-PROCESS EXTENDED USE OR
27 CLOSED-LOOP RECYCLING.

1 (ii) A MATERIALS ACCOUNTING AND ECONOMIC IMPACT ANALYSIS OF
2 SELECTED TECHNICALLY FEASIBLE OPTIONS FOR THE PURPOSES OF COMPAR-
3 ISON WITH THE RESULTS OF SUBDIVISION (C). THE OPTIONS MAY NOT
4 INCLUDE THE USE OF WASTE ACTIVITIES.

5 (E) A SCHEDULE FOR IMPLEMENTING TOXICS USE REDUCTION
6 OPTIONS.

7 (F) AN EXPLANATION FOR NOT INCLUDING IN THE IMPLEMENTATION
8 SCHEDULE TECHNICALLY FEASIBLE OPTIONS WITH A PAYBACK PERIOD OF
9 LESS THAN 2 YEARS.

10 (G) THE EFFECTS OF THE TOXICS USE REDUCTION PLAN ON WORKERS,
11 CONSUMERS, ENERGY USE, AND THE ENVIRONMENT.

12 (3) THE DIRECTOR MAY REVIEW, INSPECT, REQUEST, OR SURVEY
13 TOXICS USE REDUCTION PLANS SUBMITTED UNDER SUBSECTION (1) FOR
14 PURPOSES OF DETERMINING ADEQUACY AND COMPLETENESS AND INVESTIGAT-
15 ING TOXICS USE REDUCTION OPTIONS. THE DIRECTOR MAY MODIFY OR
16 REQUIRE MODIFICATION OF A PLAN TO REQUIRE ADEQUACY AND COMPLETE-
17 NESS, INCLUDING EVALUATION OF TECHNICALLY FEASIBLE TOXICS USE
18 REDUCTION PRACTICES AND FULL COST ACCOUNTING OF TOXICS USE. THE
19 DIRECTOR SHALL REQUIRE PLAN DEFICIENCIES TO BE CORRECTED BY THE
20 OWNER OR OPERATOR OF THE COVERED FACILITY WITHIN 90 DAYS.

21 (4) THE OWNER OR OPERATOR OF THE COVERED FACILITY MAY SUBMIT
22 A COPY OF THE TOXICS USE REDUCTION PLAN OR SHALL SUBMIT A
23 DETAILED AND COMPREHENSIVE SUMMARY OF EACH SECTION OF ITS TOXICS
24 USE REDUCTION PLAN TO THE DIRECTOR. THE PLAN OR SUMMARY SUBMIT-
25 TED UNDER THIS SUBSECTION SHALL BE MADE AVAILABLE TO THE PUBLIC.

26 (5) IN YEARS THAT TOXICS USE REDUCTION PLANS ARE NOT
27 REQUIRED, A FACILITY SHALL SUBMIT TO THE DEPARTMENT A PLAN

1 PROGRESS REPORT DETAILING PROGRESS TOWARD THE GOALS IN EACH
2 SECTION OF THE MOST CURRENT PLAN, ACTIONS PLANNED IN TOXICS USE
3 REDUCTION IN THE UPCOMING YEAR, AND, IF APPLICABLE, AN EXPLANA-
4 TION OF WHY THE FACILITY'S PROGRESS MAY BE LESS THAN THAT ANTICI-
5 PATED IN THE PLAN TIME SCHEDULE FOR IMPLEMENTATION.

6 (6) THE FIRST TOXICS USE REDUCTION PLANS REQUIRED UNDER THIS
7 SECTION SHALL BE SUBMITTED WITHIN 2 YEARS OF THE EFFECTIVE DATE
8 OF THIS PART.

9 (7) THE FACILITY, IN PREPARING A TOXICS USE REDUCTION PLAN,
10 SHALL INVOLVE A SPECTRUM OF EMPLOYEES, INCLUDING PRODUCTION,
11 PRODUCT DEVELOPMENT, AND RESEARCH AND DEVELOPMENT PERSONNEL.

12 (8) WORKER COMMITTEES, ESTABLISHED IN THE WORKER
13 RIGHT-TO-ACT ACT, SHALL HAVE AN OPPORTUNITY TO REVIEW AND PROVIDE
14 INPUT ON THE FACILITY'S PLAN BEFORE IT IS COMPLETED. FACILITY
15 EMPLOYEES OR THEIR REPRESENTATIVES SHALL RECEIVE AT LEAST 6
16 MONTHS' NOTICE OF THIS OPPORTUNITY.

17 SEC. 52E. (1) EACH COVERED FACILITY SHALL DEVELOP AND MAIN-
18 TAIN A FACILITY ENVIRONMENTAL FILE. THE FILE SHALL INCLUDE ALL
19 OF THE FOLLOWING:

20 (A) THE CURRENT TOXICS USE REDUCTION PLAN OR SUMMARY OF THE
21 TOXICS USE REDUCTION PLAN AND THE ANNUAL REPORT.

22 (B) CURRENT FACILITY PERMITS ISSUED UNDER EACH OF THE FOL-
23 LOWING ACTS:

24 (i) THE CLEAN AIR ACT.

25 (ii) FEDERAL WATER POLLUTION CONTROL ACT, CHAPTER 758, 86
26 STAT. 816, 33 U.S.C. 1251 TO 1252, 1253 TO 1254, 1255 TO 1257,
27 1258 TO 1263, 1265 TO 1270, 1281, 1282 TO 1293, 1294 TO 1299,

1 1311 TO 1313, 1314 TO 1326, 1328 TO 1330, 1341 TO 1345, 1361 TO
2 1377, AND 1381 TO 1387.

3 (iii) SOLID WASTE DISPOSAL ACT, TITLE II OF PUBLIC LAW
4 89-272, 42 U.S.C. 6901, 6902 TO 6907, 6911, 6912 TO 6914a, 6915
5 TO 6916, 6921 TO 6931, 6933 TO 6939b, 6941, 6942 TO 6949a, 6951
6 TO 6959, 6961 TO 6964, 6971 TO 6979a, 6981 TO 6987, 6991 TO
7 6991i, AND 6992 TO 6992k.

8 (iv) The air pollution act, Act No. 348 of the Public Acts
9 of 1965, being sections 336.11 to 336.36 of the Michigan Compiled
10 Laws.

11 (v) Act No. 245 of the Public Acts of 1929, being sections
12 323.1 to 323.13 of the Michigan Compiled Laws, including any
13 groundwater discharge permits.

14 (vi) The solid waste management act, Act No. 641 of the
15 Public Acts of 1978, being sections 299.401 to 299.437 of the
16 Michigan Compiled Laws.

17 (vii) The hazardous waste management act, Act No. 64 of the
18 Public Act No. 64 of the Public Acts of 1979, being
19 section 299.501 to 299.551 of the Michigan Compiled Laws.

20 (viii) Federal toxic substances control act, Public Law
21 94-469, 15 U.S.C. 2601 to 2629, 2641 to 2656, and 2661 to 2671.

22 (2) IN ADDITION TO THE REQUIREMENT OF SUBSECTION (1), THE
23 FACILITY ENVIRONMENTAL FILE SHALL INCLUDE ALL OF THE FOLLOWING:

24 (A) COMPLIANCE REPORTS, CONSENT DECREES, AND OTHER DOCUMENTS
25 RELATING TO THE FACILITY'S COMPLIANCE WITH THE STATUTES LISTED IN
26 SUBSECTION (1).

1 (B) REMEDIAL ACTION PLANS, INVESTIGATIONS, FEASIBILITY
2 STUDIES, OR OTHER OR STUDIES FOR THE CLEANUP OF HAZARDOUS
3 SUBSTANCES PURSUANT TO THE ENVIRONMENTAL RESPONSE ACT, ACT
4 NO. 307 OF THE PUBLIC ACTS OF 1982, BEING SECTIONS 299.601 TO
5 299.618 OF THE MICHIGAN COMPILED LAWS, OR THE COMPREHENSIVE ENVI-
6 RONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980,
7 PUBLIC LAW 96-510, 94 STAT. 2767.

8 (C) HAZARDOUS WASTE MANIFESTS REQUIRED PURSUANT TO THIS
9 ACT.

10 (3) A COVERED FACILITY SHALL ALLOW THE FOLLOWING PERSONS TO
11 HAVE ACCESS TO A FACILITY ENVIRONMENTAL FILE AT REASONABLE TIMES
12 AND PLACES:

13 (A) A STATE DEPARTMENT OR AGENCY.

14 (B) A COMMUNITY ENVIRONMENTAL COMMITTEE ESTABLISHED UNDER
15 SECTION 52F.

16 (C) WORKER COMMITTEE ESTABLISHED PURSUANT TO THE WORKER
17 RIGHT-TO-ACT ACT.

18 (D) AN EMPLOYEE OF THE COVERED FACILITY.

19 (4) A MEMBER OF THE PUBLIC MAY RECEIVE DATA OR COPIES OF
20 DATA FROM A FACILITY ENVIRONMENTAL FILE FROM THE GOVERNMENTAL
21 ENTITY THAT IS RESPONSIBLE FOR COLLECTION OF THE DATA AS PROVIDED
22 BY LAW. A COVERED FACILITY IS NOT REQUIRED PURSUANT TO THIS PART
23 TO GIVE DATA OR COPIES OF DATA FROM THE FACILITY ENVIRONMENTAL
24 FILE TO MEMBERS OF THE PUBLIC.

25 SEC. 52F. (1) UPON THE PETITION OF 10 OR MORE RESIDENTS OF
26 A COUNTY, TOWNSHIP, VILLAGE, OR CITY IN WHICH A COVERED FACILITY
27 IS LOCATED OR THE ADJACENT COUNTY, TOWNSHIP, VILLAGE, OR CITY,

1 THE DEPARTMENT SHALL RECOGNIZE THE CREATION OF A COMMUNITY
2 ENVIRONMENTAL COMMITTEE FOR A DESIGNATED FACILITY. MEMBERS OF A
3 COMMUNITY ENVIRONMENTAL COMMITTEE SHALL NOT BE EMPLOYEES OF THE
4 FACILITY. ANY OTHER PERSON IS ELIGIBLE TO BE A MEMBER OF A COM-
5 MUNITY ENVIRONMENTAL COMMITTEE.

6 (2) THE MEMBERS OF A COMMUNITY ENVIRONMENTAL COMMITTEE SHALL
7 ELECT A CHAIRPERSON, OTHER OFFICERS, AND 1 OR MORE DESIGNATED
8 REPRESENTATIVES AS CONSIDERED NECESSARY BY THE COMMITTEE AND
9 SHALL NOTIFY THE DEPARTMENT OF SUCH DECISIONS.

10 (3) EACH MEMBER OF A COMMUNITY ENVIRONMENTAL COMMITTEE HAS
11 AN EQUAL VOTE ON DECISIONS MADE BY THE COMMITTEE. A MAJORITY
12 VOTE BY MEMBERS ON A DECISION IS BINDING ON THE COMMITTEE.

13 (4) ONLY 1 COMMUNITY ENVIRONMENTAL COMMITTEE PER FACILITY
14 SHALL BE ESTABLISHED. IF MORE THAN 1 COMMITTEE IS FORMED, THE
15 FIRST COMMITTEE REGISTERING WITH THE DEPARTMENT IS THE OFFICIAL
16 COMMUNITY ENVIRONMENTAL COMMITTEE. A MEMBER OF AN UNOFFICIAL
17 COMMUNITY ENVIRONMENTAL COMMITTEE MAY JOIN THE OFFICIAL COMMUNITY
18 ENVIRONMENTAL COMMITTEE IF THAT PERSON IS ELIGIBLE.

19 (5) THE OWNER OR OPERATOR OF A COVERED FACILITY, OR OTHER
20 MANAGEMENT OFFICIAL DESIGNATED BY THE OWNER OR OPERATOR OF THE
21 FACILITY, SHALL MEET WITH THE COMMUNITY ENVIRONMENTAL COMMITTEE
22 OR ITS DESIGNATED REPRESENTATIVE AT LEAST QUARTERLY, IF
23 REQUESTED, AT REASONABLE TIMES AND AT MUTUALLY AGREED TO
24 LOCATIONS. THE COMMITTEE SHALL GIVE THE FACILITY AT LEAST 15
25 DAYS' NOTICE OF A REQUESTED MEETING.

1 (6) THE COMMUNITY ENVIRONMENTAL COMMITTEE MAY ENTER INTO A
2 BINDING ENFORCEABLE AGREEMENT WITH THE OWNER OR OPERATOR OF A
3 COVERED FACILITY, WHICH SHALL BE MADE AVAILABLE TO THE PUBLIC.

4 (7) THE OWNER OR OPERATOR OF A COVERED FACILITY SHALL NOTIFY
5 A COMMUNITY ENVIRONMENTAL COMMITTEE WITHIN 24 HOURS OF AN EMER-
6 GENCY RELEASE OR POTENTIAL RELEASE FROM THE FACILITY. THE COM-
7 MITTEE MAY SCHEDULE AN EMERGENCY MEETING WITH THE OWNER OR OPERA-
8 TOR OF THE FACILITY AND MAY ALSO SCHEDULE MONTHLY MEETINGS FOR UP
9 TO 6 MONTHS FOLLOWING SUCH A RELEASE OR POTENTIAL RELEASE.

10 (8) THE DEPARTMENT, UPON REQUEST OF A COMMUNITY ENVIRONMEN-
11 TAL COMMITTEE, SHALL CONDUCT A REVIEW OF THE FACILITY'S TOXICS
12 USE REDUCTION PLAN TO ENSURE THE PLAN'S ADEQUACY AND
13 COMPLETENESS.

14 SEC. 52G. (1) UPON THE REQUEST OF A DESIGNATED REPRESENTA-
15 TIVE OF A COMMUNITY ENVIRONMENTAL COMMITTEE, THE OWNER OR OPERA-
16 TOR OF A COVERED FACILITY SHALL ALLOW THE DESIGNATED REPRESENTA-
17 TIVE ACCESS TO THE FOLLOWING:

18 (A) INFORMATION CONTAINED IN THE FACILITY ENVIRONMENTAL
19 FILE.

20 (B) PERMITS, REPORTS, DATA, AND CORRESPONDENCE SUBMITTED OR
21 RECEIVED BY THE FACILITY FOR THE PURPOSE OF COMPLYING WITH STATE,
22 FEDERAL, OR LOCAL ENVIRONMENTAL LAW.

23 (C) A SUMMARY OF HEALTH AND SAFETY DATA AND INFORMATION
24 RELATING TO EMPLOYEES OF THE FACILITY OR THE CITIZENS OF THE GEO-
25 GRAPHIC AREA IN WHICH THE FACILITY IS LOCATED.

1 (D) ACCIDENT PREVENTION DATA AND INFORMATION RELATING TO
2 EMPLOYEES OF THE FACILITY OR THE CITIZENS OF THE GEOGRAPHIC AREA
3 IN WHICH THE FACILITY IS LOCATED.

4 (2) IF A COMMUNITY ENVIRONMENTAL COMMITTEE DETERMINES THAT
5 THE INFORMATION WHICH ITS DESIGNATED REPRESENTATIVE WAS GIVEN
6 ACCESS TO IS INADEQUATE, THE COMMITTEE SHALL SUBMIT A WRITTEN
7 REQUEST TO THE OWNER OR OPERATOR OF THE COVERED FACILITY FOR
8 ADDITIONAL INFORMATION.

9 (3) A REPRESENTATIVE OF THE COVERED FACILITY SHALL EITHER
10 PROVIDE THE REQUESTED INFORMATION OR PROVIDE WRITTEN EXPLANATION
11 FOR THE FAILURE TO PROVIDE THE ADDITIONAL REQUESTED INFORMATION.

12 (4) A COMMUNITY ENVIRONMENTAL COMMITTEE MAY PETITION THE
13 DIRECTOR TO COMPEL THE FACILITY TO PROVIDE INFORMATION THAT THE
14 COMMITTEE CONTENDS TO BE ENTITLED TO UNDER THIS SECTION. THE
15 DIRECTOR SHALL COMPEL DISCLOSURE UNLESS THE FACILITY'S INTERESTS
16 IN PROTECTING THE CONFIDENTIALITY OF THE INFORMATION OUTWEIGHS
17 THE PUBLIC'S INTEREST IN DISCLOSING THE INFORMATION.

18 (5) THE DESIGNATED REPRESENTATIVE OF A COMMITTEE SHALL BE
19 ALLOWED TO TOUR THE FACILITY ON AN ANNUAL BASIS IF ACCOMPANIED BY
20 A REPRESENTATIVE OF THE FACILITY.

21 SEC. 52H. (1) IN ADDITION TO ANY OTHER POWER OR DUTY OF THE
22 DEPARTMENT UNDER THIS ACT, THE DEPARTMENT SHALL DO ALL OF THE
23 FOLLOWING:

24 (A) IDENTIFY ALL DEPARTMENT REQUIREMENTS FOR REPORTING ON
25 TOXICS USE, RELEASE, AND DISPOSAL, AND TO THE MAXIMUM EXTENT POS-
26 SIBLE STANDARDIZE, CONSOLIDATE, AND COORDINATE THESE REPORTING
27 REQUIREMENTS TO MINIMIZE UNNECESSARY DUPLICATION.

1 (B) TO THE EXTENT PRACTICABLE, COORDINATE INFORMATION ABOUT
2 THE MANUFACTURE, DISTRIBUTION, PROCESS, SALE, STORAGE, DISPOSAL,
3 RELEASE, OR OTHER USE OF TOXICS, INCLUDING THE INVENTORY REPORT-
4 ING REQUIREMENT OF THIS ACT, ON A COMPUTER SYSTEM IN ORDER TO
5 PROVIDE RELIABLE AND ACCESSIBLE INFORMATION ACROSS THE STATE TO
6 AID IN STANDARDIZING THE INSPECTION, ENFORCEMENT, AND OTHER
7 ACTIVITIES OF THE STATE. THE DEPARTMENT SHALL ALSO COOPERATE
8 WITH AND MAKE THIS INFORMATION READILY AVAILABLE THROUGH COMPUTER
9 CONNECTIONS AND OTHER MEANS TO THE OFFICE OF POLLUTION PREVENTION
10 AND TOXICS USE REDUCTION CREATED IN SECTION 52I, THE ENVIRONMEN-
11 TAL PROTECTION DIVISION OF THE DEPARTMENT OF THE ATTORNEY GENER-
12 AL, AND OTHER STATE AGENCIES AND FACILITY OPERATORS.

13 (C) SEEK UNIFIED REPORTING AND ENFORCEMENT AUTHORITY FROM
14 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

15 (D) WITHIN 2 YEARS OF THE EFFECTIVE DATE OF THIS PART,
16 DEVELOP AND IMPLEMENT RULES REGARDING THE INSPECTION OF COVERED
17 FACILITIES THAT DO ALL OF THE FOLLOWING:

18 (i) ENSURE THAT, IF APPROPRIATE, INSPECTIONS ARE MULTIMEDIA
19 IN APPROACH.

20 (ii) ENSURE THAT, IF APPROPRIATE, INSPECTIONS ARE PERFORMED
21 BY TEAMS OF INSPECTORS REPRESENTING EXISTING PROGRAMS WITHIN THE
22 DEPARTMENT.

23 (iii) MINIMIZE DUPLICATION OF INSPECTION AND ENFORCEMENT
24 EFFORTS BEING CONDUCTED WITH OTHER AGENCIES.

25 (E) ENSURE THAT, TO THE MAXIMUM EXTENT PRACTICABLE, ANY COV-
26 ERED FACILITY FOUND TO BE IN VIOLATION OF ANY LAW OR STANDARD FOR

1 WHICH THE DEPARTMENT HAS ENFORCEMENT JURISDICTION COMES INTO
2 COMPLIANCE.

3 (F) CONDUCT RESEARCH ON POLLUTION PREVENTION TRENDS WITHIN
4 EACH OF THE STANDARD INDUSTRIAL CLASSIFICATION INDUSTRY GROUPS.
5 THIS RESEARCH SHALL INCLUDE AN ANALYSIS OF INFORMATION CONTAINED
6 IN THE ANNUAL REPORTS AND TOXICS USE REDUCTION PLANS AND PLAN
7 SUMMARIES PREPARED AND SUBMITTED TO THE DEPARTMENT BY FACILITY
8 OWNERS, AND MAY INCLUDE AN ANALYSIS OF THE TOXICS USE REDUCTION
9 PLANS. WITHIN 5 YEARS OF THE EFFECTIVE DATE OF THIS PART, THE
10 DEPARTMENT SHALL PREPARE AND MAKE AVAILABLE TO THE PUBLIC A POL-
11 LUTION PREVENTION PROFILE REPORT FOR EACH OF THE STANDARD INDUS-
12 TRIAL CLASSIFICATION INDUSTRY GROUPS AND, IF WARRANTED BY THE
13 RESEARCH, RECOMMENDATIONS FOR ACTIONS NECESSARY TO INCREASE POL-
14 LUTION PREVENTION AND TOXICS USE REDUCTION ACTIVITIES AT THOSE
15 FACILITIES.

16 (G) INITIATE WITHIN 1 YEAR OF THE EFFECTIVE DATE OF THIS
17 PART A PILOT MULTIMEDIA INSPECTION PROJECT THAT IS COORDINATED
18 WITHIN 1 OR MORE OF THE DISTRICT OFFICES OF THE DEPARTMENT.

19 (H) CONVENE AN INTERNAL WORK GROUP TO STUDY THE EFFECTIVE-
20 NESS OF A FACILITY PERMIT PROJECT, IN WHICH 1 PERMIT WOULD BE
21 GRANTED FOR ALL ENVIRONMENTAL EMISSIONS OR OTHER DEPARTMENT
22 APPROVED REGULATED ACTIVITIES AT A FACILITY.

23 (I) NOTIFY THE COMMUNITY ENVIRONMENTAL COMMITTEE FOR THE
24 COVERED FACILITY OR WORKER COMMITTEES IF IT DETERMINES THAT A
25 COVERED FACILITY HAS NOT ADEQUATELY PREPARED ANNUAL REPORTS OR
26 TOXICS USE REDUCTION PLANS REQUIRED UNDER THIS ACT.

1 (J) SUBJECT TO APPROPRIATIONS, PROVIDE TECHNICAL ASSISTANCE
2 GRANTS TO COMMUNITY ENVIRONMENTAL COMMITTEES, AND PROMULGATE
3 RULES TO ESTABLISH A TECHNICAL ASSISTANCE GRANT PROGRAM. IF
4 GRANTS ARE ISSUED, THE DEPARTMENT SHALL GIVE PRIORITY TO COMMU-
5 NITY ENVIRONMENTAL COMMITTEES AT THOSE COVERED FACILITIES THAT
6 ARE DETERMINED TO POSE THE GREATEST THREAT TO THE PUBLIC HEALTH
7 AND THE ENVIRONMENT.

8 (K) MAINTAIN A MASTER INDEX WHICH REFERENCES WHERE A MEMBER
9 OF THE PUBLIC CAN LOCATE INFORMATION INCLUDED IN A FACILITY'S
10 ENVIRONMENTAL FILE AND MAKE THIS INFORMATION ACCESSIBLE TO THE
11 PUBLIC.

12 (L) PROMULGATE RULES AS MAY BE NECESSARY TO IMPLEMENT THIS
13 PART.

14 (M) ANNUALLY COMPILE, ANALYZE, AND SUMMARIZE THE ANNUAL
15 REPORTS AND TOXICS USE REDUCTION PLANS OR SUMMARIES REQUIRED BY
16 THIS PART TO THE EXTENT AVAILABLE AND SUBMIT A REPORT TO THE LEG-
17 ISLATURE ON THE DEPARTMENT'S FINDINGS REGARDING PROGRESS IN AND
18 EXPECTED PROGRESS IN TOXICS USE REDUCTION AND EMISSIONS REDUCTION
19 IN THE STATE.

20 (2) THE DEPARTMENT MAY CONSIDER A REPORTING FACILITY'S GOOD
21 FAITH EFFORT TO COMPLY WITH THIS PART WHEN ISSUING A PERMIT OR
22 LICENSE FOR THAT FACILITY OR WHEN PROMULGATING RULES FOR A REGU-
23 LATORY PROGRAM.

24 SEC. 52I. THE DEPARTMENT SHALL ESTABLISH A POLLUTION PRE-
25 VENTION AND TOXICS USE REDUCTION OFFICE WITHIN THE EXECUTIVE
26 OFFICE OF THE DEPARTMENT. THE OFFICE SHALL OVERSEE THE
27 COORDINATION AND IMPLEMENTATION OF THIS PART.

1 SEC. 52J. THE DEPARTMENT SHALL WORK WITH THE DEPARTMENT OF
2 PUBLIC HEALTH AND THE DEPARTMENT OF LABOR TO COORDINATE THE
3 IMPLEMENTATION OF THIS PART.

4 SEC. 52K. (1) A COVERED FACILITY THAT CLAIMS A TRADE SECRET
5 UNDER THIS PART SHALL SUPPLY DATA TO SUPPORT THE TRADE SECRET
6 CLAIM. SUBJECT TO SUBSECTION (2), THE DIRECTOR SHALL CONSIDER
7 THE FOLLOWING FACTORS IN DETERMINING WHETHER A SPECIFIC CHEMICAL
8 IDENTITY MAY BE WITHHELD AS A TRADE SECRET:

9 (A) THE EXTENT TO WHICH THE INFORMATION IS KNOWN OUTSIDE THE
10 FACILITY'S BUSINESS.

11 (B) THE EXTENT TO WHICH IT IS KNOWN BY EMPLOYEES AND OTHERS
12 INVOLVED IN THE FACILITY'S BUSINESS.

13 (C) THE EXTENT OF MEASURES TAKEN BY THE FACILITY TO GUARD
14 THE SECRECY OF THE INFORMATION.

15 (D) THE VALUE OF THE INFORMATION TO THE FACILITY AND THE
16 FACILITY'S COMPETITORS.

17 (E) THE AMOUNT OF EFFORT AND MONEY EXPENDED BY THE FACILITY
18 IN DEVELOPING THE INFORMATION.

19 (F) THE EASE OR DIFFICULTY WITH WHICH THE INFORMATION COULD
20 BE PROPERLY ACQUIRED OR DUPLICATED BY OTHERS.

21 (2) THE DETERMINATION MADE BY THE DIRECTOR UNDER SUBSECTION
22 (1) SHALL NOT UPHOLD AS A TRADE SECRET ANY CHEMICAL IDENTITY
23 INFORMATION THAT IS ANY OF THE FOLLOWING:

24 (A) READILY DISCOVERABLE THROUGH REVERSE ENGINEERING.

25 (B) NOT SECRET, COMMONLY KNOWN OR READILY ASCERTAINABLE.

26 (C) CAPABLE OF BEING ACQUIRED BY THE GENERAL PUBLIC OR BY A
27 COMPETITOR.

1 (D) FOR A PROCESS, A MERE MECHANICAL CHANGE IN AN ALREADY
2 COMMON PROCESS OR DESIGN, OR FORTUITOUS COMBINATION OF ELEMENTS
3 OR PROCESSES ALREADY KNOWN.

4 (E) INFORMATION WHOSE CONFIDENTIALITY IS NOT CAREFULLY
5 GUARDED.

6 (3) THIS SECTION DOES NOT REQUIRE THE PRIOR APPROVAL OF
7 TRADE SECRET CLAIMS BY THE DIRECTOR.

8 (4) AN EMPLOYEE OF A COVERED FACILITY WHO IS OR HAS BEEN
9 EXPOSED TO A TOXIC SUBSTANCE, A COMMUNITY MEMBER, A HEALTH PRO-
10 FESSIONAL PROVIDING MEDICAL OR OTHER OCCUPATIONAL HEALTH SERVICES
11 TO EXPOSED EMPLOYEES OR COMMUNITY MEMBERS, OR A REPRESENTATIVE OF
12 A COMMUNITY OR WORKER COMMITTEE MAY PETITION THE DIRECTOR TO
13 REVIEW A DENIAL OF A WRITTEN REQUEST FOR DISCLOSURE OF A SPECIFIC
14 CHEMICAL IDENTITY. THIS REVIEW SHALL BE CONDUCTED AS A CONTESTED
15 CASE PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT
16 NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO
17 24.328 OF THE MICHIGAN COMPILED LAWS, AND IS CONFIDENTIAL. THE
18 DIRECTOR SHALL REVIEW THE ASSERTION OF TRADE SECRECY AND MAKE A
19 DETERMINATION IN ACCORDANCE WITH THE PRINCIPLES PROVIDED IN THIS
20 SECTION AND THE STANDARD INCORPORATED BY REFERENCE IN SECTION 14A
21 OF THE MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT, ACT NO. 154
22 OF THE PUBLIC ACTS OF 1974, BEING SECTION 408.1014A OF THE
23 MICHIGAN COMPILED LAWS. IN PREPARING THE FINAL ORDER, THE DIREC-
24 TOR SHALL CONSIDER AND REQUIRE ANY PRUDENT MEASURES NECESSARY TO
25 PROTECT THE HEALTH OF EMPLOYEES OR THE PUBLIC IN GENERAL WHILE
26 MAINTAINING THE CONFIDENTIALITY OF ANY TRADE SECRETS.

1 (5) THE DIRECTOR MAY REVOKE ANY ORDER ENTERED UNDER
2 SUBSECTION (4) UPHOLDING A TRADE SECRET CLAIM AFTER A HEARING
3 INVOLVING THE PARTIES OF INTEREST UPON SHOWING THAT A PARTY HAS
4 NOT COMPLIED WITH AN ORDER ISSUED PURSUANT TO SUBSECTION (4).

5 (6) RECORDS AND INFORMATION OBTAINED BY ANY DEPARTMENT, COM-
6 MISSION, OR PUBLIC AGENCY RELATED TO A REVIEW BY THE DIRECTOR
7 UNDER SUBSECTION (4) AND TO INFORMATION DETERMINED BY THE DIREC-
8 TOR TO BE A TRADE SECRET IN THAT REVIEW IS EXEMPT FROM DISCLOSURE
9 UNDER THE FREEDOM OF INFORMATION ACT, ACT NO. 442 OF THE PUBLIC
10 ACTS OF 1976, BEING SECTIONS 15.231 TO 15.246 OF THE MICHIGAN
11 COMPILED LAWS.

12 (7) NOTWITHSTANDING INFORMATION THAT HAS BEEN CLAIMED AS A
13 TRADE SECRET PURSUANT TO 29 C.F.R. 1910.1200(I) OR HAS BEEN
14 UPHELD BY THE DIRECTOR AS A TRADE SECRET PURSUANT TO THIS SEC-
15 TION, A REPORTING FACILITY SHALL DISCLOSE SUCH INFORMATION TO THE
16 DEPARTMENT AS NECESSARY TO ENABLE THE DEPARTMENT TO FULFILL ITS
17 RESPONSIBILITIES UNDER THIS PART.

18 (8) AS USED IN THIS SECTION, "TRADE SECRET" MEANS A CONFI-
19 DENTIAL PROCESS, FORMULA, PATTERN, DEVICE, OR COMPILATION OF
20 INFORMATION THAT IS USED IN A REPORTING FACILITY'S BUSINESS AND
21 THAT GIVES THE FACILITY THE OPPORTUNITY TO OBTAIN AN ADVANTAGE
22 OVER COMPETITORS WHO DO NOT KNOW OR USE IT.

23 SEC. 521. (1) A PERSON WHO VIOLATES THIS PART IS SUBJECT TO
24 A CIVIL FINE OF \$25,000.00 PER VIOLATION PER DAY.

25 (2) A PERSON WHO MAKES A FRIVOLOUS TRADE SECRET CLAIM UNDER
26 THIS PART IS SUBJECT TO A CIVIL FINE OF \$25,000.00 PER FRIVOLOUS
27 CLAIM.

1 (3) AT THE REQUEST OF A STATE AGENCY, THE ATTORNEY GENERAL
2 MAY BRING A CIVIL ACTION FOR INJUNCTIVE RELIEF AGAINST ANY PERSON
3 WHO VIOLATES THIS ACT.

4 (4) A DEFAULT IN A CIVIL FINE ORDERED UNDER THIS PART MAY BE
5 REMEDIED BY ANY MEANS AUTHORIZED UNDER THE REVISED JUDICATURE ACT
6 OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING
7 SECTIONS 600.101 TO 600.9947 OF THE MICHIGAN COMPILED LAWS.

8 (5) THE PENALTIES AND REMEDIES IN PART 1 ARE NOT APPLICABLE
9 TO THIS PART.

10 SEC. 52M. (1) A PERSON MAY BRING AN ACTION IN CIRCUIT COURT
11 AGAINST ANY PERSON ALLEGED TO HAVE BEEN OR BE IN VIOLATION OF
12 THIS PART, OR AGAINST AN APPROPRIATE GOVERNMENT OFFICIAL IF THERE
13 IS ALLEGED TO HAVE BEEN A FAILURE OF THE OFFICIAL TO PERFORM A
14 NONDISCRETIONARY DUTY UNDER THIS PART.

15 (2) AN ACTION SHALL NOT BE BROUGHT UNDER THIS SECTION PRIOR
16 TO 60 DAYS AFTER THE PLAINTIFF GIVES NOTICE TO THE COVERED FACIL-
17 ITY OR OFFICIAL WHO IS ALLEGED TO HAVE VIOLATED THIS PART, TO THE
18 DEPARTMENT, AND TO THE ATTORNEY GENERAL. IN ADDITION, AN ACTION
19 SHALL NOT BE BROUGHT UNDER THIS SECTION IF THE DEPARTMENT OR THE
20 ATTORNEY GENERAL HAS COMMENCED AND IS DILIGENTLY PROSECUTING AN
21 ADMINISTRATIVE CIVIL ACTION AGAINST THE ALLEGED VIOLATOR.

22 (3) THE COURT MAY AWARD TO THE SUBSTANTIALLY PREVAILING
23 PARTY IN AN ACTION BROUGHT UNDER THIS SECTION THE PARTY'S COSTS
24 AND ATTORNEYS' FEES.

25 Section 2. This amendatory act shall not take effect unless
26 Senate Bill No. _____ or House Bill No. _____ (request
27 no. 01753'93) of the 87th Legislature is enacted into law.