



HOUSE BILL No. 5867

May 9, 1996, Introduced by Rep. Alley and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 11502, 11503, 11504, 11523, 11525, and 11542 of Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," being sections 324.11502, 324.11503, 324.11504, 324.11523, 324.11525, and 324.11542 of the Michigan Compiled Laws; and to add sections 11523a and 11523b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 11502, 11503, 11504, 11523, 11525, and
2 11542 of Act No. 451 of the Public Acts of 1994, being
3 sections 324.11502, 324.11503, 324.11504, 324.11523, 324.11525,
4 and 324.11542 of the Michigan Compiled Laws, are amended and
5 sections 11523a and 11523b are added to read as follows:

6 Sec. 11502. (1) "Applicant" includes any person.

1 (2) "Ashes" means the residue from the burning of wood,
2 coal, coke, refuse, wastewater sludge, or other combustible
3 materials.

4 (3) "Bond" means A FINANCIAL INSTRUMENT EXECUTED ON A FORM
5 APPROVED BY THE DEPARTMENT, INCLUDING a surety bond from a surety
6 company authorized to transact business in this state, a certifi-
7 cate of deposit, a cash bond, ~~or~~ an irrevocable letter of
8 credit, INSURANCE, A TRUST FUND, AN ESCROW ACCOUNT, OR A COMBINA-
9 TION OF ANY OF THESE INSTRUMENTS in favor of the department. THE
10 OWNER OR OPERATOR OF A DISPOSAL AREA WHO IS REQUIRED TO ESTABLISH
11 A BOND UNDER OTHER STATE OR FEDERAL STATUTE MAY PETITION THE
12 DEPARTMENT TO ALLOW SUCH A BOND TO MEET THE REQUIREMENTS OF THIS
13 PART. THE DEPARTMENT SHALL APPROVE A BOND ESTABLISHED UNDER
14 OTHER STATE OR FEDERAL STATUTE IF THE BOND PROVIDES EQUIVALENT
15 FUNDS AND ACCESS BY THE DEPARTMENT AS OTHER FINANCIAL INSTRUMENTS
16 ALLOWED BY THIS SUBSECTION.

17 (4) "CERTIFICATE OF DEPOSIT" MEANS A NEGOTIABLE CERTIFICATE
18 OF DEPOSIT HELD BY A BANK OR OTHER FINANCIAL INSTITUTION REGU-
19 LATED AND EXAMINED BY A STATE OR FEDERAL AGENCY, THE VALUE OF
20 WHICH IS FULLY INSURED BY AN AGENCY OF THE UNITED STATES
21 GOVERNMENT. A CERTIFICATE OF DEPOSIT USED TO FULFILL THE
22 REQUIREMENTS OF THIS PART SHALL BE IN THE SOLE NAME OF THE
23 DEPARTMENT WITH A MATURITY DATE OF NOT LESS THAN 1 YEAR AND SHALL
24 BE RENEWED NOT LESS THAN 60 DAYS BEFORE THE MATURITY DATE. AN
25 APPLICANT WHO USES A CERTIFICATE OF DEPOSIT AS A BOND SHALL
26 RECEIVE ANY ACCRUED INTEREST ON THAT CERTIFICATE OF DEPOSIT UPON
27 RELEASE OF THE BOND BY THE DEPARTMENT.

1 (5) ~~-(4)-~~ "Certified health department" means a city,
2 county, or district department of health that is specifically
3 delegated authority by the department to perform designated
4 activities as prescribed by this part.

5 (6) ~~-(5)-~~ "Coal or wood ash" means either or both of the
6 following:

7 (a) The residue remaining after the ignition of coal or
8 wood, or both, and may include noncombustible materials, other-
9 wise referred to as bottom ash.

10 (b) The airborne residues from burning coal or wood, or
11 both, that are finely divided particles entrained in flue gases
12 arising from a combustion chamber, otherwise referred to as fly
13 ash.

14 (7) ~~-(6)-~~ "Collection center" means a tract of land, build-
15 ing, unit, or appurtenance or combination thereof that is used to
16 collect junk motor vehicles and farm implements under section
17 11530.

18 Sec. 11503. (1) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVI-
19 RONMENTAL QUALITY.

20 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

21 (3) ~~-(1)-~~ "Discharge" includes, but is not limited to, any
22 spilling, leaking, pumping, pouring, emitting, emptying, dis-
23 charging, injecting, escaping, leaching, dumping, or disposing of
24 a substance into the environment which is or may become injurious
25 to the public health, safety, or welfare, or to the environment.

26 (4) ~~-(2)-~~ "Disposal area" means ~~-a-~~ 1 OR MORE OF THE
27 FOLLOWING AT A LOCATION AS DEFINED BY THE BOUNDARY IDENTIFIED IN

1 ITS CONSTRUCTION PERMIT OR ENGINEERING PLANS APPROVED BY THE
2 DEPARTMENT:

3 (A) A solid waste transfer facility. ~~, incinerator,~~
4 ~~sanitary~~

5 (B) INCINERATOR.

6 (C) SANITARY landfill. ~~, processing~~

7 (D) PROCESSING plant. ~~, or other~~

8 (E) OTHER solid waste handling or disposal facility utilized
9 in the disposal of solid waste.

10 ~~(3) "Enforceable mechanism" means a legal method whereby~~
11 ~~the state, a county, a municipality, or a person is authorized to~~
12 ~~take action to guarantee compliance with an approved county solid~~
13 ~~waste management plan. Enforceable mechanisms include contracts,~~
14 ~~intergovernmental agreements, laws, ordinances, rules, and~~
15 ~~regulations.~~

16 (5) "ESCROW ACCOUNT" MEANS AN ACCOUNT MANAGED BY A BANK OR
17 OTHER FINANCIAL INSTITUTION WHOSE ACCOUNT OPERATIONS ARE REGU-
18 LATED AND EXAMINED BY A FEDERAL OR STATE AGENCY AND WHICH COM-
19 PLIES WITH SECTION 11523B.

20 (6) "FINANCIAL ASSURANCE" MEANS THE MECHANISMS USED TO
21 DEMONSTRATE THAT THE FUNDS NECESSARY TO MEET THE COST OF CLOSURE,
22 POSTCLOSURE MAINTENANCE AND MONITORING, AND CORRECTIVE ACTION
23 WILL BE AVAILABLE WHENEVER THEY ARE NEEDED.

24 (7) "FINANCIAL TEST" MEANS A CORPORATE OR LOCAL GOVERNMENT
25 FINANCIAL TEST OR GUARANTEE APPROVED FOR TYPE II LANDFILLS UNDER
26 SUBTITLE D OF THE SOLID WASTE DISPOSAL ACT, TITLE II OF PUBLIC
27 LAW 89-272, 42 U.S.C. 6945. AN OWNER OR OPERATOR MAY USE A

1 SINGLE FINANCIAL TEST FOR MORE THAN 1 FACILITY. INFORMATION
2 SUBMITTED TO THE DEPARTMENT TO DOCUMENT COMPLIANCE WITH THE TEST
3 SHALL INCLUDE A LIST SHOWING THE NAME AND ADDRESS OF EACH FACIL-
4 ITY AND THE AMOUNT OF FUNDS ASSURED BY THE TEST FOR EACH
5 FACILITY. FOR PURPOSES OF THE FINANCIAL TEST, THE OWNER OR OPER-
6 ATOR SHALL AGGREGATE THE SUM OF THE CLOSURE, POSTCLOSURE, AND
7 CORRECTIVE ACTION COSTS IT SEEKS TO ASSURE WITH ANY OTHER ENVI-
8 RONMENTAL OBLIGATIONS ASSURED BY A FINANCIAL TEST UNDER STATE OR
9 FEDERAL LAW.

10 (8) ~~-(4)-~~ "Garbage" means rejected food wastes including
11 waste accumulation of animal, fruit, or vegetable matter used or
12 intended for food or that attends the preparation, use, cooking,
13 dealing in, or storing of meat, fish, fowl, fruit, or vegetable
14 MATTER.

15 Sec. 11504. (1) "Health officer" means a full-time adminis-
16 trative officer of a certified city, county, or district depart-
17 ment of health.

18 (2) "Inert material" means a substance that will not decom-
19 pose, dissolve, or in any other way form a contaminated leachate
20 upon contact with water, or other liquids determined by the
21 department as likely to be found at the disposal area, percolat-
22 ing through the substance.

23 (3) "INSURANCE" MEANS INSURANCE THAT CONFORMS TO THE
24 REQUIREMENTS OF 40 C.F.R. 258.74(d) PROVIDED BY AN INSURER WHO
25 HAS A CERTIFICATE OF AUTHORITY FROM THE MICHIGAN COMMISSIONER OF
26 INSURANCE TO SELL THIS LINE OF COVERAGE. AN APPLICANT FOR AN

1 OPERATING LICENSE SHALL SUBMIT EVIDENCE OF THE REQUIRED COVERAGE
2 BY SUBMITTING BOTH OF THE FOLLOWING TO THE DEPARTMENT:

3 (A) A CERTIFICATE OF INSURANCE THAT USES WORDING APPROVED BY
4 THE DEPARTMENT.

5 (B) A CERTIFIED TRUE AND COMPLETE COPY OF THE INSURANCE
6 POLICY.

7 (4) ~~-(3)-~~ "Landfill" means a disposal area that is a sani-
8 tary landfill.

9 (5) "LETTER OF CREDIT" MEANS AN IRREVOCABLE LETTER OF CREDIT
10 THAT COMPLIES WITH 40 C.F.R. 258.74(c).

11 (6) ~~-(4)-~~ "Medical waste" means that term as it is defined
12 in part 138 of the public health code, Act No. 378 of the Public
13 Acts of 1978, being sections 333.13801 to 333.13831 of the
14 Michigan Compiled Laws.

15 (7) ~~-(5)-~~ "Municipal solid waste incinerator" means an
16 incinerator that is owned or operated by any person, and meets
17 all of the following requirements:

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

25 (b) The incinerator has established contractual requirements
26 or other notification or inspection procedures sufficient to

1 assure that the incinerator receives and burns only waste
2 referred to in subdivision (a).

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

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

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

10 (8) ~~-(6)-~~ "Municipal solid waste incinerator ash" means the
11 substances remaining after combustion in a municipal solid waste
12 incinerator.

13 (9) ~~-(7)-~~ "Perpetual care fund" means a perpetual care fund
14 provided for in section 11525.

15 (10) "TRUST FUND" MEANS A TRUST FUND HELD BY A TRUSTEE WHICH
16 HAS THE AUTHORITY TO ACT AS A TRUSTEE AND WHOSE TRUST OPERATIONS
17 ARE REGULATED AND EXAMINED BY A FEDERAL OR STATE AGENCY. A TRUST
18 FUND SHALL COMPLY WITH SECTION 11523B.

19 Sec. 11523. (1) The department shall not issue a license to
20 operate a disposal area unless the applicant has filed, as a part
21 of the application for a license, ~~a bond to cover the cost of~~
22 ~~closure and of postclosure monitoring and maintenance of the dis-~~
23 ~~posal area after capacity has been reached or operations have~~
24 ~~otherwise terminated, in accordance with the following~~ EVIDENCE
25 OF THE FOLLOWING FINANCIAL ASSURANCE:

26 (a) ~~Except as provided in subdivision (b), a bond~~
27 FINANCIAL ASSURANCE established for a TYPE III LANDFILL OR A

1 PREEXISTING UNIT AT A TYPE II landfill shall be in THE FORM OF A
2 BOND IN an amount equal to \$20,000.00 per acre of licensed land-
3 fill WITHIN THE SOLID WASTE BOUNDARY. However, the amount of the
4 bond shall not be less than \$20,000.00 or more than
5 \$1,000,000.00. Each bond shall provide assurance for the mainte-
6 nance of the finished landfill site for a period of 30 years
7 after the landfill or any approved portion is completed. IN
8 ADDITION TO THIS BOND, A PERPETUAL CARE FUND SHALL BE MAINTAINED
9 UNDER SECTION 11525.

10 (b) ~~A bond established for a landfill or portion of a land-~~
11 ~~fill that receives municipal solid waste incinerator ash under~~
12 ~~section 11542 shall be in an amount equal to \$50,000.00 per acre~~
13 ~~of licensed landfill or portion of the landfill. Each bond shall~~
14 ~~provide assurance for the maintenance of the finished landfill~~
15 ~~site or portion of landfill site for a period of 30 years after~~
16 ~~the landfill or any approved portion is completed.~~ FINANCIAL
17 ASSURANCE FOR A TYPE II LANDFILL WHICH IS AN EXISTING UNIT OR A
18 NEW UNIT SHALL BE IN AN AMOUNT EQUAL TO THE COST, IN CURRENT DOL-
19 LARS, OF HIRING A THIRD PARTY, TO CONDUCT CLOSURE, POSTCLOSURE
20 MAINTENANCE AND MONITORING, AND IF NECESSARY, CORRECTIVE ACTION.
21 AN APPLICATION FOR A TYPE II LANDFILL WHICH IS AN EXISTING UNIT
22 OR NEW UNIT SHALL DEMONSTRATE FINANCIAL ASSURANCE IN ACCORDANCE
23 WITH SECTION 11523A.

24 (c) ~~A bond~~ FINANCIAL ASSURANCE established for a solid
25 waste transfer facility, incinerator, processing plant, ~~or~~
26 other solid waste handling or disposal facility, OR A COMBINATION
27 OF THESE utilized in the disposal of solid waste shall be IN THE

1 FORM OF A BOND in an amount equal to 1/4 of 1% of the
2 construction cost of the facility, but shall not be less than
3 \$4,000.00, and shall be continued in effect for a period of 2
4 years after the disposal area is closed.

5 (2) ~~(d) An applicant for a license to operate~~ THE OWNER OR
6 OPERATOR OF a landfill may post a cash bond with the department
7 ~~as provided for in subsection (2)~~ instead of ~~a surety bond or~~
8 ~~certificate of deposit~~ OTHER BONDING MECHANISMS TO FULFILL THE
9 FINANCIAL ASSURANCE REQUIREMENTS OF THIS SECTION. A minimum ~~of~~
10 ~~\$20,000.00~~ AMOUNT EQUAL TO THE REMAINING FINANCIAL ASSURANCE
11 DIVIDED BY THE TERM OF THE OPERATING LICENSE shall be paid to the
12 department prior to licensure. Subsequent payments to the
13 department shall be made ~~every 6 months~~ ANNUALLY in an amount
14 ~~per acre of licensed landfill or any approved portion of land~~
15 ~~fill as determined by the department~~ EQUAL TO THE REMAINING
16 FINANCIAL ASSURANCE DIVIDED BY THE NUMBER OF YEARS REMAINING
17 UNTIL THE OPERATING LICENSE EXPIRES, until the required amount
18 ~~per acre~~ is attained. ~~(2) An applicant who elects to use a~~
19 ~~certificate of deposit as bond shall receive any accrued interest~~
20 ~~on that certificate of deposit upon release of the bond by the~~
21 ~~department.~~ An ~~applicant~~ OWNER OR OPERATOR OF A DISPOSAL AREA
22 who elects to post cash as bond shall accrue interest on that
23 bond at the annual rate of 6%, to be accrued quarterly, except
24 that the interest rate payable to an ~~applicant~~ OWNER OR
25 OPERATOR shall not exceed the rate of interest accrued on the
26 state common cash fund for the quarter in which an accrual is
27 determined. Interest shall be paid to the ~~applicant~~ OWNER OR

1 OPERATOR upon release of the bond by the department. Any
2 interest greater than 6% shall be deposited in the state treasury
3 to the credit of the general fund and shall be appropriated to
4 the department to be used by the department for administration of
5 this part.

6 (3) An ~~applicant for~~ OWNER OR OPERATOR OF a disposal area
7 that is not a landfill who has accomplished closure ~~or postclo-~~
8 ~~sure monitoring and maintenance,~~ IN A MANNER approved by the
9 department and in accordance with this part and the rules promul-
10 gated under this part, may request a 50% reduction in the bond
11 DURING THE 2-YEAR PERIOD AFTER CLOSURE. AT THE END OF THE 2-YEAR
12 PERIOD, THE OWNER OR OPERATOR MAY REQUEST THAT THE DEPARTMENT
13 TERMINATE THE BOND. THE DEPARTMENT SHALL APPROVE TERMINATION OF
14 THE BOND WITHIN 60 DAYS OF SUCH REQUEST PROVIDED ALL WASTE AND
15 WASTE RESIDUES HAVE BEEN REMOVED FROM THE DISPOSAL AREA AND THAT
16 CLOSURE IS CERTIFIED.

17 (4) The department may utilize a bond required under this
18 section for the closure and postclosure monitoring and mainte-
19 nance of a disposal area if the ~~applicant~~ OWNER OR OPERATOR
20 fails to comply with the closure and postclosure monitoring and
21 maintenance requirements of this part and the rules promulgated
22 under this part TO THE EXTENT NECESSARY TO CORRECT SUCH VIOLA-
23 TIONS FOLLOWING ISSUANCE OF A NOTICE OF VIOLATION OR OTHER ORDER
24 BY THE DEPARTMENT WHICH ALLEGES VIOLATION OF THIS PART AND RULES
25 PROMULGATED UNDER THIS PART AND PROVIDES 7 DAYS' NOTICE AND
26 OPPORTUNITY FOR HEARING.

1 (5) ~~In addition to the bond required in subsection (1), a~~
2 ~~landfill that receives municipal solid waste incinerator ash~~
3 ~~under section 11542 shall provide a bond or a letter of credit in~~
4 ~~an amount equal to \$2,000,000.00. The bond or letter of credit~~
5 ~~described in this subsection shall provide assurance for remedial~~
6 ~~action at the landfill for a period of time extending 30 years~~
7 ~~after the landfill or any portion of the landfill is closed.~~

8 UNDER THE TERMS OF A SURETY BOND, LETTER OF CREDIT, OR INSURANCE
9 POLICY, THE ISSUING INSTITUTION SHALL NOTIFY BOTH THE DEPARTMENT
10 AND THE OWNER OR OPERATOR AT LEAST 120 DAYS BEFORE THE EXPIRATION
11 DATE OR ANY CANCELLATION OF THE BOND. IF THE OWNER OR OPERATOR
12 DOES NOT EXTEND THE EFFECTIVE DATE OF THE BOND, OR ESTABLISH
13 ALTERNATE FINANCIAL ASSURANCE WITHIN 90 DAYS AFTER RECEIPT OF AN
14 EXPIRATION OR CANCELLATION NOTICE BY THE ISSUING INSTITUTION, THE
15 DEPARTMENT MAY DRAW ON THE BOND.

16 (6) The department shall not issue a construction permit or
17 a new license to operate a disposal area to an applicant that is
18 the subject of a bankruptcy action commenced under title 11 of
19 the United States Code, 11 U.S.C. 101 to 1330, or any other
20 predecessor or successor statute.

21 (7) A PERSON REQUIRED UNDER THIS SECTION TO PROVIDE FINAN-
22 CIAL ASSURANCE IN THE FORM OF A BOND FOR A LANDFILL MAY REQUEST A
23 REDUCTION IN THE BOND BASED UPON THE VALUE OF THE PERPETUAL CARE
24 FUND ESTABLISHED UNDER SECTION 11525. A PERSON REQUESTING A BOND
25 REDUCTION SHALL DO SO ON A FORM CONSISTENT WITH THIS PART AS PRE-
26 PARED BY THE DEPARTMENT. THE DEPARTMENT SHALL GRANT THIS REQUEST
27 UNLESS THERE ARE SUFFICIENT GROUNDS FOR DENIAL AND THOSE REASONS

1 ARE PROVIDED IN WRITING. THE DEPARTMENT SHALL GRANT OR DENY A
2 REQUEST FOR A REDUCTION OF THE BOND WITHIN 60 DAYS AFTER THE
3 REQUEST IS MADE. IF THE DEPARTMENT GRANTS A REQUEST FOR A
4 REDUCED BOND, THE DEPARTMENT SHALL REQUIRE A BOND IN AN AMOUNT
5 SUCH THAT FOR TYPE III LANDFILLS, AND TYPE II LANDFILLS WHICH ARE
6 PREEXISTING UNITS, THE AMOUNT OF MONEY IN THE PERPETUAL CARE FUND
7 PLUS THE AMOUNT OF THE REDUCED BOND EQUALS THE MAXIMUM AMOUNT
8 REQUIRED IN A PERPETUAL CARE FUND IN SECTION 11525(2).

9 (8) THE DEPARTMENT SHALL RELEASE THE BOND REQUIRED BY THIS
10 SECTION IF THE AMOUNT IN THE PERPETUAL CARE FUND EXCEEDS THE
11 AMOUNT OF THE FINANCIAL ASSURANCE REQUIRED UNDER SUBSECTION (1).

12 (9) PRIOR TO CLOSURE OF A LANDFILL, IF MONEY IS DISBURSED
13 FROM THE PERPETUAL CARE FUND, THEN THE DEPARTMENT MAY REQUIRE A
14 CORRESPONDING INCREASE IN THE AMOUNT OF BONDING REQUIRED TO BE
15 PROVIDED IF NECESSARY TO MEET THE REQUIREMENT OF THIS SECTION.

16 SEC. 11523A. (1) EFFECTIVE APRIL 9, 1997, THE DEPARTMENT
17 SHALL NOT ISSUE A LICENSE TO OPERATE A TYPE II LANDFILL UNLESS
18 THE APPLICANT DEMONSTRATES THAT FOR ANY NEW UNIT OR EXISTING UNIT
19 AT THE FACILITY, THE COMBINATION OF THE PERPETUAL CARE FUND
20 ESTABLISHED UNDER SECTION 11525, BONDS, AND THE FINANCIAL CAPA-
21 BILITY OF THE APPLICANT AS EVIDENCED BY A FINANCIAL TEST, PRO-
22 VIDES FINANCIAL ASSURANCE IN AN AMOUNT NOT LESS THAN THAT
23 REQUIRED BY THIS SECTION. AN APPLICANT MAY UTILIZE A FINANCIAL
24 TEST FOR AN AMOUNT UP TO, BUT NOT EXCEEDING 70% OF THE CLOSURE,
25 POSTCLOSURE, AND CORRECTIVE ACTION COST ESTIMATE.

26 (2) AN APPLICANT MAY DEMONSTRATE COMPLIANCE WITH THIS
27 SECTION BY SUBMITTING EVIDENCE WITH A FORM CONSISTENT WITH THIS

1 PART, AS PREPARED BY THE DEPARTMENT, THAT THE APPLICANT HAS
2 FINANCIAL ASSURANCE FOR ANY EXISTING UNIT OR NEW UNIT IN AN
3 AMOUNT EQUAL TO OR GREATER THAN THE SUM OF THE FOLLOWING STAN-
4 DARDIZED COSTS:

5 (A) A STANDARD CLOSURE COST ESTIMATE. THE STANDARD CLOSURE
6 COST ESTIMATE SHALL BE BASED UPON THE SUM OF THE FOLLOWING COSTS
7 IN 1996 DOLLARS, ADJUSTED FOR INFLATION AND PARTIAL CLOSURES, IF
8 ANY, AS SPECIFIED IN SUBSECTIONS (4) AND (5):

9 (i) A BASE COST OF \$20,000.00 PER ACRE TO CONSTRUCT A COM-
10 PACTED SOIL FINAL COVER USING ON-SITE MATERIAL.

11 (ii) A SUPPLEMENTAL COST OF \$20,000.00 PER ACRE, TO INSTALL
12 A SYNTHETIC COVER LINER, IF REQUIRED BY RULES UNDER THIS PART.

13 (iii) A SUPPLEMENTAL COST OF \$5,000.00 PER ACRE, IF LOW PER-
14 MEABILITY SOIL MUST BE TRANSPORTED FROM OFF-SITE TO CONSTRUCT THE
15 FINAL COVER OR IF A BENTONITE GEOCOMPOSITE LINER IS USED IN LIEU
16 OF LOW PERMEABILITY SOIL IN A COMPOSITE COVER.

17 (iv) A SUPPLEMENTAL COST OF \$5,000.00 PER ACRE, TO CONSTRUCT
18 A PASSIVE GAS COLLECTION SYSTEM IN THE FINAL COVER, UNLESS AN
19 ACTIVE GAS COLLECTION SYSTEM HAS BEEN INSTALLED AT THE FACILITY.

20 (B) A STANDARD POSTCLOSURE COST ESTIMATE. THE STANDARD
21 POSTCLOSURE COST ESTIMATE SHALL BE BASED UPON THE SUM OF THE FOL-
22 LOWING COSTS, ADJUSTED FOR INFLATION AS SPECIFIED IN SECTION
23 11525(2):

24 (i) A FINAL COVER MAINTENANCE COST OF \$200.00 PER ACRE PER
25 YEAR.

26 (ii) A LEACHATE DISPOSAL COST OF \$100.00 PER ACRE PER YEAR.

1 (iii) A LEACHATE TRANSPORTATION COST OF \$1,000.00 PER ACRE
2 PER YEAR, IF LEACHATE IS REQUIRED TO BE TRANSPORTED OFF-SITE FOR
3 TREATMENT.

4 (iv) A GROUNDWATER MONITORING COST OF \$1,000.00 PER MONITOR-
5 ING WELL PER YEAR.

6 (v) A GAS MONITORING COST OF \$100.00 PER MONITORING POINT
7 PER YEAR, FOR MONITORING POINTS USED TO DETECT LANDFILL GAS AT OR
8 BEYOND THE FACILITY PROPERTY BOUNDARY.

9 (C) THE CORRECTIVE ACTION COST ESTIMATE, IF ANY. THE COR-
10 RECTIVE ACTION COST ESTIMATE SHALL BE A DETAILED WRITTEN ESTI-
11 MATE, IN CURRENT DOLLARS, OF THE COST OF HIRING A THIRD PARTY TO
12 PERFORM CORRECTIVE ACTION IN ACCORDANCE WITH THIS PART.

13 (3) IN LIEU OF USING SOME OR ALL OF THE STANDARDIZED COSTS
14 SPECIFIED IN SUBSECTION (2) OF THIS SECTION, AN APPLICANT MAY
15 ESTIMATE THE SITE SPECIFIC COSTS OF CLOSURE OR POSTCLOSURE MAIN-
16 TENANCE AND MONITORING. A SITE SPECIFIC COST ESTIMATE SHALL BE A
17 WRITTEN ESTIMATE, IN CURRENT DOLLARS, OF THE COST OF HIRING A
18 THIRD PARTY TO PERFORM THE ACTIVITY. A THIRD PARTY IS A PARTY
19 WHO IS NEITHER A PARENT CORPORATION OR A SUBSIDIARY OF THE OWNER
20 OR OPERATOR. SITE SPECIFIC COST ESTIMATES SHALL BE BASED ON THE
21 FOLLOWING:

22 (A) FOR CLOSURE, THE COST TO CLOSE THE LARGEST AREA OF THE
23 LANDFILL EVER REQUIRING A FINAL COVER AT ANY TIME DURING THE
24 ACTIVE LIFE, IF THE EXTENT AND MANNER OF ITS OPERATION WOULD MAKE
25 CLOSURE THE MOST EXPENSIVE, IN ACCORDANCE WITH THE APPROVED CLO-
26 SURE PLAN. THE CLOSURE COST ESTIMATE MAY NOT INCORPORATE ANY
27 SALVAGE VALUE THAT MAY BE REALIZED BY THE SALE OF STRUCTURES,

1 LAND, EQUIPMENT, OR OTHER ASSETS ASSOCIATED WITH THE FACILITY AT
2 THE TIME OF FINAL CLOSURE.

3 (B) FOR POSTCLOSURE, THE COST TO CONDUCT POSTCLOSURE MAINTENANCE AND MONITORING IN ACCORDANCE WITH THE APPROVED POSTCLOSURE
4 PLAN FOR THE ENTIRE POSTCLOSURE PERIOD.

6 (4) THE OWNER OR OPERATOR OF A LANDFILL SUBJECT TO THIS SECTION SHALL, DURING THE ACTIVE LIFE OF THE LANDFILL AND DURING THE
7 POSTCLOSURE CARE PERIOD, ANNUALLY ADJUST THE FINANCIAL ASSURANCE
8 COST ESTIMATES AND CORRESPONDING AMOUNT OF FINANCIAL ASSURANCE
9 FOR INFLATION. COST ESTIMATES SHALL BE ADJUSTED FOR INFLATION BY
10 MULTIPLYING THE COST ESTIMATE BY AN INFLATION FACTOR DERIVED FROM
11 THE MOST RECENT BUREAU OF RECLAMATION COMPOSITE INDEX PUBLISHED
12 BY THE UNITED STATES DEPARTMENT OF COMMERCE OR ANOTHER INDEX THAT
13 IS MORE REPRESENTATIVE OF THE COSTS OF CLOSURE AND POSTCLOSURE
14 MONITORING AND MAINTENANCE. THE OWNER OR OPERATOR SHALL DOCUMENT
15 THE ADJUSTMENT ON A FORM CONSISTENT WITH THIS PART AS PREPARED BY
16 THE DEPARTMENT AND SHALL PLACE SUCH DOCUMENTATION IN THE OPERATING
17 RECORD OF THE FACILITY.

19 (5) THE OWNER OR OPERATOR OF A LANDFILL SUBJECT TO THIS SECTION MAY REQUEST THAT THE DEPARTMENT AUTHORIZE A REDUCTION IN THE
20 APPROVED COST ESTIMATES AND CORRESPONDING FINANCIAL ASSURANCE FOR
21 THE LANDFILL BY SUBMITTING A FORM CONSISTENT WITH THE PART AS
22 PREPARED BY THE DEPARTMENT CERTIFYING COMPLETION OF ANY OF THE
23 FOLLOWING ACTIVITIES:

25 (A) PARTIAL CLOSURE OF THE LANDFILL. THE CURRENT CLOSURE
26 COST ESTIMATE FOR PARTIALLY CLOSED PORTIONS OF A LANDFILL UNIT
27 MAY BE REDUCED BY 80%, IF THE MAXIMUM WASTE SLOPE ON THE UNCLOSED

1 PORTIONS OF THE UNIT DOES NOT EXCEED 25%. THE PERCENTAGE OF THE
2 COST ESTIMATE REDUCTION APPROVED BY THE DEPARTMENT FOR THE PAR-
3 Tially CLOSED PORTION SHALL BE REDUCED 1% FOR EVERY 1% INCREASE
4 IN THE SLOPE OF WASTE OVER 25% IN THE ACTIVE PORTION. AN OWNER
5 OR OPERATOR REQUESTING A REDUCTION IN FINANCIAL ASSURANCE FOR
6 PARTIAL CLOSURE SHALL ENCLOSE WITH THE REQUEST A CERTIFICATION
7 UNDER THE SEAL OF A LICENSED PROFESSIONAL ENGINEER THAT CERTIFIES
8 BOTH OF THE FOLLOWING:

9 (i) A PORTION OF THE LICENSED LANDFILL UNIT HAS REACHED
10 FINAL GRADES AND HAS HAD A FINAL COVER INSTALLED IN COMPLIANCE
11 WITH THE APPROVED CLOSURE PLAN AND RULES PROMULGATED UNDER THIS
12 PART.

13 (ii) THE MAXIMUM SLOPE OF WASTE IN THE ACTIVE PORTION OF THE
14 LANDFILL UNIT AT THE TIME OF PARTIAL CLOSURE.

15 (B) FINAL CLOSURE OF THE LANDFILL. AN OWNER OR OPERATOR
16 REQUESTING A COST ESTIMATE REDUCTION FOR FINAL CLOSURE SHALL
17 SUBMIT A CERTIFICATION UNDER THE SEAL OF A LICENSED PROFESSIONAL
18 ENGINEER THAT CLOSURE OF THAT LANDFILL UNIT HAS BEEN FULLY COM-
19 PLETED IN ACCORDANCE WITH THE APPROVED CLOSURE PLAN FOR THE
20 LANDFILL. UPON SUBMITTAL OF THE CLOSURE CERTIFICATION AND COM-
21 PLETION OF THE CONSISTENCY REVIEW, THE OWNER OR OPERATOR MAY
22 REDUCE THE CLOSURE COST ESTIMATE BY 100%.

23 (C) POSTCLOSURE MAINTENANCE AND MONITORING. THE OWNER OR
24 OPERATOR OF A LANDFILL UNIT WHO HAS COMPLETED FINAL CLOSURE OF
25 THE UNIT MAY REQUEST A REDUCTION IN THE POSTCLOSURE COST ESTIMATE
26 AND CORRESPONDING FINANCIAL ASSURANCE FOR 1 YEAR OR MORE OF
27 POSTCLOSURE MAINTENANCE AND MONITORING IF THE LANDFILL HAS BEEN

1 MONITORED AND MAINTAINED IN ACCORDANCE WITH THE APPROVED
2 POSTCLOSURE PLAN. THE DEPARTMENT SHALL, WITHIN 60 DAYS OF
3 RECEIVING A COST ESTIMATE REDUCTION REQUEST GRANT WRITTEN
4 APPROVAL OR ISSUE A WRITTEN DENIAL STATING THE REASON FOR
5 DENIAL. THE DEPARTMENT SHALL GRANT THE REQUEST AND THE OWNER OR
6 OPERATOR MAY REDUCE THE POSTCLOSURE COST ESTIMATE TO REFLECT THE
7 NUMBER OF YEARS REMAINING IN THE POSTCLOSURE PERIOD UNLESS THE
8 DEPARTMENT PROVIDED IN WRITING THAT THE OWNER OR OPERATOR HAS NOT
9 PERFORMED THE SPECIFIC TASKS CONSISTENT WITH THIS PART, RULES
10 PROMULGATED UNDER THIS PART, AND AN APPROVED PLAN.

11 (6) THE OWNER OR OPERATOR OF A LANDFILL SUBJECT TO THIS SEC-
12 TION MAY REQUEST A REDUCTION IN THE AMOUNT OF ONE OR MORE OF THE
13 FINANCIAL ASSURANCE MECHANISMS IN PLACE. IF THE COMBINED VALUE
14 OF THE REMAINING FINANCIAL ASSURANCE MECHANISMS EQUALS THE
15 REQUIRED AMOUNT UNDER SECTION 11523A, THE DEPARTMENT SHALL
16 APPROVE THE REQUEST.

17 (7) AN OWNER OR OPERATOR REQUESTING THAT THE DEPARTMENT
18 APPROVE A FINANCIAL ASSURANCE REDUCTION FOR PERFORMANCE OF THE
19 ACTIVITIES SPECIFIED IN SUBSECTION (5) OR DUE TO EXCESS FINANCIAL
20 ASSURANCE SPECIFIED IN SUBSECTION (6) SHALL DO SO ON A FORM CON-
21 SISTENT WITH THIS PART AS PREPARED BY THE DEPARTMENT. THE
22 DEPARTMENT SHALL GRANT WRITTEN APPROVAL OR, WITHIN 30 DAYS OF
23 RECEIVING A FINANCIAL ASSURANCE REDUCTION REQUEST, ISSUE A WRIT-
24 TEN DENIAL STATING THE REASON FOR THE DENIAL.

25 SEC. 11523B. (1) THE OWNER OR OPERATOR OF A LANDFILL MAY
26 ESTABLISH A TRUST FUND OR ESCROW ACCOUNT TO FULFILL THE
27 REQUIREMENTS OF SECTIONS 11523 AND 11523A. THE TRUST FUND OR

1 ESCROW ACCOUNT SHALL BE EXECUTED ON A FORM PROVIDED BY THE
2 DEPARTMENT.

3 (2) PAYMENTS INTO A TRUST FUND OR ESCROW ACCOUNT SHALL BE
4 MADE ANNUALLY OVER THE TERM OF THE FIRST OPERATING LICENSE ISSUED
5 AFTER THE EFFECTIVE DATE OF THIS SECTION. THE FIRST PAYMENT INTO
6 A TRUST FUND OR ESCROW ACCOUNT SHALL BE MADE PRIOR TO LICENSURE
7 AND SHALL BE AT LEAST EQUAL TO THE PORTION OF THE FINANCIAL
8 ASSURANCE REQUIREMENT TO BE COVERED BY THE TRUST FUND OR ESCROW
9 ACCOUNT DIVIDED BY THE TERM OF THE OPERATING LICENSE. SUBSEQUENT
10 PAYMENTS SHALL BE EQUAL TO THE REMAINING FINANCIAL ASSURANCE
11 REQUIREMENT DIVIDED BY THE NUMBER OF YEARS REMAINING UNTIL THE
12 LICENSE EXPIRES.

13 (3) IF THE OWNER OR OPERATOR OF A LANDFILL ESTABLISHES A
14 TRUST FUND OR ESCROW ACCOUNT AFTER HAVING USED ONE OR MORE ALTER-
15 NATE FORMS OF FINANCIAL ASSURANCE, THE INITIAL PAYMENT INTO THE
16 TRUST FUND OR ESCROW ACCOUNT SHALL BE AT LEAST THE AMOUNT THE
17 FUND WOULD CONTAIN IF THE FUND WERE ESTABLISHED INITIALLY AND
18 ANNUAL PAYMENTS MADE ACCORDING TO SUBSECTION (2).

19 (4) ALL EARNINGS AND INTEREST FROM A TRUST FUND OR ESCROW
20 ACCOUNT SHALL BE CREDITED TO THE FUND OR ACCOUNT. HOWEVER, THE
21 CUSTODIAN MAY BE COMPENSATED FOR REASONABLE FEES AND COSTS FOR
22 HIS OR HER RESPONSIBILITIES AS CUSTODIAN. THE CUSTODIAN SHALL
23 ENSURE THE FILING OF ALL REQUIRED TAX RETURNS FOR WHICH THE TRUST
24 FUND OR ESCROW ACCOUNT IS LIABLE AND SHALL DISBURSE FUNDS FROM
25 EARNINGS TO PAY LAWFULLY DUE TAXES OWED BY THE TRUST FUND OR
26 ESCROW ACCOUNT, WITHOUT PERMISSION OF THE DEPARTMENT.

1 (5) THE CUSTODIAN SHALL ANNUALLY, 30 DAYS PRECEDING THE
2 ANNIVERSARY DATE OF ESTABLISHMENT OF THE FUND, FURNISH TO THE
3 OWNER OR OPERATOR AND TO THE DEPARTMENT A STATEMENT CONFIRMING
4 THE VALUE OF THE FUND OR ACCOUNT AS OF THE END OF THAT MONTH.

5 (6) THE OWNER OR OPERATOR MAY REQUEST THAT THE DEPARTMENT
6 AUTHORIZE THE RELEASE OF FUNDS FROM A TRUST FUND OR ESCROW
7 ACCOUNT. THE DEPARTMENT SHALL GRANT THE REQUEST IF THE OWNER OR
8 OPERATOR DEMONSTRATES THAT THE VALUE OF THE FUND OR ACCOUNT
9 EXCEEDS THE OWNER'S OR OPERATOR'S FINANCIAL ASSURANCE
10 OBLIGATION. A PAYMENT OR DISBURSEMENT FROM THE FUND OR ACCOUNT
11 SHALL NOT BE MADE WITHOUT THE PRIOR WRITTEN APPROVAL OF THE
12 DEPARTMENT.

13 (7) THE OWNER OR OPERATOR SHALL RECEIVE ALL INTEREST OR
14 EARNINGS FROM A TRUST FUND OR ESCROW ACCOUNT UPON ITS
15 TERMINATION.

16 (8) FOR PURPOSES OF THIS SECTION, THE TERM "CUSTODIAN" MEANS
17 THE TRUSTEE OF A TRUST FUND OR ESCROW AGENT OF AN ESCROW ACCOUNT.

18 Sec. 11525. (1) The owner or operator of a landfill shall
19 establish and maintain a perpetual care fund ~~to be used exclu-~~
20 ~~sively for closure, monitoring, and maintenance of the landfill~~
21 ~~and for response activity necessitated by a discharge from the~~
22 ~~landfill of a substance that is or may become injurious to the~~
23 ~~public health, safety, or welfare, or the environment~~ AS SPECI-
24 FIED IN THIS SECTION. A perpetual care fund may be established
25 as a trust or an escrow account AND MAY BE USED TO DEMONSTRATE
26 FINANCIAL ASSURANCE FOR TYPE II LANDFILLS UNDER SECTION 11523 AND
27 SECTION 11523A.

1 (2) Except as otherwise provided in this section, the owner
2 or operator of a landfill shall deposit into ~~the~~ ITS perpetual
3 care fund 75 cents for each ton or portion of a ton of solid
4 waste that is disposed of in the landfill after June 17, 1990.
5 ~~If the landfill is not equipped with a scale, the owner or oper-~~
6 ~~ator shall deposit into the perpetual care fund 25 cents for each~~
7 ~~cubic yard or portion of a cubic yard of solid waste that is dis-~~
8 ~~posed of in the landfill after June 17, 1990.~~ THE DEPOSITS SHALL
9 BE MADE NOT LESS THAN SEMIANNUALLY UNTIL THE FUND REACHES THE
10 MAXIMUM REQUIRED FUND AMOUNT. THE MAXIMUM REQUIRED FUND AMOUNT
11 IS \$1,156,000.00, AS THIS AMOUNT IS ~~ANNUALLY~~ ADJUSTED FOR INFLA-
12 TION AND ROUNDED TO THE NEAREST THOUSAND. THE DEPARTMENT SHALL
13 ADJUST THE MAXIMUM REQUIRED FUND AMOUNT FOR INFLATION ANNUALLY BY
14 MULTIPLYING THE AMOUNT BY AN INFLATION FACTOR DERIVED FROM THE
15 MOST RECENT BUREAU OF RECLAMATION COMPOSITE INDEX PUBLISHED BY
16 THE UNITED STATES DEPARTMENT OF COMMERCE OR ANOTHER INDEX MORE
17 REPRESENTATIVE OF THE COSTS OF CLOSURE AND POSTCLOSURE MONITORING
18 AND MAINTENANCE AS DETERMINED APPROPRIATE BY THE DEPARTMENT.

19 (3) The owner or operator of a landfill that is used for the
20 disposal of the following materials shall deposit into the per-
21 petual care fund 7.5 cents for each ton or cubic yard or portion
22 of a ton or cubic yard of the following materials that are dis-
23 posed of in the landfill after June 17, 1990:

24 (a) Coal or wood ash that is disposed of in a landfill that
25 is used only for the disposal of coal or wood ash, or that is
26 permanently segregated in a landfill.

1 (b) Wastewater treatment sludge or sediments from wood pulp
2 or paper producing industries that is disposed of in a landfill
3 that is used only for the disposal of wastewater treatment sludge
4 and sediments from wood pulp or paper producing industries, or
5 that is permanently segregated in a landfill.

6 (c) Foundry sand that is approved by the department for use
7 as daily cover at an operating landfill, that is disposed of in a
8 landfill that is used only for the disposal of foundry sand, or
9 that is permanently segregated in a landfill.

10 ~~-(d) Until June 17, 1993, organic fruit and vegetable pro-~~
11 ~~cessing waste.~~

12 (4) The owner or operator of a landfill that is used only
13 for the disposal of a mixture of 2 or more of the materials
14 described in subsection (3)(a) to (c) or in which a mixture of 2
15 or more of these materials are permanently segregated shall
16 deposit into the perpetual care fund 19 cents for each ton or
17 cubic yard or portion of a ton or cubic yard of these materials
18 that are disposed of in the landfill after June 17, 1990.

19 (5) Money is not required to be deposited into a perpetual
20 care fund for materials that are regulated under ~~Act No. 92 of~~
21 ~~the Public Acts of 1970, being sections 425.181 to 425.188 of the~~
22 ~~Michigan Compiled Laws~~ PART 631.

23 (6) The owner or operator of a landfill may contribute addi-
24 tional amounts into the perpetual care fund at his or her
25 discretion.

26 (7) The custodian of a perpetual care fund shall be a bank
27 or other financial institution that has the authority to act as a

1 custodian and whose account operations are regulated and examined
2 by a federal or state agency. ~~The custodian shall invest money~~
3 ~~in a perpetual care fund in time or demand deposits of the custo-~~
4 ~~dian or any other financial institution, to the extent insured by~~
5 ~~an agency of the federal government, in direct obligations of the~~
6 ~~federal government, or this state, or in obligations where the~~
7 ~~principal and interest are guaranteed by the federal government~~
8 ~~or this state or in a common trust fund or registered mutual fund~~
9 ~~comprised solely of these investments. Earnings shall be~~
10 ~~credited~~ UNTIL THE PERPETUAL CARE FUND REACHES THE MAXIMUM
11 REQUIRED FUND AMOUNT, THE CUSTODIAN OF A PERPETUAL CARE FUND
12 SHALL CREDIT INTEREST AND EARNINGS OF THE PERPETUAL CARE FUND to
13 the perpetual care fund. AFTER THE PERPETUAL CARE FUND REACHES
14 THE MAXIMUM REQUIRED FUND AMOUNT, EARNINGS SHALL BE DISTRIBUTED
15 AS DIRECTED BY THE OWNER OR OPERATOR. The agreement governing the
16 operation of the perpetual care fund shall be executed on a form
17 ~~provided~~ CONSISTENT WITH THIS PART AS PREPARED by the
18 department. The custodian may be compensated FROM THE FUND for
19 reasonable fees and costs incurred for his or her responsibili-
20 ties as custodian. ~~The accounts of a perpetual care fund shall~~
21 ~~be kept on a calendar year basis.~~ The custodian of a perpetual
22 care fund shall annually make an accounting to the department
23 within 30 days following the close of the ~~calendar~~ STATE FISCAL
24 year.

25 (8) The custodian of a perpetual care fund shall not dis-
26 burse any funds to the owner or operator of a landfill for the
27 purposes of the perpetual care fund except upon the prior written

1 approval of the department. However, the custodian shall ~~file~~
2 ENSURE THE FILING OF all required tax returns for which the per-
3 petual care fund is liable and shall disburse funds ~~from earn-~~
4 ~~ings of the fund~~ to pay lawfully due taxes owed by the perpetual
5 care fund without permission of the department. ~~Upon the~~
6 ~~request of the owner or operator of a landfill for a disbursement~~
7 ~~of funds from a perpetual care fund, the department, within 60~~
8 ~~days, shall grant written approval or issue a written denial~~
9 ~~stating the reasons for denial.~~ The owner or operator of the
10 landfill shall provide notice of requests for disbursement and
11 denials and approvals to the custodian of the perpetual care
12 fund. Requests for disbursement from a perpetual care fund shall
13 be submitted not more frequently than ~~quarterly~~ SEMIANNUALLY.
14 THE OWNER OR OPERATOR OF A LANDFILL MAY REQUEST DISBURSEMENT OF
15 FUNDS FROM A PERPETUAL CARE FUND WHENEVER THE AMOUNT OF MONEY IN
16 THE FUND EXCEEDS THE MAXIMUM REQUIRED FUND AMOUNT SPECIFIED IN
17 SUBSECTION (2). THE DEPARTMENT SHALL APPROVE THE DISBURSEMENT
18 PROVIDED THE TOTAL AMOUNT OF FINANCIAL ASSURANCE MAINTAINED MEETS
19 THE REQUIREMENTS OF SECTIONS 11523 AND 11523A.

20 (9) If the amount of money in a perpetual care fund ~~falls~~
21 IS below ~~an~~ THE FOLLOWING amount, ~~equal to that required in~~
22 ~~section 11523,~~ the department is not required to approve a dis-
23 bursement from the fund, and the cost of necessary closure,
24 POSTCLOSURE monitoring ~~,~~ AND maintenance, and ~~response~~
25 ~~activities~~ CORRECTIVE ACTION, IF NECESSARY, shall be borne by
26 the owner and operator of the landfill: ~~—~~

1 (A) FOR THOSE LANDFILLS CONTAINING ONLY THOSE MATERIALS
2 SPECIFIED IN SUBSECTION (3), AN AMOUNT EQUAL TO 1/2 OF THE
3 MAXIMUM REQUIRED FUND AMOUNT SPECIFIED IN SUBSECTION (2).

4 (B) FOR ALL OTHER LANDFILLS, AN AMOUNT EQUAL TO THE MAXIMUM
5 REQUIRED FUND AMOUNT SPECIFIED IN SUBSECTION (2).

6 (10) ~~(9)~~ If the owner or operator of a landfill refuses or
7 fails to conduct closure, POSTCLOSURE monitoring ~~—~~ AND mainte-
8 nance, or ~~—response activities—~~ CORRECTIVE ACTION as ~~are~~ neces-
9 sary to protect the public health, safety, or welfare, or the
10 environment or fails to request the disbursement of money from a
11 perpetual care fund when necessary to protect the public health,
12 safety, or welfare, or the environment, then the department may
13 require the disbursement of money from the perpetual care fund
14 and may expend the money for closure, POSTCLOSURE monitoring ~~—~~
15 AND maintenance, and ~~—response activities—~~ CORRECTIVE ACTION, AS
16 NECESSARY. The department may assess a perpetual care fund for
17 administrative costs associated with actions taken under this
18 subsection.

19 (11) ~~(10) Except as provided in subsection (12), upon the~~
20 ~~expiration of 30 years after the closure of a landfill~~ UPON
21 APPROVAL BY THE DEPARTMENT OF A REQUEST TO TERMINATE FINANCIAL
22 ASSURANCE FOR A LANDFILL UNDER SECTION 11525A, any money in the
23 perpetual care fund for that landfill shall be disbursed by the
24 custodian ~~upon approval by the department as follows: (a) Fifty~~
25 ~~percent shall be deposited in the environmental response fund~~
26 ~~created in part 201. (b) Fifty percent shall be returned to the~~

1 owner of the disposal area unless a contract between the owner
2 and the operator of the disposal area provides otherwise.

3 (12) ~~(11)~~ The owner of a landfill shall provide notice to
4 the custodian of the perpetual care fund for that landfill if
5 there is a change of ownership of the landfill. The custodian
6 shall maintain records of ownership of a landfill during the time
7 in which a perpetual care fund is established.

8 ~~(12) Following the expiration of 30 years after the closure~~
9 ~~of a landfill, the owner of the landfill may petition the depart-~~
10 ~~ment for approval of disbursement of money in a perpetual care~~
11 ~~fund. The department shall approve disbursement pursuant to~~
12 ~~subsection (10) unless the department determines that the owner~~
13 ~~or operator of the landfill has refused or failed to conduct clo-~~
14 ~~sure, monitoring, maintenance, or response activities at the~~
15 ~~landfill necessary to protect the public health, safety, or wel-~~
16 ~~fare, or the environment. If the department makes this determi-~~
17 ~~nation, the department shall deny the owner's request for~~
18 ~~approval of disbursement and shall notify the owner of the land-~~
19 ~~fill and the custodian in writing of that determination and the~~
20 ~~reasons for that determination. Ninety days after receiving~~
21 ~~notice of the department's determination under this subsection,~~
22 ~~the custodian shall disburse all of the money in the perpetual~~
23 ~~care fund to the environmental response fund created in part 20,~~
24 ~~unless during this 90 day period the owner or operator of the~~
25 ~~landfill appeals the department's determination in circuit~~
26 ~~court. If the owner of a landfill does not petition for the~~
27 ~~department's approval of a disbursement, the department on its~~

~~1 own may approve disbursement of money in a perpetual care fund~~
~~2 pursuant to subsection (10) or this subsection.~~

3 (13) This section does not relieve an owner or operator of a
4 disposal area that is a landfill of any liability that he or she
5 may have under this part or as otherwise provided by law.

6 (14) This section does not create a cause of action at law
7 or in equity against a custodian of a perpetual care fund other
8 than for errors or omissions related to investments, accountings,
9 disbursements, filings of required tax returns, and maintenance
10 of records required by this section or the applicable perpetual
11 care fund.

12 (15) As used in this section, "custodian" means the trustee
13 or escrow agent of a perpetual care fund.

14 Sec. 11542. (1) The generation, transportation, treatment,
15 storage, and disposal of municipal solid waste incinerator ash is
16 regulated under this part as solid waste and is not regulated
17 under part 111.

18 (2) Except as provided in subsection (10), municipal solid
19 waste incinerator ash shall be disposed of in 1 of the
20 following:

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

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

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

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

3 (A) A leachate collection system.

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

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

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

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

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

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

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

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

19 (A) A leachate collection system.

20 (B) ~~A synthetic liner at least 60 mils thick.~~ A COMPOSITE
21 LINER, AS DEFINED IN R 299.4102 OF THE MICHIGAN ADMINISTRATIVE
22 CODE.

23 ~~(C) A geotextile layer at least 100 mils thick.~~

24 ~~(D) A synthetic liner at least 40 mils thick.~~

25 ~~(E) A geotextile layer at least 100 mils thick.~~

26 (C) ~~(F)~~ A leak detection and leachate collection system.

~~(G) A synthetic liner at least 40 mils thick.~~

~~(iv) The landfill's cells each hold a maximum of 100,000 cubic yards of municipal solid waste incinerator ash.~~

(D) A SECOND COMPOSITE LINER.

(iv) ~~(v)~~ If contaminants that may threaten the public health, safety, or welfare, or the environment are found in the leachate collection system described in subparagraph ~~(iii)(F)~~ (iii)(C), the owner or operator of the landfill shall determine the source and nature of the contaminants and make repairs, to the extent practicable, that will prevent the contaminants from entering the leachate collection system. If the department determines that the source of the contaminants is caused by a design failure of the landfill, the department, notwithstanding an approved construction permit or operating license, may require landfill cells at that landfill that will be used for the disposal of municipal solid waste incinerator ash, which are under construction or will be constructed in the future at the landfill, to be constructed in conformance with improved design standards approved by the department. However, this subparagraph does not require the removal of liners or leak detection and leachate collection systems that are already in place in a landfill cell under construction.

~~(vi) On June 12, 1989, the owner or operator of the landfill has a letter of agreement with an existing municipal solid waste incinerator to receive municipal solid waste incinerator ash, and the owner or operator has by September 10, 1989 submitted this letter to the department.~~

1 (c) A landfill that IS A MONITORABLE UNIT, AS DEFINED IN
2 R 299.4104 OF THE MICHIGAN ADMINISTRATIVE CODE, AND THAT meets
3 all of the following requirements:

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

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

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

10 (A) A leachate collection system.

11 (B) A synthetic liner at least ~~80~~ 60 mils thick.

12 (C) ~~At the option of the owner or operator of the landfill,~~
13 ~~a leak detection and leachate collection system.~~ IMMEDIATELY

14 BELOW THE SYNTHETIC LINER, EITHER 2 FEET OF COMPACTED CLAY WITH A
15 MAXIMUM HYDRAULIC CONDUCTIVITY OF 1×10^{-7} CENTIMETERS PER
16 SECOND OR A BENTONITE GEOCOMPOSITE LINER, AS SPECIFIED IN R
17 299.4914 OF THE MICHIGAN ADMINISTRATIVE CODE.

18 (D) At least 10 feet of either natural or compacted clay
19 with a maximum hydraulic conductivity of 1×10^{-7} centimeters
20 per second, OR EQUIVALENT.

21 ~~(iv) If construction of the landfill begins prior to~~
22 ~~June 1, 1990, the liner specified in subparagraph (iii)(B) may be~~
23 ~~60 mils thick.~~

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

1 (e) A type II landfill, as defined in R 299.4105 of the
2 Michigan administrative code, if all of the following conditions
3 apply:

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

7 (ii) The ash is tested by a laboratory listed on the list
8 compiled by the department under section 11544 and the ash, upon
9 testing, meets the requirements of 40 C.F.R. 261.20 to 261.24. A
10 person seeking to dispose of ash under this subdivision may
11 select an approved laboratory from the list compiled in section
12 11544 to conduct the test.

13 (iii) The ash from any individual municipal solid waste
14 incinerator is disposed of pursuant to this subdivision for a
15 period not to exceed 60 days.

16 ~~(3) Except as provided in subsection (5), a landfill that~~
17 ~~is constructed pursuant to the design described in subsection~~
18 ~~(2)(a) or (b) shall be capped following its closure by all of the~~
19 ~~following in descending order:~~

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

21 ~~(b) Two feet of subsurface drainage media or cobbles or a~~
22 ~~combination thereof to protect against animal burrowing, tempera-~~
23 ~~ture, erosion, and rooted vegetation.~~

24 ~~(c) A flexible membrane liner at least 30 mils thick.~~

25 ~~(d) 3 feet of compacted clay with a maximum hydraulic con-~~
26 ~~ductivity of 1×10^{-7} centimeters per second.~~

1 ~~(e) A synthetic liner at least 30 mils thick with a~~
2 ~~geomembrane infiltration system above the liner may be used in~~
3 ~~place of the compacted clay specified in subdivision (d) if on~~
4 ~~June 12, 1989 the owner or operator of the landfill has a letter~~
5 ~~of agreement with an existing municipal solid waste incinerator~~
6 ~~to receive municipal solid waste incinerator ash, and the owner~~
7 ~~or operator has by September 10, 1989 submitted this letter to~~
8 ~~the department.~~

9 (4) Except as provided in subsection (5), a landfill that is
10 constructed pursuant to the design described in subsection
11 ~~-(2)(c)-~~ (2) shall be capped following its closure by all of the
12 following in descending order:

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

14 (b) Two feet of ~~compacted clay with a maximum hydraulic~~
15 ~~conductivity of 1×10^{-7} centimeters per second of compacted~~
16 ~~clay~~ SOIL TO PROTECT AGAINST ANIMAL BURROWING, TEMPERATURE, ERO-
17 SION, AND ROOTED VEGETATION.

18 (c) An infiltration collection system.

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

20 (e) ~~One foot~~ TWO FEET of compacted clay with a maximum
21 hydraulic conductivity of 1×10^{-7} centimeters per second.

22 (5) A landfill that receives municipal solid waste incinera-
23 tor ash under this section may be capped with a design approved
24 by the department that will prevent the migration of any hazard-
25 ous constituent into the groundwater or surface water at least as
26 effectively as the design requirements of ~~subsections (3) and~~
27 SUBSECTION (4).

1 (6) If leachate is collected from a landfill under this
2 section, the leachate shall be monitored and tested in accordance
3 with this part and the rules promulgated under this part.

4 (7) Prior to and after June 12, 1989, notwithstanding any
5 other provision in this section, municipal solid waste incinera-
6 tor ash may be stored or may continue to be stored on a temporary
7 basis if all of the following conditions exist:

8 (a) The ash is stored in a landfill licensed under this
9 part.

10 (b) The owner or operator of the landfill, by September 12,
11 1989, does either of the following:

12 (i) Applies for an operating permit amendment pursuant to
13 subsection (11) that would allow the permanent disposal of the
14 ash at the landfill.

15 (ii) Applies for a construction permit under this part that
16 would allow the permanent disposal of the ash at the landfill.

17 (c) The ash is stored for not longer than 9 months after an
18 operating license or an operating license amendment is approved
19 or denied by the department, or by June 12, 1991, whichever
20 occurs first, unless the department has unreasonably delayed
21 approving or denying an operating license or operating license
22 amendment.

23 (d) On June 12, 1989, the owner or operator of the landfill
24 has a letter of agreement with an existing municipal solid waste
25 incinerator or with a municipal solid waste incinerator under
26 construction to receive municipal solid waste incinerator ash,

1 and the owner or operator has by September 10, 1989 submitted
2 this letter to the department.

3 (e) The temporary storage at the landfill provides for an
4 intermediate separation of the ash from other solid waste using
5 not less than 2 feet of compacted soil or a synthetic liner at
6 least 30 mils thick and the ash is covered daily in a manner that
7 prevents the ash from blowing.

8 (f) By September 10, 1989 or prior to beginning temporary
9 storage, the owner or operator of the landfill receiving the
10 municipal solid waste incinerator ash submits an ash management
11 plan to the department that includes leachate and runoff control
12 measures and dust control measures. The department shall approve
13 or disapprove the plan submitted under this subsection within 30
14 days of receiving it. If the department disapproves the plan,
15 the department shall notify the owner or operator submitting the
16 plan of this fact, and shall provide modifications that, if
17 included, would result in the plan's approval. If the department
18 disapproves a plan, the owner or operator of the landfill shall
19 within 30 days after receipt of the department's disapproval
20 submit a revised plan that addresses all of the modifications
21 provided by the department. The department shall approve or dis-
22 approve the revised plan within 30 days of receiving it, and the
23 department shall not unreasonably withhold approval of the
24 revised plan. Upon approval by the department, the plan shall
25 become part of the operating license of the landfill. The opera-
26 tion of a landfill without an approved plan under this

1 subdivision subjects the owner or operator, or both, to all of
2 the sanctions provided by this part.

3 (g) By July 12, 1989 or prior to receiving the ash for tem-
4 porary storage, the owner or operator of the landfill notifies
5 the governing body of the municipality and the county board of
6 commissioners of the county in which the landfill is located of
7 its intent to temporarily store the ash.

8 (8) Following a period of temporary storage under subsection
9 (7), municipal solid waste incinerator ash shall be permanently
10 disposed of in accordance with this section. In addition to any
11 other penalty provided in this part, a person who stores munici-
12 pal solid waste incinerator ash under subsection (7) for a period
13 longer than is allowed by subsection (7) is liable for a civil
14 fine of \$5,000.00 per day of violation.

15 (9) The owner or operator of a landfill that receives munic-
16 ipal solid waste incinerator ash under this section for temporary
17 storage or for disposal shall do all of the following:

18 (a) Manage the ash to control dust.

19 (b) Manage the landfill to control track out.

20 (c) Manage all access roads within the landfill to control
21 dust.

22 (d) Only dispose of wet ash in the landfill.

23 (e) If the ash was in temporary storage under subsection
24 (7), rewet the ash prior to transporting the ash to the permanent
25 landfill.

26 (10) As an alternative to disposal described in
27 subsection (2), the owner or operator of a municipal solid waste

1 incinerator may process municipal solid waste incinerator ash
2 through mechanical or chemical methods, or both, to substantially
3 diminish the toxicity of the ash or its constituents or limit the
4 leachability of the ash or its constituents to minimize threats
5 to human health and the environment, if processing is performed
6 on the site of the municipal solid waste incinerator or at the
7 site of a landfill described in subsection (2), if the process
8 has been approved by the department as provided by rule, and if
9 the ash is tested after processing in accordance with a protocol
10 approved by the department as provided by rule. The department
11 shall approve the process and testing protocol under this subsec-
12 tion only if the process and testing protocol will protect human
13 health and the environment. In making this determination, the
14 department shall consider all potential pathways of human and
15 environmental exposure, including both short-term and long-term,
16 to constituents of the ash that may be released during the reuse
17 or recycling of the ash. The department shall consider requiring
18 methods to determine the leaching, total chemical analysis,
19 respirability, and toxicity of reused or recycled ash. A leach-
20 ing procedure shall include testing under both acidic and native
21 conditions. If municipal solid waste incinerator ash is pro-
22 cessed in accordance with the requirements of this subsection and
23 the processed ash satisfies the testing protocol approved by the
24 department as provided by rule, the ash may be disposed of in a
25 ~~type II~~ MUNICIPAL SOLID WASTE landfill, as defined by
26 ~~R 299.4105~~ R 299.4104 of the Michigan administrative code,
27 licensed under this part or may be used in any manner approved by

1 the department. If municipal solid waste incinerator ash is
2 processed as provided in this subsection, but does not satisfy
3 the testing protocol approved by the department as provided by
4 rule, the ash shall be disposed of in accordance with subsection
5 (2).

6 (11) The disposal of municipal solid waste incinerator ash
7 within a landfill that is in compliance with subsection (2) does
8 not constitute a new proposal for which a new construction permit
9 is required under section 11510, if a construction permit has
10 previously been issued under section 11509 for the landfill and
11 the owner or operator of the landfill submits 6 copies of an
12 operating license amendment application to the department for
13 approval. The operating license amendment application shall
14 include revised plans and specifications for all facility modifi-
15 cations including a leachate disposal plan, an erosion control
16 plan, and a dust control plan which shall be part of the operat-
17 ing license amendment. The dust control plan shall contain suf-
18 ficient detail to ensure that dust emissions are controlled by
19 available control technologies that reduce dust emissions by a
20 reasonably achievable amount to the extent necessary to protect
21 human health and the environment. The dust control plan shall
22 provide for the ash to be wet during all times that the ash is
23 exposed to the atmosphere at the landfill or otherwise to be cov-
24 ered by daily cover material; for dust emissions to be controlled
25 during dumping, grading, loading, and bulk transporting of the
26 ash at the landfill; and for dust emissions from access roads
27 within the landfill to be controlled. With the exception of a

1 landfill that is in existence on June 12, 1989 that the
2 department determines is otherwise in compliance with this sec-
3 tion, the owner or operator of the landfill shall obtain the
4 operating license amendment prior to initiating construction.
5 Prior to operation, the owner or operator of a landfill shall
6 submit to the department certification from a licensed profes-
7 sional engineer that the landfill has been constructed in accord-
8 ance with the approved plan and specifications. At the time the
9 copies are submitted to the department, the owner or operator of
10 the landfill shall send a copy of the operating license amendment
11 application to the municipality where the landfill is located.
12 At least 30 days prior to making a final decision on the operat-
13 ing license amendment, the department shall hold at least 1
14 public meeting in the vicinity of the landfill to receive public
15 comments. Prior to a public meeting, the department shall pub-
16 lish notice of the meeting in a newspaper serving the local
17 area. The department shall issue a final decision on an operat-
18 ing license amendment application within 120 days after the
19 department receives an administratively complete application.

20 (12) Once every other month, the owner or operator of a
21 municipal solid waste incinerator shall collect a 24-hour compos-
22 ite sample of the municipal solid waste incinerator ash generated
23 by the incinerator. By July 12, 1989, the owner or operator of a
24 municipal solid waste incinerator shall submit a protocol for
25 sample collection to the department for approval. Each sample
26 shall be collected according to the approved protocol. The owner
27 or operator shall perform an analysis of the collected sample for

1 trace metals as totals by acid digestion using analytical methods
2 described in SW-846 "test methods for evaluating solid waste,
3 third edition". The purpose of these tests is to determine the
4 changes in characteristics of municipal solid waste incinerator
5 ash from source separation initiatives over the life of the
6 facility. If fly ash generated by the municipal solid waste
7 incinerator is processed separately from the bottom ash, the
8 owner or operator shall perform separate tests on the fly ash and
9 the bottom ash. The owner or operator of the municipal solid
10 waste incinerator shall submit these test results to the depart-
11 ment within 60 days after the sample was collected.

12 (13) The owner or operator of a municipal solid waste incin-
13 erator or a disposal area that receives municipal solid waste
14 incinerator ash shall allow the department access to the facility
15 for the purpose of supervising the collection of samples or
16 obtaining samples of ash to test or to monitor air quality at the
17 facility.

18 (14) As used in subsection (2), "landfill" means a landfill
19 or a specific portion of a landfill.