

SENATE BILL No. 807

September 15, 2009, Introduced by Senators McMANUS, BIRKHOLZ, STAMAS, VAN WOERKOM, CROUSEY, JELINEK, PATTERSON, PAPPAGEORGE, KAHN, RICHARDVILLE, GEORGE, KUIPERS, SANBORN, GILBERT, ALLEN, BARCIA and HARDIMAN and referred to the Committee on Appropriations.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 301, 501, 503, 508, 510, 1101, 1301, 2521,
3101, 3131, 3132, 3133, 3301, 5201, 5402, 5703, 5705, 6306, 8307a,
8707, 8801, 9101, 11503, 11701, 11715d, 12101, 14301, 14501, 14701,
14721, 14802, 14804, 14810, 16901, 16903, 16903a, 16908a, 17203,
17301, 17327, 19601, 19701, 20101, 20104a, 20503, 21101, 21501,
21502, 21506, 21515, 21521, 21522, 21541, 21542, 21551, 21561,
21562, 30101, 30301, 30321, 31701, 32501, 32513, 32601, 32701,
32801, 32803, 33911, 33924, 33929, 35301, 40107c, 41303, 61501,
62501, 63101, 63201, 63502, 76111, 79501, 79504, 79505, and 79506
(MCL 324.301, 324.501, 324.503, 324.508, 324.510, 324.1101,
324.1301, 324.2521, 324.3101, 324.3131, 324.3132, 324.3133,
324.3301, 324.5201, 324.5402, 324.5703, 324.5705, 324.6306,

324.8307a, 324.8707, 324.8801, 324.9101, 324.11503, 324.11701, 324.11715d, 324.12101, 324.14301, 324.14501, 324.14701, 324.14721, 324.14802, 324.14804, 324.14810, 324.16901, 324.16903, 324.16903a, 324.16908a, 324.17203, 324.17301, 324.17327, 324.19601, 324.19701, 324.20101, 324.20104a, 324.20503, 324.21101, 324.21501, 324.21502, 324.21506, 324.21515, 324.21521, 324.21522, 324.21541, 324.21542, 324.21551, 324.21561, 324.21562, 324.30101, 324.30301, 324.30321, 324.31701, 324.32501, 324.32513, 324.32601, 324.32701, 324.32801, 324.32803, 324.33911, 324.33924, 324.33929, 324.35301, 324.40107c, 324.41303, 324.61501, 324.62501, 324.63101, 324.63201, 324.63502, 324.76111, 324.79501, 324.79504, 324.79505, and 324.79506), sections 301 and 503 as amended by 2004 PA 587, section 1301 as amended by 2008 PA 18, section 2521 as amended by 2005 PA 313, section 3101 as amended by 2006 PA 97, sections 3131, 3132, and 3133 as added by 1997 PA 29, section 3301 as added by 2004 PA 246, section 5201 as amended by 2005 PA 257, section 5402 as added by 1997 PA 26, section 6306 as amended by 1996 PA 564, section 8307a as added by 2002 PA 418, section 8707 as amended by 2000 PA 100, section 8801 as added by 1998 PA 287, section 9101 as amended by 2005 PA 55, section 11503 as amended by 2007 PA 212, section 11701 as amended by 2005 PA 199, section 11715d as added by 2004 PA 381, section 12101 as amended by 2008 PA 8, section 14301 as amended by 1998 PA 289, section 14501 as amended by 2007 PA 174, section 14701 as amended by 2004 PA 562, section 14721 as added by 2004 PA 526, sections 14802 and 14804 as amended by 1997 PA 133, section 14810 as added by 1996 PA 132, section 16901 as amended by 2006 PA 520, section 16903 as amended by 2006 PA 522, sections

16903a and 16908a as added by 1997 PA 17, section 17203 as added by 2002 PA 578, sections 17301 and 17327 as added by 2008 PA 394, section 19601 as added by 1998 PA 288, section 19701 as added by 2002 PA 397, section 20101 as amended section 20104a as added by 1996 PA 383, section 20503 as added by 2004 PA 229, section 21502 as amended by 2006 PA 318, section 21506 as amended by 2004 PA 390, section 21515 as amended by 1996 PA 181, sections 21561 and 21562 as added by 2006 PA 322, section 30101 as amended by 2006 PA 275, sections 30301 and 32501 as amended by 2003 PA 14, section 30321 as amended by 1996 PA 530, section 31701 as added by 2003 PA 177, section 32513 as amended by 2008 PA 276, section 32601 as added by 2000 PA 278, section 32701 as amended by 2008 PA 179, sections 32801 and 32803 as amended by 2008 PA 189, sections 33911, 33924, and 33929 as amended by 2006 PA 496, section 35301 as amended by 1995 PA 262, section 40107c as added by 2007 PA 47, section 41303 as amended by 2009 PA 52, section 61501 as amended by 1998 PA 303, section 62501 as amended by 1998 PA 467, section 63101 as amended section 63201 as added by 2004 PA 449, section 63502 as amended by 2001 PA 78, section 76111 as amended by 2001 PA 75, and sections 79501, 79504, 79505, and 79506 as added by 1998 PA 285, and by adding sections 501b, 501c, and 501d; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 301. Except as otherwise defined in this act, as used in
2 this act:

3 **(A) "ADMINISTRATOR" MEANS THE ENVIRONMENTAL PERMITS**
4 **ADMINISTRATOR APPOINTED UNDER SECTION 501B.**

1 **(B) "BOARD" MEANS THE NATURAL RESOURCES SCIENCE ADVISORY BOARD**
2 **CREATED IN SECTION 501D.**

3 **(C)** ~~(a)~~—"Commission" means the commission of natural
4 resources.

5 **(D)** ~~(b)~~—"Department" means the director of the department of
6 natural resources or his or her designee to whom the director
7 delegates a power or duty by written instrument.

8 **(E)** ~~(c)~~—"Department of natural resources" means the principal
9 state department created in section 501.

10 **(F)** ~~(d)~~—"Director" means the director of the department of
11 natural resources.

12 **(G)** ~~(e)~~—"Local unit of government" means a municipality or
13 county.

14 **(H)** ~~(f)~~—"Michigan conservation and recreation legacy fund"
15 means the Michigan conservation and recreation legacy fund
16 established in section 40 of article IX of the state constitution
17 of 1963 and provided for in section 2002.

18 **(I)** ~~(g)~~—"Municipality" means a city, village, or township.

19 **(J)** ~~(h)~~—"Person" means an individual, partnership,
20 corporation, association, governmental entity, or other legal
21 entity.

22 **(K)** ~~(i)~~—"Public domain" means all land owned by the state or
23 land deeded to the state under state law.

24 **(L)** ~~(j)~~—"Rule" means a rule promulgated pursuant to the
25 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
26 24.328.

27 Sec. 501. (1) A department of natural resources for this state

1 is created which shall possess the powers and perform the duties
2 granted and imposed by this act and as otherwise provided by law.

3 **THE DEPARTMENT OF NATURAL RESOURCES IS THE SUCCESSOR AGENCY TO THE**
4 **DEPARTMENT OF ENVIRONMENTAL QUALITY CREATED BY EXECUTIVE**
5 **REORGANIZATION ORDER NO. 1995-16, MCL 324.99903. IN ADDITION TO THE**
6 **POWERS AND DUTIES PROVIDED BY LAW TO THE DEPARTMENT OF NATURAL**
7 **RESOURCES, THE DEPARTMENT OF NATURAL RESOURCES HAS THE POWERS AND**
8 **DUTIES PROVIDED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN**
9 **EXECUTIVE REORGANIZATION ORDER NO. 1995-16, MCL 324.99903, AND THE**
10 **POWERS AND DUTIES OTHERWISE PROVIDED TO THE DEPARTMENT OF**
11 **ENVIRONMENTAL QUALITY OR THE DIRECTOR OF THE DEPARTMENT OF**
12 **ENVIRONMENTAL QUALITY BY LAW.**

13 (2) The commission of natural resources is created as the head
14 of the department of natural resources and may establish general
15 policies related to natural resources management and environmental
16 protection for the guidance of the director. ~~In addition, the~~
17 ~~commission has appellate authority as provided in section 1101. The~~
18 commission shall be composed of 7 members, not more than 4 of whom
19 shall be members of the same political party, appointed by the
20 governor by and with the advice and consent of the senate. A member
21 of the commission shall be selected with special reference to that
22 person's training and experience related to at least 1 of the
23 principal lines of activities vested in the department of natural
24 resources and the ability and fitness of that person to deal with
25 those activities. The term of office of each member of the
26 commission shall be 4 years. The governor shall fill a vacancy
27 occurring in the membership of the commission and may remove a

1 member of the commission for cause after a hearing. Each member of
2 the commission shall hold office until the appointment and
3 qualification of that member's successor.

4 (3) The commission, within 30 days after having qualified and
5 annually after that time, shall meet at its office in Lansing and
6 organize by appointing a secretary, who need not be a member of the
7 commission. The governor shall appoint a chairperson of the
8 commission from among its members, who shall serve as chairperson
9 at the pleasure of the governor. Four members of the commission
10 constitute a quorum for the transaction of business. The business
11 which the commission may perform shall be conducted at a public
12 meeting of the commission held in compliance with the open meetings
13 act, ~~Act No. 267 of the Public Acts of 1976, being sections 15.261~~
14 ~~to 15.275 of the Michigan Compiled Laws 1976 PA 267, MCL 15.261 TO~~
15 **15.275.** Public notice of the time, date, and place of the meeting
16 shall be given in the manner required by ~~Act No. 267 of the Public~~
17 ~~Acts of 1976~~ **THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO**
18 **15.275.** A meeting may be called by the chairperson and shall be
19 called on request of a majority of the members of the commission. A
20 meeting may be held as often as necessary and at other places than
21 the commissioners' offices at Lansing. The commission shall meet at
22 least once each month.

23 (4) The commission shall appoint and employ a director **OF THE**
24 **DEPARTMENT OF NATURAL RESOURCES** who shall continue in office at the
25 pleasure of the commission. The director shall appoint 1 or more
26 deputy directors and other assistants and employees as are
27 necessary to implement this part and any other law of this state

1 affecting the powers and duties of the department. ~~of natural~~
2 ~~resources.~~ A person to whom the director has lawfully delegated
3 decision making authority in writing may perform a duty or exercise
4 a power conferred by law upon the department at the time and to the
5 extent the duty and power is delegated to that person by the
6 director. When a vacancy in the office of director occurs, or the
7 director is unable to perform the director's duties or is absent
8 from the state, the powers and duties of the director as prescribed
9 by law shall be imposed on and transferred to a deputy director
10 until the vacancy is filled or the director's inability or absence
11 from the state ceases.

12 (5) The compensation of the deputy directors, the assistants,
13 and the employees and the number of assistants and employees shall
14 be subject to the approval of the state administrative board. The
15 members of the commission shall not receive compensation under this
16 part, but each member and the other officers and employees of the
17 department ~~of natural resources~~ shall be entitled to reasonable
18 expenses while traveling in the performance of their duties
19 prescribed by this act. The salaries and expenses authorized under
20 this act shall be paid out of the state treasury in the same manner
21 as the salaries of other state officers and employees are paid. The
22 department of management and budget shall furnish suitable offices
23 and office equipment, at Lansing, for the use of the department. ~~of~~
24 ~~natural resources.~~

25 (6) Each member of the commission and the director shall
26 qualify by taking and subscribing to the constitutional oath of
27 office and by filing it in the office of the secretary of state.

1 SEC. 501B. (1) THE OFFICE OF ENVIRONMENTAL PERMITS IS
2 ESTABLISHED WITHIN THE DEPARTMENT OF NATURAL RESOURCES. THE OFFICE
3 SHALL BE HEADED BY AN ENVIRONMENTAL PERMITS ADMINISTRATOR WHO SHALL
4 BE APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE
5 SENATE AND WHO SHALL CONTINUE IN OFFICE AT THE PLEASURE OF THE
6 GOVERNOR. THE ADMINISTRATOR SHALL BE SELECTED WITH SPECIAL
7 REFERENCE TO THE INDIVIDUAL'S TRAINING AND EXPERIENCE RELATED TO
8 ENVIRONMENTAL PERMITS ISSUED BY THE DEPARTMENT AND THE ABILITY AND
9 FITNESS OF THAT INDIVIDUAL TO CARRY OUT HIS OR HER RESPONSIBILITIES
10 AS PROVIDED IN THIS ACT AND AS OTHERWISE PROVIDED BY LAW.

11 (2) THE ADMINISTRATOR SHALL QUALIFY FOR OFFICE BY TAKING AND
12 SUBSCRIBING TO THE CONSTITUTIONAL OATH OF OFFICE AND BY FILING IT
13 WITH THE OFFICE OF THE SECRETARY OF STATE.

14 (3) THE ADMINISTRATOR SHALL DO ALL OF THE FOLLOWING:

15 (A) ADMINISTER THE OFFICE OF ENVIRONMENTAL PERMITS.

16 (B) MAKE THE FINAL AGENCY DECISION ON ALL ENVIRONMENTAL
17 PERMITS ISSUED BY THE DEPARTMENT, INDEPENDENT OF THE DIRECTOR OR
18 THE COMMISSION.

19 (C) HIRE THROUGH A REQUEST FOR PROPOSALS PROCESS A QUALIFIED
20 INDEPENDENT PERSON TO PERFORM A BENCHMARK ANALYSIS OF EACH
21 ENVIRONMENTAL PERMITTING PROGRAM ADMINISTERED BY THE DEPARTMENT AND
22 ARRANGE FOR AN INDEPENDENT AND EXTERNAL PEER REVIEW OF EACH OF
23 THESE PROGRAMS. A PERSON SHALL NOT BE SELECTED TO PERFORM A
24 BENCHMARK ANALYSIS OR PEER REVIEW UNDER THIS SUBDIVISION UNLESS THE
25 PERSON HAS A PROVEN ABILITY TO EVALUATE ENVIRONMENTAL PERMITTING
26 ACTIVITIES AND MAKE RECOMMENDATIONS FOR IMPROVEMENT. A BENCHMARK
27 ANALYSIS OR PEER REVIEW OF A PERMITTING PROGRAM SHALL INCLUDE ALL

1 OF THE FOLLOWING:

2 (i) A CALCULATION OF THE DEPARTMENT'S PER-PERMIT COST TO
3 PROCESS A PERMIT AND ADMINISTER THE PERMITTING PROGRAM.

4 (ii) A REVIEW OF THE TIMELINESS OF THE PERMITTING PROCESS FROM
5 RECEIPT OF A PERMIT APPLICATION TO APPROVAL OR DENIAL OF A PERMIT
6 APPLICATION.

7 (iii) A REVIEW OF THE DEPARTMENT'S CUSTOMER SERVICE PRACTICES
8 ASSOCIATED WITH THE PERMITTING PROGRAM.

9 (iv) A REVIEW OF MEASURABLE ENVIRONMENTAL IMPACTS RELATED TO
10 THE PERMITTING PROGRAM.

11 (v) A COMPARISON OF THE DEPARTMENT'S PERFORMANCE TO COMPARABLE
12 PERMITTING PROGRAMS ADMINISTERED BY OTHER GREAT LAKE STATES.

13 (4) THE DIRECTOR SHALL PROVIDE APPROPRIATE OFFICE SPACE AND
14 STAFFING FOR THE OPERATIONS OF THE OFFICE OF ENVIRONMENTAL PERMITS.

15 (5) AS USED IN THIS SECTION, "ENVIRONMENTAL PERMITS" MEANS ALL
16 PERMITS AND OPERATING LICENSES ISSUED BY THE DEPARTMENT.
17 ENVIRONMENTAL PERMITS DO NOT INCLUDE HUNTING, FUR HARVESTER, OR
18 FISHING LICENSES.

19 SEC. 501C. THE POSITION OF ENVIRONMENTAL OMBUDSMAN IS CREATED
20 WITHIN THE OFFICE OF ENVIRONMENTAL PERMITS. THE GOVERNOR, WITH THE
21 ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT AN ENVIRONMENTAL
22 PERMITS OMBUDSMAN WHO SHALL CONTINUE IN OFFICE AT THE PLEASURE OF
23 THE GOVERNOR. THE ENVIRONMENTAL PERMITS OMBUDSMAN SHALL DO ALL OF
24 THE FOLLOWING:

25 (A) PROVIDE INFORMATION REGARDING THE ENVIRONMENTAL PERMITTING
26 PROCESS TO INDIVIDUALS SEEKING ENVIRONMENTAL PERMITS FROM THE
27 DEPARTMENT.

1 (B) FACILITATE AGREEMENTS ON PERMIT CONDITIONS OR PERMIT
2 DISPUTES BETWEEN PERMIT APPLICANTS AND THE DEPARTMENT.

3 (C) ASSIST THE DEPARTMENT AND THE ADMINISTRATOR IN
4 ESTABLISHING A PROTOCOL FOR COORDINATING PROJECTS REQUIRING MORE
5 THAN 1 PERMIT FROM THE DEPARTMENT.

6 (D) PROVIDE A COST/BENEFIT ANALYSIS OF PROPOSED RULES RELATED
7 TO ENVIRONMENTAL PERMITS ISSUED BY THE DEPARTMENT.

8 SEC. 501D. (1) THE NATURAL RESOURCES SCIENCE ADVISORY BOARD IS
9 CREATED WITHIN THE DEPARTMENT OF NATURAL RESOURCES. THE BOARD SHALL
10 CONSIST OF 5 INDIVIDUALS APPOINTED BY THE GOVERNOR WITH THE ADVICE
11 AND CONSENT OF THE SENATE WITH EXPERTISE IN 1 OR MORE OF THE
12 FOLLOWING AREAS:

13 (A) ECOLOGICAL SCIENCES.

14 (B) CHEMISTRY.

15 (C) BIOLOGICAL SCIENCES.

16 (D) RISK ASSESSMENT.

17 (E) GEOLOGY.

18 (2) THE MEMBERS FIRST APPOINTED TO THE BOARD SHALL BE
19 APPOINTED WITHIN 45 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
20 ACT THAT ADDED THIS SECTION.

21 (3) MEMBERS OF THE BOARD SHALL SERVE FOR TERMS OF 3 YEARS OR
22 UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER, EXCEPT THAT OF
23 THE MEMBERS FIRST APPOINTED 2 SHALL SERVE FOR 1 YEAR, 2 SHALL SERVE
24 FOR 2 YEARS, AND 1 SHALL SERVE FOR 3 YEARS.

25 (4) IF A VACANCY OCCURS ON THE BOARD, THE GOVERNOR SHALL MAKE
26 AN APPOINTMENT FOR THE UNEXPIRED TERM IN THE SAME MANNER AS THE
27 ORIGINAL APPOINTMENT.

1 (5) THE GOVERNOR MAY REMOVE A MEMBER OF THE BOARD FOR
2 INCOMPETENCY, DERELICTION OF DUTY, MALFEASANCE, MISFEASANCE, OR
3 NONFEASANCE IN OFFICE, OR ANY OTHER GOOD CAUSE.

4 (6) A MAJORITY OF THE MEMBERS OF THE BOARD CONSTITUTE A QUORUM
5 FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE BOARD. A
6 MAJORITY OF THE MEMBERS PRESENT AND SERVING ARE REQUIRED FOR
7 OFFICIAL ACTION OF THE BOARD.

8 (7) THE BUSINESS THAT THE BOARD MAY PERFORM SHALL BE CONDUCTED
9 AT A PUBLIC MEETING OF THE BOARD HELD IN COMPLIANCE WITH THE OPEN
10 MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

11 (8) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
12 RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL FUNCTION IS
13 SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231
14 TO 15.246.

15 (9) MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION.
16 HOWEVER, MEMBERS OF THE BOARD MAY BE REIMBURSED FOR THEIR ACTUAL
17 AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR
18 OFFICIAL DUTIES AS MEMBERS OF THE BOARD.

19 (10) THE COMMISSION, THE DIRECTOR, OR THE ADMINISTRATOR MAY
20 CONVENE THE BOARD TO PROVIDE ADVICE AND GUIDANCE ON A SCIENTIFIC
21 ISSUE AFFECTING A PROGRAM ADMINISTERED BY THE DEPARTMENT.

22 (11) WHEN THE BOARD IS CONVENED, THE BOARD SHALL ASSESS THE
23 SCIENTIFIC ISSUE BEFORE THE BOARD AND SHALL DETERMINE WHETHER THE
24 BOARD HAS SUFFICIENT EXPERTISE TO FULLY REVIEW THE ISSUE. IF THE
25 BOARD DETERMINES THAT ADDITIONAL EXPERTISE WOULD AID THE BOARD IN
26 ITS REVIEW, THE BOARD MAY APPOINT 1 OR MORE CONSULTING MEMBERS WHO
27 HAVE KNOWLEDGE AND EXPERTISE RELATED TO THE SUBJECT OF THE SPECIFIC

1 SCIENTIFIC INQUIRY. UPON APPOINTMENT, THESE ADDITIONAL CONSULTING
2 MEMBERS SHALL PROVIDE ADVICE AND RECOMMENDATIONS TO THE BOARD
3 DURING THE PARTICULAR SCIENTIFIC REVIEW.

4 (12) THE DIRECTOR SHALL PROVIDE ADMINISTRATIVE SUPPORT,
5 INCLUDING APPOINTING AN EXECUTIVE DIRECTOR OF THE BOARD, TO
6 FACILITATE THE OPERATIONS OF THE BOARD.

7 Sec. 503. (1) The department shall protect and conserve the
8 AIR, WATER, AND OTHER natural resources of this state; provide and
9 develop facilities for outdoor recreation; prevent the destruction
10 of timber and other forest growth by fire or otherwise; promote the
11 reforestation of forestlands belonging to the state; prevent and
12 guard against the pollution of lakes and streams within the state
13 and enforce all laws provided for that purpose with all authority
14 granted by law; and foster and encourage the protecting and
15 propagation of game and fish. The department has the power and
16 jurisdiction over the management, control, and disposition of all
17 land under the public domain, except for those lands under the
18 public domain that are managed by other state agencies to carry out
19 their assigned duties and responsibilities. On behalf of the people
20 of the state, the department may accept gifts and grants of land
21 and other property and may buy, sell, exchange, or condemn land and
22 other property, for any of the purposes contemplated by this part.
23 The department may accept funds, money, or grants for development
24 of salmon and steelhead trout fishing in this state from the
25 government of the United States, or any of its departments or
26 agencies, pursuant to the anadromous fish conservation act, 16 USC
27 757a to 757f, and may use this money in accordance with the terms

1 and provisions of that act. However, the acceptance and use of
2 federal funds does not commit state funds and does not place an
3 obligation upon the legislature to continue the purposes for which
4 the funds are made available.

5 (2) The department may lease lands owned or controlled by the
6 department or may grant concessions on lands owned or controlled by
7 the department to any person for any purpose that the department
8 determines to be necessary to implement this part. In granting a
9 concession, the department shall provide that each concession is
10 awarded at least every 7 years based on extension, renegotiation,
11 or competitive bidding. However, if the department determines that
12 a concession requires a capital investment in which reasonable
13 financing or amortization necessitates a longer term, the
14 department may grant a concession for up to a 15-year term. A
15 concession granted under this subsection shall require, unless the
16 department authorizes otherwise, that all buildings and equipment
17 shall be removed at the end of the concession's term. Any lease
18 entered into under this subsection shall limit the purposes for
19 which the leased land is to be used and shall authorize the
20 department to terminate the lease upon a finding that the land is
21 being used for purposes other than those permitted in the lease.
22 Unless otherwise provided by law, money received from a lease or a
23 concession of tax reverted land shall be credited to the fund
24 providing financial support for the management of the leased land.
25 Money received from a lease of all other land shall be credited to
26 the fund from which the land was purchased. However, money received
27 from program-related leases on these lands shall be credited to the

1 fund providing financial support for the management of the leased
2 lands. For land managed by the forest management division of the
3 department, that fund is either the forest development fund
4 established pursuant to part 505 or the forest recreation account
5 of the Michigan conservation and recreation legacy fund provided
6 for in section 2005. For land managed by the wildlife or fisheries
7 division of the department, that fund is the game and fish
8 protection account of the Michigan conservation and recreation
9 legacy fund provided for in section 2010.

10 (3) When the department sells land, the deed by which the land
11 is conveyed may reserve all mineral, coal, oil, and gas rights to
12 the state only when the land is in production or is leased or
13 permitted for production, or when the department determines that
14 the land has unusual or sensitive environmental features or that it
15 is in the best interest of this state to reserve those rights as
16 determined by commission policy. However, the department shall not
17 reserve the rights to sand, gravel, clay, or other nonmetallic
18 minerals. When the department sells land that contains subsurface
19 rights, the department shall include a deed restriction that
20 restricts the subsurface rights from being severed from the surface
21 rights in the future. If the landowner severs the subsurface rights
22 from the surface rights, the subsurface rights revert to this
23 state. The deed may reserve to the state the right of ingress and
24 egress over and across land along watercourses and streams.
25 Whenever an exchange of land is made, either with the United States
26 government, a corporation, or an individual, for the purpose of
27 consolidating the state forest reserves, the department may issue

1 deeds without reserving to the state the mineral, coal, oil, and
2 gas rights and the rights of ingress and egress. The department may
3 sell the limestone, sand, gravel, or other nonmetallic minerals.
4 However, the department shall not sell a mineral or nonmetallic
5 mineral right if the sale would violate part 353, part 637, or any
6 other provision of law. The department may sell all reserved
7 mineral, coal, oil, and gas rights to such lands upon terms and
8 conditions as the department considers proper and may sell oil and
9 gas rights as provided in part 610. The owner of such lands as
10 shown by the records shall be given priority in case the department
11 authorizes any sale of such lands, and, unless the landowner waives
12 such rights, the department shall not sell such rights to any other
13 person. For the purpose of this section, mineral rights do not
14 include rights to sand, gravel, clay, or other nonmetallic
15 minerals.

16 (4) The department may enter into contracts for the sale of
17 the economic share of royalty interests it holds in hydrocarbons
18 produced from devonian or antrim shale qualifying for the
19 nonconventional fuel credit contained in section 29 of the internal
20 revenue code of 1986. However, in entering into these contracts,
21 the department shall assure that revenues to the natural resources
22 trust fund under these contracts are not less than the revenues the
23 natural resources trust fund would have received if the contracts
24 were not entered into. The sale of the economic share of royalty
25 interests under this subsection may occur under contractual terms
26 and conditions considered appropriate by the department and as
27 approved by the state administrative board. Funds received from the

1 sale of the economic share of royalty interests under this
2 subsection shall be transmitted to the state treasurer for deposit
3 in the state treasury as follows:

4 (a) Net proceeds allocable to the nonconventional fuel credit
5 contained in section 29 of the internal revenue code of 1986, under
6 this subsection shall be credited to the environmental protection
7 fund created in section 503a.

8 (b) Proceeds related to the production of oil or gas from
9 devonian or antrim shale shall be credited to the natural resources
10 trust fund or other applicable fund as provided by law.

11 (5) As used in subsection (4):

12 (a) "Natural resources trust fund" means the Michigan natural
13 resources trust fund established in section 35 of article IX of the
14 state constitution of 1963 and provided for in section 1902.

15 (b) "Net proceeds" means the total receipts received from the
16 sale of royalty interests under subsection (4) less costs related
17 to the sale. Costs may include, but are not limited to, legal,
18 financial advisory, geological or reserve studies, and accounting
19 services.

20 (6) As used in this section:

21 (a) "Concession" means an agreement between the department and
22 a person under terms and conditions as specified by the department
23 to provide services or recreational opportunities for public use.

24 (b) "Lease" means a conveyance by the department to a person
25 of a portion of the state's interest in land under specific terms
26 and for valuable consideration, thereby granting to the lessee the
27 possession of that portion conveyed during the period stipulated.

1 Sec. 508. The department may establish and collect fees and
2 rentals for any photographic or publication products or services
3 that the department provides. The fees and rentals shall be
4 credited to a separate fund of the state treasury and shall be
5 available for appropriation to the department ~~of natural resources~~
6 and used to provide the photographic or publication products or
7 services. The fees and rentals shall not exceed the material costs
8 to the department of providing the products or services. In
9 addition, the expenditures made in a fiscal year to provide the
10 photographic and publication products or services shall not exceed
11 the amount appropriated for that purpose for that fiscal year, plus
12 any amounts carried over from previous fiscal years, or the amount
13 of fees and rentals actually received during that fiscal year, plus
14 any amounts carried over from previous fiscal years, whichever is
15 less. Any unexpended fees and rentals collected pursuant to this
16 section, along with any excess collections from prior fiscal years,
17 shall be carried over into subsequent fiscal years and shall be
18 available for appropriation for the purposes described in this
19 section.

20 Sec. 510. (1) Money received by the department ~~of natural~~
21 ~~resources~~ for reimbursement of damages to department ~~of natural~~
22 ~~resources~~ property, reimbursement of land recording fees, sale of
23 farm animals from Maybury state park, reimbursement for utilities
24 for the Michigan state exposition and fairgrounds, reproduction of
25 the agenda of the commission or other meetings of the department,
26 reimbursement for forest fire protection services provided to the
27 federal government or other states, and money received from

1 forfeited cash bonds, security bonds, and court ordered
2 reimbursements may be credited to the accounts from which these
3 disbursements were or are to be made.

4 (2) The department may establish and collect fees for use of
5 aircraft and pilots of the department. ~~of natural resources.~~ The
6 aircraft fees collected shall be credited to a separate fund of the
7 state treasury and shall be available for appropriation to the
8 department ~~of natural resources~~ and used to pay all operating and
9 maintenance costs of the aircraft, including depreciation and
10 aircraft replacement, but shall not exceed the fee revenue
11 collected for the fiscal year together with any unexpended balances
12 of prior years.

13 Sec. 1101. (1) If a person has legal standing to challenge a
14 final decision of the department under this act regarding the
15 issuance, denial, suspension, revocation, annulment, withdrawal,
16 recall, cancellation, or amendment of a permit or operating
17 license, the ~~commission~~ **ADMINISTRATOR**, upon request of that person,
18 shall review the decision and make the final agency decision. A
19 preliminary, procedural, or intermediate decision of the department
20 is reviewable by the ~~commission~~ **ADMINISTRATOR** only if the
21 ~~commission~~ **ADMINISTRATOR** elects to grant a review. If a person is
22 granted review by the ~~commission~~ **ADMINISTRATOR** under this section,
23 the person is considered to have exhausted his or her
24 administrative remedies with regard to that matter. The ~~commission~~
25 **ADMINISTRATOR** may utilize administrative law judges or hearing
26 officers to conduct the review of decisions as contested case
27 hearings and to issue proposals for decisions as provided by law or

1 rule.

2 (2) In all instances, except those described in subsection
3 (1), if a person has legal standing to challenge a final decision
4 of the department under this act, that person may seek direct
5 review by the courts as provided by law. Direct review by the
6 courts is available to that person as an alternative to any
7 administrative remedy that is provided in this act. A preliminary,
8 procedural, or intermediate action or ruling of the department is
9 not immediately reviewable, except that the court may grant leave
10 for review of a preliminary, procedural, or intermediate action or
11 ruling if the court determines that review of the final decision
12 would not provide an adequate remedy. If a person is granted direct
13 review by the courts under this section, the person is considered
14 to have exhausted his or her administrative remedies with regard to
15 that matter.

16 (3) If the court does not review a decision of the department
17 brought before the court as provided in this section, the person
18 with legal standing retains any administrative appeal rights that
19 are otherwise provided by law.

20 (4) If the court reviews a preliminary, procedural, or
21 intermediate decision of the department brought before the court as
22 provided in this section, the person with legal standing retains
23 the right to judicial review of the final decision of the
24 department as provided by law.

25 **(5) THIS SECTION DOES NOT APPLY TO A HUNTING, FUR HARVESTER,**
26 **OR FISHING LICENSE ISSUED BY THE DEPARTMENT.**

27 Sec. 1301. As used in this part:

1 (a) "Application period" means the period beginning when an
2 application for a permit is received by the state and ending when
3 the application is considered to be administratively complete under
4 section 1305 and any applicable fee has been paid.

5 (b) "Department" means, **SUBJECT TO SECTION 1101**, the
6 department, agency, or officer authorized by this act to approve or
7 deny an application for a particular permit.

8 (c) "Director" means, **SUBJECT TO SECTION 1101**, the director of
9 the state department authorized under this act to approve or deny
10 an application for a particular permit or the director's designee.

11 (d) "Permit" means a permit or operating license required by
12 any of the following sections or by rules promulgated thereunder,
13 or, in the case of section 9112, by an ordinance or resolution
14 adopted thereunder:

15 (i) Section 3104, floodplain alteration permit.

16 (ii) Section 3503, permit for use of water in mining iron ore.

17 (iii) Section 4105, sewerage system construction permit.

18 (iv) Section 6516, vehicle testing license.

19 (v) Section 6521, motor vehicle fleet testing permit.

20 (vi) Section 8310, restricted use pesticide dealer license.

21 (vii) Section 8310a, agricultural pesticide dealer license.

22 (viii) Section 8504, license to manufacture or distribute
23 fertilizer.

24 (ix) Section 9112, local soil erosion and sedimentation control
25 permit.

26 (x) Section 11509, solid waste disposal area construction
27 permit.

1 (xi) Section 11512, solid waste disposal area operating
2 license.

3 (xii) Section 11542, municipal solid waste incinerator ash
4 landfill operating license amendment.

5 (xiii) Section 11702, septage waste servicing license or septage
6 waste vehicle license.

7 (xiv) Section 11709, septage waste site permit.

8 (xv) Section 30104, inland lakes and streams project permit.

9 (xvi) Section 30304, state permit for dredging, filling, or
10 other activity in wetland.

11 (xvii) Section 31509, dam construction, repair, removal permit.

12 (xviii) Section 32312, flood risk, high risk, or environmental
13 area permit.

14 (xix) Section 32503, permit for dredging and filling
15 bottomland.

16 (xx) Section 35304, department permit for critical dune area
17 use.

18 (xxi) Section 36505, endangered species permit.

19 (xxii) Section 41702, game bird hunting preserve license.

20 (xxiii) Section 42101, dog training area permit.

21 (xxiv) Section 42501, fur dealer's license.

22 (xxv) Section 42702, game dealer's license.

23 (xxvi) Section 44513, charter boat operating permit under
24 reciprocal agreement.

25 (xxvii) Section 44517, boat livery operating permit.

26 (xxviii) Section 45503, permit to take frogs for scientific use.

27 (xxix) Section 45902, game fish propagation license.

1 (xxx) Section 45906, game fish import license.

2 (xxxi) Section 61525, oil or gas well drilling permit.

3 (xxxii) Section 62509, brine, storage, or waste disposal well
4 drilling or conversion permit or test well drilling permit.

5 (xxxiii) Section 63103a, metallic mineral mining permit.

6 (xxxiv) Section 63514 or 63525, surface coal mining and
7 reclamation permit or revision of the permit during the term of the
8 permit, respectively.

9 (xxxv) Section 63704, sand dune mining permit.

10 (xxxvi) Section 72108, use permits for Michigan trailway.

11 (xxxvii) Section 76109, sunken aircraft or watercraft abandoned
12 property recovery permit.

13 (xxxviii) Section 76504, Mackinac Island motor vehicle and land
14 use permits.

15 (xxxix) Section 80159, buoy or beacon permit.

16 (e) "Processing deadline" means the last day of the processing
17 period.

18 (f) "Processing period" means the following time period after
19 the close of the application period, for the following permit, as
20 applicable:

21 (i) Twenty days for a permit under section 61525 or 62509.

22 (ii) Thirty days for a permit under section 9112.

23 (iii) Thirty days after the department consults with the
24 underwater salvage and preserve committee created under section
25 76103, for a permit under section 76109.

26 (iv) Sixty days, for a permit under section 30104 for a minor
27 project as established by rule under section 30105(7) or for a

1 permit under section 32312.

2 (v) Sixty days or, if a hearing is held, 90 days for a permit
3 under section 35304.

4 (vi) Sixty days or, if a hearing is held, 120 days for a permit
5 under section 30104, other than a permit for a minor project as
6 established by rule under section 30105(7), or for a permit under
7 section 31509.

8 (vii) Ninety days for a permit under section 11512, a revision
9 of a surface coal mining and reclamation permit during the term of
10 the permit under section 63525, or a permit under section 72108.

11 (viii) Ninety days or, if a hearing is held, 150 days for a
12 permit under section 3104, 30304, or 32503.

13 (ix) One hundred and twenty days for a permit under section
14 11509, 11542, 63103a, 63514, or 63704.

15 (x) One hundred fifty days for a permit under section 36505.
16 However, if a site inspection or federal approval is required, the
17 150-day period is tolled pending completion of the inspection or
18 receipt of the federal approval.

19 (xi) For any other permit, 150 days or, if a hearing is held,
20 90 days after the hearing, whichever is later.

21 Sec. 2521. (1) The department ~~of environmental quality, in~~
22 ~~conjunction with the department of natural resources,~~ shall
23 biennially prepare a report that assesses the status of and trends
24 related to the overall state of the natural environment in
25 Michigan. The report shall be based upon environmental indicators
26 identified by the ~~departments of environmental quality and natural~~
27 ~~resources~~ **DEPARTMENT** and upon data obtained through sound

1 scientific methodologies and processes. The report shall be
2 submitted to the governor, to the standing committees of the
3 legislature with jurisdiction over issues primarily related to
4 natural resources and the environment, and to the senate and house
5 appropriations subcommittees on environmental quality and natural
6 resources. The report shall be submitted not later than October 1,
7 2008 and every third year thereafter. The reports shall also be
8 made available to the public electronically and, upon request, in
9 paper format.

10 (2) ~~The departments of environmental quality and natural~~
11 ~~resources-DEPARTMENT~~ shall monitor efforts undergoing in other
12 states and nationally to establish uniformity among environmental
13 indicators that might be included within the report.

14 (3) All state agencies shall cooperate with the ~~departments of~~
15 ~~environmental quality and natural resources-DEPARTMENT~~ in carrying
16 out their responsibilities under this section.

17 (4) As used in this section, "environmental indicator" means a
18 measure of the state of the natural environment that can be derived
19 from empirical data. The department shall use the most recent data
20 available. If relevant data is not available, the department shall
21 include in the report recommendations for gathering data in the
22 future.

23 Sec. 3101. As used in this part:

24 (a) "Aquatic nuisance species" means a nonindigenous species
25 that threatens the diversity or abundance of native species or the
26 ecological stability of infested waters, or commercial,
27 agricultural, aquacultural, or recreational activities dependent on

1 such waters.

2 (b) "Ballast water" means water and associated solids taken on
3 board a vessel to control or maintain trim, draft, stability, or
4 stresses on the vessel, without regard to the manner in which it is
5 carried.

6 (c) "Ballast water treatment method" means a method of
7 treating ballast water and sediments to remove or destroy living
8 biological organisms through 1 or more of the following:

9 (i) Filtration.

10 (ii) The application of biocides or ultraviolet light.

11 (iii) Thermal methods.

12 (iv) Other treatment techniques approved by the department.

13 ~~— (d) "Department" means the department of environmental~~
14 ~~quality.~~

15 (D) ~~(e)~~—"Detroit consumer price index" means the most
16 comprehensive index of consumer prices available for the Detroit
17 area from the United States department of labor, bureau of labor
18 statistics.

19 (E) ~~(f)~~—"Emergency management coordinator" means that term as
20 defined in section 2 of the emergency management act, 1976 PA 390,
21 MCL 30.402.

22 (F) ~~(g)~~—"Great Lakes" means the Great Lakes and their
23 connecting waters, including Lake St. Clair.

24 (G) ~~(h)~~—"Group 1 facility" means a facility whose discharge is
25 described by R 323.2218 of the Michigan administrative code.

26 (H) ~~(i)~~—"Group 2 facility" means a facility whose discharge is
27 described by R 323.2210(y), R 323.2215, or R 323.2216 of the

1 Michigan administrative code.

2 (I) ~~(j)~~—"Group 3 facility" means a facility whose discharge is
3 described by R 323.2211 or R 323.2213 of the Michigan
4 administrative code.

5 (J) ~~(k)~~—"Local health department" means that term as defined
6 in section 1105 of the public health code, 1978 PA 368, MCL
7 333.1105.

8 (K) ~~(l)~~—"Local unit" means a county, city, village, or township
9 or an agency or instrumentality of any of these entities.

10 (L) ~~(m)~~—"Municipality" means this state, a county, city,
11 village, or township, or an agency or instrumentality of any of
12 these entities.

13 (M) ~~(n)~~—"National response center" means the national
14 communications center established under the clean water act, 33 USC
15 1251 to 1387, located in Washington, DC, that receives and relays
16 notice of oil discharge or releases of hazardous substances to
17 appropriate federal officials.

18 (N) ~~(o)~~—"Nonoceangoing vessel" means a vessel that is not an
19 oceangoing vessel.

20 (O) ~~(p)~~—"Oceangoing vessel" means a vessel that operates on
21 the Great Lakes or the St. Lawrence waterway after operating in
22 waters outside of the Great Lakes or the St. Lawrence waterway.

23 (P) ~~(q)~~—"Open water disposal of contaminated dredge materials"
24 means the placement of dredge materials contaminated with toxic
25 substances as defined in R 323.1205 of the Michigan administrative
26 code into the open waters of the waters of the state but does not
27 include the siting or use of a confined disposal facility

1 designated by the United States army corps of engineers or beach
2 nourishment activities utilizing uncontaminated materials.

3 (Q) ~~(r)~~—"Primary public safety answering point" means that
4 term as defined in section 102 of the emergency ~~telephone 9-1-1~~
5 service enabling act, 1986 PA 32, MCL 484.1102.

6 (R) ~~(s)~~—"Sediments" means any matter settled out of ballast
7 water within a vessel.

8 (S) ~~(t)~~—"Sewage sludge" means sewage sludge generated in the
9 treatment of domestic sewage, other than only septage or industrial
10 waste.

11 (T) ~~(u)~~—"Sewage sludge derivative" means a product for land
12 application derived from sewage sludge that does not include solid
13 waste or other waste regulated under this act.

14 (U) ~~(v)~~—"Sewage sludge generator" means a person who generates
15 sewage sludge that is applied to land.

16 (V) ~~(w)~~—"Sewage sludge distributor" means a person who
17 applies, markets, or distributes, except at retail, a sewage sludge
18 derivative.

19 (W) ~~(x)~~—"St. Lawrence waterway" means the St. Lawrence river,
20 the St. Lawrence seaway, and the gulf of St. Lawrence.

21 (X) ~~(y)~~—"Threshold reporting quantity" means that term as
22 defined in R 324.2002 of the Michigan administrative code.

23 (Y) ~~(z)~~—"Waters of the state" means groundwaters, lakes,
24 rivers, and streams and all other watercourses and waters,
25 including the Great Lakes, within the jurisdiction of this state.

26 Sec. 3131. ~~(1) By October 1, 1997, the~~ **THE** department ~~of~~
27 ~~environmental quality~~ in consultation with the department of

1 agriculture shall promulgate rules to manage the land application
2 of sewage sludge and sewage sludge derivatives. The rules shall be
3 consistent with the minimum requirements of 40 C.F.R.—CFR part 503
4 but may impose requirements in addition to or more stringent than
5 40 C.F.R.—CFR part 503 to protect public health or the environment
6 from any adverse effect from a pollutant in sewage sludge or in a
7 sewage sludge derivative. However, the rules shall require that if
8 monitoring of sewage sludge or a sewage sludge derivative indicates
9 a pollutant concentration in excess of that provided in table 3 of
10 40 C.F.R.—CFR 503.13, monitoring frequency shall be increased to
11 not less than twice that provided in table 1 of 40 C.F.R.—CFR
12 503.16, until pollutant concentrations are at or below those
13 provided in table 3 of 40 C.F.R.—CFR 503.13. The rules shall
14 require a sewage sludge generator or sewage sludge distributor to
15 deliver to a county, city, village, or township a copy of any
16 record required to be created under the rules pertaining to sewage
17 sludge or a sewage sludge derivative applied to land in that local
18 unit. The copy shall be delivered free of charge promptly after the
19 record is created.

20 ~~—— (2) If the Michigan supreme court rules that sections 45 and~~
21 ~~46 of the administrative procedures act of 1969, 1969 PA 306, MCL~~
22 ~~24.245 and 24.246, are unconstitutional and a statute requiring~~
23 ~~legislative review of administrative rules is not enacted within 90~~
24 ~~days after the Michigan supreme court ruling, the rule-making~~
25 ~~authority under this section and any rules promulgated under that~~
26 ~~rule-making authority are rescinded, and the land application of~~
27 ~~sewage sludge shall be managed by the department of environmental~~

~~quality in consultation with the department of agriculture
consistent with the requirements of 40 C.F.R. part 503.~~

Sec. 3132. (1) Beginning in state fiscal year 1998, an annual sewage sludge land application fee is imposed upon sewage sludge generators and sewage sludge distributors. The sewage sludge land application fee shall be in an amount equal to the sum of an administrative fee and a generation fee. The administrative fee shall be \$400.00 and the department shall set the generation fee as provided by subsection (2). The department shall set the generation fee so that the annual cumulative total of the sewage sludge land application fee to be paid in a state fiscal year is, as nearly as possible, \$650,000.00 minus the amount in the fund created under subsection (5) carried forward from the prior state fiscal year. Starting with fees to be paid in state fiscal year 1999, the \$650,000.00 amount shall be annually adjusted for inflation using the Detroit consumer price index.

(2) Each sewage sludge generator and sewage sludge distributor shall annually report to the department for each state fiscal year, beginning with the 1997 state fiscal year, the number of dry tons of sewage sludge it generated or the number of dry tons of sewage sludge in sewage sludge derivatives it distributed that were applied to land in that state fiscal year. The report is due 30 days after the end of the state fiscal year. By December 15 of each state fiscal year, the department shall determine the generation fee on a per dry ton basis by dividing the cumulative generation fee by the number of dry tons of sewage sludge applied to land or in sewage sludge derivatives applied to land in the immediately

1 preceding state fiscal year. The department shall notify each
2 sewage sludge generator and sewage sludge distributor of the
3 generation fee on a per dry ton basis. Notwithstanding any other
4 provision of this section, for the 1998 state fiscal year, the
5 generation fee shall not exceed \$4.00 per dry ton.

6 (3) By January 31 of each state fiscal year, each sewage
7 sludge generator or sewage sludge distributor shall pay its sewage
8 sludge land application fee. The sewage sludge generator or sewage
9 sludge distributor shall determine the amount of its sewage sludge
10 land application fee by multiplying the number of dry tons of
11 sewage sludge that it reported under subsection (2) by the
12 generation fee and adding the administrative fee.

13 (4) The department ~~of environmental quality~~ shall assess
14 interest on all fee payments submitted under this section after the
15 due date. The permittee shall pay an additional amount equal to
16 0.75% of the payment due for each month or portion of a month the
17 payment remains past due. The failure by a person to timely pay a
18 fee imposed by this section is a violation of this part.

19 (5) The sewage sludge land application fund is created in the
20 state treasury. The department ~~of environmental quality~~ shall
21 forward all fees collected under this section to the state
22 treasurer for deposit into the fund. The state treasurer may
23 receive money or other assets from any source for deposit into the
24 fund. The state treasurer shall direct the investment of the fund.
25 The state treasurer shall credit to the fund interest and earnings
26 from fund investments. An unexpended balance within the fund at the
27 close of the state fiscal year shall be carried forward to the

1 following state fiscal year. The fund shall be allocated solely for
2 the administration of this section and sections 3131 and 3133,
3 including, but not limited to, education of the farmers, sewage
4 sludge generators, sewage sludge distributors, and the general
5 public about land application of sewage sludge and sewage sludge
6 derivatives and the requirements of this section and sections 3131
7 and 3133. The director ~~of the department of environmental quality~~
8 may contract with a nonprofit educational organization to
9 administer the educational components of this section. Ten percent
10 of the fund shall be allocated to the department of agriculture to
11 provide persons involved in or affected by land application of
12 sewage sludge or sewage sludge derivatives with education and
13 technical assistance relating to land application of sewage sludge
14 or sewage sludge derivatives.

15 (6) A local unit may enact, maintain, and enforce an ordinance
16 that prohibits the land application of sewage sludge or a sewage
17 sludge derivative if monitoring indicates a pollutant concentration
18 in excess of that provided in table 1 of 40 ~~C.F.R.~~ **CFR** 503.13 until
19 subsequent monitoring indicates that pollutant concentrations do
20 not exceed those provided in table 1 of 40 ~~C.F.R.~~ **CFR** 503.13.

21 Sec. 3133. (1) Except as otherwise provided in this section,
22 sections 3131 and 3132 preempt a local ordinance, regulation, or
23 resolution of a local unit that would duplicate, extend, revise, or
24 conflict with section 3131 or 3132. Except as otherwise provided
25 for in this section, a local unit shall not enact, maintain, or
26 enforce an ordinance, regulation, or resolution that duplicates,
27 extends, revises, or conflicts with section 3131 or 3132.

1 (2) The director ~~of the department of environmental quality~~
2 may contract with a local unit to act as its agent for the purpose
3 of enforcing this section and sections 3131 and 3132. The
4 department shall have sole authority to assess fees. If a local
5 unit is under contract with the department ~~of environmental quality~~
6 to act as its agent or the local unit has received prior written
7 authorization from the department, then the local unit may pass an
8 ordinance that is identical to section 3132 and rules promulgated
9 under section 3131, except as prohibited in subsection (4).

10 (3) A local unit may enact an ordinance prescribing standards
11 in addition to or more stringent than those contained in section
12 3132 or in rules promulgated under section 3131 and which regulate
13 a sewage sludge or sewage sludge derivative land application site
14 under either or both of the following circumstances:

15 (a) The operation of a sewage sludge or sewage sludge
16 derivative land application site within that local unit will result
17 in unreasonable adverse effects on the environment or public health
18 within the local unit. The determination that unreasonable adverse
19 effects on the environment or public health will exist shall take
20 into consideration specific populations whose health may be
21 adversely affected within the local unit.

22 (b) The operation of a sewage sludge or sewage sludge
23 derivative land application site within that local unit has
24 resulted or will result in the local unit being in violation of
25 other existing state laws or federal laws.

26 (4) An ordinance enacted pursuant to subsection (2) or (3)
27 shall not conflict with existing state laws or federal laws. An

1 ordinance enacted pursuant to subsection (3) shall not be enforced
2 by a local unit until approved or conditionally approved by the
3 director of the department ~~of environmental quality~~ under
4 subsection (5). The local unit shall comply with any conditions of
5 approval.

6 (5) If the legislative body of a local unit submits to the
7 department ~~of environmental quality~~ a resolution identifying how
8 the requirements of subsection (3)(a) or (b) are met, the
9 department shall hold a public meeting in the local unit within 60
10 days after the submission of the resolution to assist the
11 department in determining whether the requirements of subsection
12 (3)(a) or (b) are met. Within 45 days after the public meeting, the
13 department shall issue a detailed opinion on whether the
14 requirements of subsection (3)(a) or (b) are met as identified by
15 the resolution of the local unit and shall approve, conditionally
16 approve, or disapprove the ordinance accordingly. If the department
17 fails to satisfy the requirements of this subsection, the ordinance
18 is considered to be approved.

19 Sec. 3301. As used in this part:

20 (a) "Aquatic nuisance" means an organism that lives or
21 propagates, or both, within the aquatic environment and that
22 impairs the use or enjoyment of the waters of the state, including
23 the intermediate aquatic hosts for schistosomes that cause
24 swimmer's itch.

25 (b) "Certificate of coverage" means written authorization from
26 the department to implement a project under a general permit.

27 ~~— (c) "Department" means the department of environmental~~

1 ~~quality.~~

2 ~~—— (d) "Director" means the director of the department.~~

3 Sec. 5201. As used in this part:

4 (a) "Authority" means the Michigan municipal bond authority
5 created in section 4 of the shared credit rating act, 1985 PA 227,
6 MCL 141.1054.

7 ~~—— (b) "Department" means the department of environmental~~
8 ~~quality.~~

9 (B) ~~(e)~~—"Fund" means the strategic water quality initiatives
10 fund created in section 5204.

11 (C) ~~(d)~~—"Grant" means a grant from the grant program.

12 (D) ~~(e)~~—"Grant program" means the strategic water quality
13 initiatives grant program established under section 5204a.

14 (E) ~~(f)~~—"Loan" means a loan from the loan program.

15 (F) ~~(g)~~—"Loan program" means the strategic water quality
16 initiatives loan program established under section 5202.

17 (G) ~~(h)~~—"Municipality" means that term as it is defined in
18 section 5301.

19 (H) ~~(i)~~—"On-site septic system" means a natural system or
20 mechanical device used to store, treat, and dispose of sewage from
21 1 or more dwelling units that utilize a subsurface trench or bed
22 that allows the effluent to be absorbed and treated by the
23 surrounding soil, including a septic tank and tile field system.

24 (I) ~~(j)~~—"State water pollution control revolving fund" means
25 the state water pollution control revolving fund established under
26 section 16a of the shared credit rating act, 1985 PA 227, MCL
27 141.1066a.

1 Sec. 5402. As used in this part:

2 ~~— (a) "Department" means the department of environmental quality~~
3 ~~or its authorized agent or representative.~~

4 ~~— (b) "Director" means the director of the department of~~
5 ~~environmental quality or his or her designated representative.~~

6 **(A)** ~~(c)~~—"Disadvantaged community" means a municipality in
7 which all of the following conditions are met:

8 (i) Users within the area served by a proposed public water
9 supply project are directly assessed for the costs of construction.

10 (ii) The area served by a proposed public water supply project
11 does not exceed 120% of the statewide median annual household
12 income for Michigan.

13 (iii) The municipality demonstrates at least 1 of the following:

14 (A) More than 50% of the area served by a proposed public
15 water supply project is identified as a poverty area by the United
16 States bureau of the census.

17 (B) The median annual household income of the area served by a
18 proposed public water supply project is less than the most recently
19 published federal poverty guidelines for a family of 4 in the 48
20 contiguous United States. In determining the median annual
21 household income of the area served by the proposed public water
22 supply project under this subparagraph, the municipality shall
23 utilize the most recently published statistics from the United
24 States Bureau of the Census, updated to reflect current dollars,
25 for the community which most closely approximates the area being
26 served. If these figures are not available for the area served by
27 the proposed public water supply project, the municipality may have

1 a survey conducted to document the median annual household income
2 of the area served by the project.

3 (C) The median annual household income of the area served by a
4 proposed public water supply project is less than the most recently
5 published statewide median annual household income for Michigan,
6 and annual user costs for water supply exceed 1.5% of the median
7 annual household income of the area served by the proposed public
8 water supply project.

9 (D) The median annual household income of the area served by a
10 proposed public water supply project is not greater than 120% of
11 the statewide median annual household income for Michigan, and
12 annual user costs for water supply exceed 3% of the median annual
13 household income of the area served by the proposed project.

14 (B) ~~(d)~~—"Federal safe drinking water act" means title XIV of
15 the public health service act, chapter 373, 88 Stat. 1660, and the
16 rules promulgated under that act.

17 (C) ~~(e)~~—"Fund" means the safe drinking water revolving fund
18 created in section 16b of the shared credit rating act, 1985 PA
19 227, MCL 141.1066b.

20 (D) ~~(f)~~—"Fundable range" means those projects, taken in
21 descending order on the priority list, for which the department
22 estimates sufficient funds exist to provide assistance during each
23 annual funding cycle.

24 (E) ~~(g)~~—"Municipality" means a city, village, county,
25 township, authority, public school district, or other public body
26 with taxing authority, including an intermunicipal agency of 2 or
27 more municipalities, authorized or created under state law.

1 (F) ~~(h)~~—"Noncommunity water supply" means a public water
2 supply that is not a community water supply, but that has not less
3 than 15 service connections or that serves not less than 25
4 individuals on an average daily basis for not less than 60 days per
5 year.

6 Sec. 5703. (1) The office of the small business clean air
7 ombudsman is created within the department of ~~commerce~~**ENERGY,**
8 **LABOR, AND ECONOMIC GROWTH.** The office shall exercise its powers
9 and duties independently of any state department or entity.

10 (2) The principal executive officer of the office is the small
11 business clean air ombudsman, who shall be appointed by the
12 governor.

13 Sec. 5705. The program is created in the department of
14 ~~commerce~~**ENERGY, LABOR, AND ECONOMIC GROWTH.** The program shall
15 develop adequate mechanisms for all of the following:

16 (a) Developing, collecting, and coordinating information on
17 compliance methods and technologies for small businesses.

18 (b) Encouraging lawful cooperation among small businesses and
19 other persons to further compliance with the clean air act and part
20 55.

21 (c) Assisting small business with information regarding
22 pollution prevention and accidental release detection and
23 prevention, including, but not limited to, providing information
24 concerning alternative technologies, process changes, and products
25 and methods of operation that help reduce air pollution.

26 (d) Establishing a compliance assistance program that assists
27 small businesses in determining applicable requirements for

1 compliance and the procedures for obtaining permits efficiently in
2 a timely manner under the clean air act or part 55, or both.

3 (e) Providing mechanisms and access to information so that
4 small businesses receive notification of their rights under the
5 clean air act and part 55 in a manner and form that assures
6 reasonably adequate time for small businesses to evaluate their
7 compliance methods or applicable proposed or final rules or
8 standards under the clean air act and part 55.

9 (f) Informing small businesses of their obligations under the
10 clean air act and part 55, including mechanisms for referring small
11 businesses to qualified auditors or to the state if the state
12 elects to provide audits to determine compliance with the clean air
13 act and part 55. To the extent permissible by state and federal
14 law, audits shall be separate from the formal inspection and
15 compliance program.

16 (g) Providing information on how to obtain consideration from
17 the department on requests from small businesses for modifications
18 of any work practice, technological method of compliance, or the
19 schedule of milestones for reductions of emissions preceding an
20 applicable compliance date.

21 Sec. 6306. (1) Each motor vehicle subject to this part shall
22 be inspected for emissions as provided in this part. A person shall
23 not operate a motor vehicle subject to this part whose certificate
24 of compliance has expired or who has not received a time extension
25 or waiver and whose vehicle fails to meet emission cut points
26 established by the department or other emission control
27 requirements established by the department in this part. If a

1 vehicle subject to testing under this part has not been tested
2 within the previous 12 months, the prospective seller of the
3 vehicle shall have the vehicle tested and complete necessary
4 repairs before offering the vehicle for sale.

5 (2) To enforce this section, the department shall implement
6 and administer a motor vehicle emissions inspection and maintenance
7 program designed to meet the performance standards for a motor
8 vehicle emissions inspection and maintenance program as established
9 by the United States environmental protection agency in 40 ~~C.F.R.~~
10 **CFR** 51.351 in the counties of Kent, Ottawa, and Muskegon in those
11 areas that are not in attainment of the national ambient air
12 quality standards for ozone. However, those counties that would be
13 in attainment of the national ambient air quality standards for
14 ozone, given base line emissions for that county, but for emissions
15 emanating from outside of the state, are excluded from
16 implementation of such a program unless the department of
17 ~~environmental quality~~ **NATURAL RESOURCES** shall affirmatively
18 determine by clear and convincing evidence, based on study of
19 formation and transport of ozone, that the control of motor vehicle
20 emissions would significantly contribute to the attainment of the
21 national ambient air quality standards for ozone as promulgated
22 under the clean air act. The motor vehicle emissions inspection and
23 maintenance program shall include the following test procedures and
24 components:

25 (a) Biennial testing.

26 (b) Test-only network.

27 (c) Transient mass-emission evaporative system, purge, and

1 pressure testing on 1981 and later model year vehicles using the
2 IM240 driving cycle.

3 (d) Two-speed idle testing, antitampering, and pressure test
4 on 1975 to 1980 vehicles in accordance with the following:

5 (i) Visual antitampering inspection of the catalytic converter,
6 gas cap, PCV valve, air pump, and fuel inlet restrictor on light-
7 duty gas vehicles and light-duty gas trucks of 10,000 pounds or
8 less gross vehicle weight.

9 (ii) Pressure test of the evaporative system for light-duty gas
10 vehicles and light-duty gas trucks of 10,000 pounds or less gross
11 vehicle weight.

12 (e) On-board diagnostic check for vehicles so equipped.

13 (3) The cut points set forth in test procedures, quality
14 control requirements, and equipment specifications issued by the
15 United States environmental protection agency are hereby adopted
16 for the emissions testing program authorized in this part.

17 (4) Equipment and test procedures shall meet the requirements
18 of appendices A through E to subpart S of 40 ~~C.F.R.~~ **CFR** 51 and the
19 test procedures, quality control requirements, and equipment
20 specifications issued by the United States environmental protection
21 agency.

22 (5) Vehicles shall be subject to inspection according to the
23 following:

24 (a) The first initial inspection under this part for each even
25 numbered model year vehicle shall take place within 6 months before
26 the expiration of the vehicle registration in an even numbered
27 calendar year.

1 (b) The first initial inspection under this part for each odd
2 numbered model year vehicle shall take place within 6 months before
3 the expiration of the vehicle registration in an odd numbered
4 calendar year.

5 (6) The department, in consultation with the department of
6 state and the department of ~~environmental quality~~ **NATURAL**
7 **RESOURCES**, may promulgate rules for the administration of the motor
8 vehicle emissions inspection and maintenance program, including,
9 but not limited to, all of the following:

10 (a) Standards for public inspection station equipment,
11 including emission testing equipment.

12 (b) Emission test cut points and other emission control
13 requirements based on the clean air act and the state
14 implementation plan.

15 (c) Exemptions from inspections as authorized under this part.

16 (d) Standards and procedures for the issuance of certificates
17 of compliance and certificates of waiver from inspection and
18 maintenance program requirements.

19 (e) Rules to ensure that owners of motor vehicles registered
20 in this state who temporarily reside out of state are not unduly
21 inconvenienced by the requirements of this part. The rules may
22 include any of the following:

23 (i) Reciprocal agreements with other states that require motor
24 vehicle inspections that are at least as stringent as those
25 required under this part and rules promulgated under this part.

26 (ii) Provision for time extensions of not more than 2 years for
27 persons temporarily residing in a state, the District of Columbia,

1 or a territory of the United States with which this state has not
2 entered into a reciprocal agreement for vehicle emissions
3 inspection and maintenance. Additional time extensions shall be
4 granted to persons temporarily residing out of state because of
5 military service.

6 (7) The department may promulgate rules to require the
7 inspection of motor vehicles through the use of remote sensing
8 devices. These rules may provide for use of remote sensing devices
9 for research purposes, but shall not provide for any checklanes or
10 other measures by which motorists will be stopped on highways or
11 other areas open to the general public.

12 (8) Upon receipt of documentation from the department, the
13 department of state may suspend the registration of any vehicle
14 that is not in compliance with this part and the rules promulgated
15 under this part and for which the required certificate of
16 compliance has not been obtained.

17 (9) If any area in this state subject to this part is
18 redesignated by the United States environmental protection agency
19 as being in attainment with the national ambient air quality
20 standards for ozone, a motor vehicle emissions inspection and
21 maintenance program authorized by this part is suspended and shall
22 only be reimplemented if required as a contingency measure included
23 in a maintenance plan approved by the United States environmental
24 protection agency as part of the redesignation as an ozone
25 attainment area. The department may only implement the contingency
26 measure if there is observation of an actual violation of the ozone
27 national ambient air quality standard under 40 C.F.R.—**CFR** 50.9

1 during the maintenance period.

2 (10) Implementation of a motor vehicle emissions inspection
3 and maintenance program authorized by this part shall be suspended
4 if the classification of the Grand Rapids and Muskegon ozone
5 nonattainment areas is adjusted from moderate ozone nonattainment
6 areas to transitional or marginal nonattainment areas by the United
7 States environmental protection agency pursuant to its authority
8 under section 181 of the clean air act, 42 ~~U.S.C.~~ **USC** 7511, or if
9 the United States environmental protection agency determines that a
10 motor vehicle emissions inspection and maintenance program is not
11 applicable or is not necessary for either of these areas to meet
12 the requirements of the clean air act.

13 Sec. 8307a. (1) Every pesticide distributed, sold, exposed, or
14 offered for sale in this state shall be registered with the
15 director pursuant to this part. The registration shall be submitted
16 on a form provided by the director and shall be renewed annually
17 before July 1. The director shall not register a pesticide under
18 this part unless the registrant has paid all groundwater protection
19 fees and late fees required under part 87, registration fees under
20 this part, and any administrative fines imposed under this part.

21 (2) A pesticide is considered distributed, sold, exposed, or
22 offered for sale in this state when the offer to sell either
23 originates within this state or is directed by the offeror to
24 persons in this state and received by those persons.

25 (3) If a registrant distributes identical pesticides under
26 more than 1 brand name, or distributes more than 1 pesticide
27 formulation, each brand or formulation shall be registered as a

1 separate product.

2 (4) A registrant shall not register a pesticide that contains
3 a substance that is required to be registered with the department
4 unless that substance is also registered with the department.

5 (5) A pesticide registration applicant shall submit to the
6 director a complete copy of the pesticide labeling and the
7 following, in a format prescribed by the director:

8 (a) The name and address of the applicant and the name and
9 address of the person whose name will appear on the label, if other
10 than the applicant.

11 (b) The full product name of the pesticide and the EPA
12 registration number.

13 (c) Other information considered necessary by the director.

14 (6) The applicant shall submit a complete formula of the
15 pesticide proposed for registration, including the active and inert
16 ingredients, when requested by the director and necessary for the
17 director to execute his or her duties under this part. The director
18 shall not use any information relative to formulas of products,
19 trade secrets, or other information obtained under this part for
20 his or her own advantage or reveal such information, other than to
21 his or her authorized representative, the EPA, the department of
22 ~~environmental quality~~ **NATURAL RESOURCES**, the department of
23 community health, a court of the state in response to a subpoena, a
24 licensed physician, or in an emergency to a pharmacist or other
25 persons qualified to administer antidotes.

26 Sec. 8707. (1) The director, in conjunction with Michigan
27 state university extension and the Michigan state university

1 agricultural experiment station, and in cooperation with the United
2 States department of agriculture natural resources conservation
3 service, the department of ~~environmental quality~~ **NATURAL RESOURCES**,
4 and other professional and industry organizations, shall develop
5 groundwater stewardship practices for approval by the commission of
6 agriculture and upon approval shall promote their implementation.

7 (2) The director, in conjunction with Michigan state
8 university, the department of ~~environmental quality~~ **NATURAL**
9 **RESOURCES**, and other persons the director considers appropriate,
10 shall develop a voluntary on-site evaluation system for pesticide
11 or nitrogen fertilizer use. The on-site evaluation system shall be
12 designed to do all of the following:

13 (a) Provide persons with the ability to voluntarily determine
14 the relative groundwater impact potential posed by their use of
15 pesticides and nitrogen fertilizers.

16 (b) Provide persons with the ability to determine the degree
17 to which operations are in accord with groundwater stewardship
18 practices and applicable groundwater protection rules.

19 (c) Prioritize operational changes at the site level intended
20 to protect groundwater.

21 (d) Guide persons to appropriate technical and educational
22 materials.

23 (3) The director, in conjunction with the groundwater advisory
24 council, shall review and evaluate the effectiveness of groundwater
25 stewardship practices adopted under subsection (1).

26 Sec. 8801. As used in this part:

27 ~~— (a) "Department" means the department of environmental~~

1 ~~quality.~~

2 (A) ~~(b)~~—"Director" means the director of the department **OF**
3 **NATURAL RESOURCES.**

4 (B) ~~(c)~~—"Fund" means the clean water fund created in section
5 8807.

6 (C) ~~(d)~~—"Grant" means a nonpoint source pollution prevention
7 and control grant or a wellhead protection grant under this part.

8 (D) ~~(e)~~—"Local unit of government" means a county, city,
9 village, or township, or an agency of a county, city, village, or
10 township; the office of a county drain commissioner; a soil
11 conservation district established under part 93; a watershed
12 council; a local health department as defined in section 1105 of
13 the public health code, 1978 PA 368, MCL 333.1105; or an authority
14 or any other public body created by or pursuant to state law.

15 (E) ~~(f)~~—"Nonpoint source pollution" means water pollution from
16 diffuse sources, including runoff from precipitation or snowmelt
17 contaminated through contact with pollutants in the soil or on
18 other surfaces and either infiltrating into the groundwater or
19 being discharged to surface waters, or runoff or wind causing
20 erosion of soil into surface waters.

21 Sec. 9101. (1) "Agricultural practices" means all land farming
22 operations except the plowing or tilling of land for the purpose of
23 crop production or the harvesting of crops.

24 (2) "Authorized public agency" means a state agency or an
25 agency of a local unit of government authorized under section 9110
26 to implement soil erosion and sedimentation control procedures with
27 regard to earth changes undertaken by it.

1 (3) "Conservation district" means a conservation district
2 authorized under part 93.

3 (4) "Consultant" means either of the following:

4 (a) An individual who has a current certificate of training
5 under section 9123.

6 (b) A person who employs 1 or more individuals who have
7 current certificates of training under section 9123.

8 (5) "County agency" means an officer, board, commission,
9 department, or other entity of county government.

10 (6) "County enforcing agency" means a county agency or a
11 conservation district designated by a county board of commissioners
12 under section 9105.

13 (7) "County program" or "county's program" means a soil
14 erosion and sedimentation control program established under section
15 9105.

16 ~~(8) "Department" means the department of environmental~~
17 ~~quality.~~

18 (8) ~~(9)~~—"Earth change" means a human-made change in the
19 natural cover or topography of land, including cut and fill
20 activities, which may result in or contribute to soil erosion or
21 sedimentation of the waters of the state. Earth change does not
22 include the practice of plowing and tilling soil for the purpose of
23 crop production.

24 (9) ~~(10)~~—"Gardening" means activities necessary to the growing
25 of plants for personal use, consumption, or enjoyment.

26 (10) ~~(11)~~—"Local ordinance" means an ordinance enacted by a
27 local unit of government under this part providing for soil erosion

1 and sedimentation control.

2 (11) ~~(12)~~—"Municipal enforcing agency" means an agency
3 designated by a municipality under section 9106 to enforce a local
4 ordinance.

5 (12) ~~(13)~~—"Municipality" means any of the following:

6 (a) A city.

7 (b) A village.

8 (c) A charter township.

9 (d) A general law township that is located in a county with a
10 population of 200,000 or more.

11 (13) ~~(14)~~—"Rules" means the rules promulgated pursuant to the
12 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
13 24.328.

14 (14) ~~(15)~~—"Seawall maintenance" means an earth change activity
15 landward of the seawall.

16 (15) ~~(16)~~—"Sediment" means solid particulate matter, including
17 both mineral and organic matter, that is in suspension in water, is
18 being transported, or has been removed from its site of origin by
19 the actions of wind, water, or gravity and has been deposited
20 elsewhere.

21 (16) ~~(17)~~—"Soil erosion" means the wearing away of land by the
22 action of wind, water, gravity, or a combination of wind, water, or
23 gravity.

24 (17) ~~(18)~~—"State agency" means a principal state department or
25 a state public university.

26 (18) ~~(19)~~—"Violation of this part" or "violates this part"
27 means a violation of this part, the rules promulgated under this

1 part, a permit issued under this part, or a local ordinance enacted
2 under this part.

3 (19) ~~(20)~~ "Waters of the state" means the Great Lakes and
4 their connecting waters, inland lakes and streams as defined in
5 rules promulgated under this part, and wetlands regulated under
6 part 303.

7 Sec. 11503. (1) "De minimis" refers to a small amount of
8 material or number of items, as applicable, commingled and
9 incidentally disposed of with other solid waste.

10 ~~— (2) "Department" means the department of environmental~~
11 ~~quality.~~

12 ~~— (3) "Director" means the director of the department.~~

13 (2) ~~(4)~~ "Discharge" includes, but is not limited to, any
14 spilling, leaking, pumping, pouring, emitting, emptying,
15 discharging, injecting, escaping, leaching, dumping, or disposing
16 of a substance into the environment which is or may become
17 injurious to the public health, safety, or welfare, or to the
18 environment.

19 (3) ~~(5)~~ "Disposal area" means 1 or more of the following at a
20 location as defined by the boundary identified in its construction
21 permit or engineering plans approved by the department:

22 (a) A solid waste transfer facility.

23 (b) Incinerator.

24 (c) Sanitary landfill.

25 (d) Processing plant.

26 (e) Other solid waste handling or disposal facility utilized
27 in the disposal of solid waste.

1 (4) ~~(6)~~—"Enforceable mechanism" means a legal method whereby
2 the state, a county, a municipality, or another person is
3 authorized to take action to guarantee compliance with an approved
4 county solid waste management plan. Enforceable mechanisms include
5 contracts, intergovernmental agreements, laws, ordinances, rules,
6 and regulations.

7 (5) ~~(7)~~—"Escrow account" means an account managed by a bank or
8 other financial institution whose account operations are regulated
9 and examined by a federal or state agency and which complies with
10 section 11523b.

11 (6) ~~(8)~~—"Farm" means that term as defined in section 2 of the
12 Michigan right to farm act, 1981 PA 93, MCL 286.472.

13 (7) ~~(9)~~—"Farm operation" means that term as defined in section
14 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

15 (8) ~~(10)~~—"Financial assurance" means the mechanisms used to
16 demonstrate that the funds necessary to meet the cost of closure,
17 postclosure maintenance and monitoring, and corrective action will
18 be available whenever they are needed.

19 (9) ~~(11)~~—"Financial test" means a corporate or local
20 government financial test or guarantee approved for type II
21 landfills under 42 USC 6941 to 6949a. An owner or operator may use
22 a single financial test for more than 1 facility. Information
23 submitted to the department to document compliance with the test
24 shall include a list showing the name and address of each facility
25 and the amount of funds assured by the test for each facility. For
26 purposes of the financial test, the owner or operator shall
27 aggregate the sum of the closure, postclosure, and corrective

1 action costs it seeks to assure with any other environmental
2 obligations assured by a financial test under state or federal law.

3 (10) ~~(12)~~—"Food processing residuals" means any of the
4 following:

5 (a) Residuals of fruits, vegetables, aquatic plants, or field
6 crops.

7 (b) Otherwise unusable parts of fruits, vegetables, aquatic
8 plants, or field crops from the processing thereof.

9 (c) Otherwise unusable food products which do not meet size,
10 quality, or other product specifications and which were intended
11 for human or animal consumption.

12 (11) ~~(13)~~—"Garbage" means rejected food wastes including waste
13 accumulation of animal, fruit, or vegetable matter used or intended
14 for food or that results from the preparation, use, cooking,
15 dealing in, or storing of meat, fish, fowl, fruit, or vegetable
16 matter.

17 (12) ~~(14)~~—"Scrap wood" means wood or wood product that is 1 or
18 more of the following:

19 (a) Plywood, pressed board, oriented strand board, or any
20 other wood or wood product mixed with glue or filler.

21 (b) Wood or wood product treated with creosote or
22 pentachlorophenol.

23 (c) Any other wood or wood product designated as scrap wood in
24 rules promulgated by the department.

25 (13) ~~(15)~~—"Treated wood" means wood or wood product that has
26 been treated with 1 or more of the following:

27 (a) Chromated copper arsenate (CCA).

1 (b) Ammoniacal copper quat (ACQ).

2 (c) Ammoniacal copper zinc arsenate (ACZA).

3 (d) Any other chemical designated in rules promulgated by the
4 department.

5 (14) ~~(16)~~—"Wood" means trees, branches, bark, lumber, pallets,
6 wood chips, sawdust, or other wood or wood product but does not
7 include scrap wood, treated wood, painted wood or painted wood
8 product, or any wood or wood product that has been contaminated
9 during manufacture or use.

10 Sec. 11701. As used in this part:

11 (a) "Agricultural land" means land on which a food crop, a
12 feed crop, or a fiber crop is grown, including land used or
13 suitable for use as a range or pasture; a sod farm; or a Christmas
14 tree farm.

15 (b) "Certified health department" means a city, county, or
16 district department of health certified under section 11716.

17 (c) "Cesspool" means a cavity in the ground that receives
18 waste to be partially absorbed directly or indirectly by the
19 surrounding soil.

20 ~~—(d) "Department" means the department of environmental quality~~
21 ~~or its authorized agent.~~

22 ~~—(e) "Director" means the director of the department of~~
23 ~~environmental quality or his or her designee.~~

24 (D) ~~(f)~~—"Domestic septage" means liquid or solid material
25 removed from a septic tank, cesspool, portable toilet, type III
26 marine sanitation device, or similar storage or treatment works
27 that receives only domestic sewage. Domestic septage does not

1 include liquid or solid material removed from a septic tank,
2 cesspool, or similar facility that receives either commercial
3 wastewater or industrial wastewater and does not include grease
4 removed from a grease interceptor, grease trap, or other
5 appurtenance used to retain grease or other fatty substances
6 contained in restaurant waste.

7 (E) ~~(g)~~—"Domestic sewage" means waste and wastewater from
8 humans or household operations.

9 (F) ~~(h)~~—"Domestic treatment plant septage" means biosolids
10 generated during the treatment of domestic sewage in a treatment
11 works and transported to a receiving facility or managed in
12 accordance with a residuals management program approved by the
13 department.

14 (G) ~~(i)~~—"Food establishment septage" means material pumped
15 from a grease interceptor, grease trap, or other appurtenance used
16 to retain grease or other fatty substances contained in restaurant
17 wastes and which is blended into a uniform mixture, consisting of
18 not more than 1 part of that restaurant-derived material per 3
19 parts of domestic septage, prior to land application or disposed of
20 at a receiving facility.

21 (H) ~~(j)~~—"Fund" means the septage waste program fund created in
22 section 11717.

23 (I) ~~(k)~~—"Governmental unit" means a county, township,
24 municipality, or regional authority.

25 (J) ~~(l)~~—"Incorporation" means the mechanical mixing of surface-
26 applied septage waste with the soil.

27 (K) ~~(m)~~—"Injection" means the pressurized placement of septage

1 waste below the surface of soil.

2 (I) ~~(n)~~—"Operating plan" means a plan developed by a receiving
3 facility for receiving septage waste that specifies at least all of
4 the following:

5 (i) Categories of septage waste that the receiving facility
6 will receive.

7 (ii) The receiving facility's service area.

8 (iii) The hours of operation for receiving septage waste.

9 (iv) Any other conditions for receiving septage waste
10 established by the receiving facility.

11 (M) ~~(e)~~—"Pathogen" means a disease-causing agent. Pathogen
12 includes, but is not limited to, certain bacteria, protozoa,
13 viruses, and viable helminth ova.

14 (N) ~~(p)~~—"Peace officer" means a sheriff or sheriff's deputy, a
15 village or township marshal, an officer of the police department of
16 any city, village, or township, any officer of the Michigan state
17 police, any peace officer who is trained and certified pursuant to
18 the commission on law enforcement standards act, 1965 PA 203, MCL
19 28.601 to 28.616, or any conservation officer appointed by the
20 department ~~or the department of natural resources~~ pursuant to
21 section 1606.

22 (O) ~~(q)~~—"Portable toilet" means a receptacle for human waste
23 temporarily in a location for human use.

24 (P) ~~(r)~~—"Receiving facility" means a structure that is
25 designed to receive septage waste for treatment at a wastewater
26 treatment plant or at a research, development, and demonstration
27 project authorized under section 11511b to which the structure is

1 directly connected, and that is available for that purpose as
2 provided for in an ordinance of the local unit of government where
3 the structure is located or in an operating plan. Receiving
4 facility does not include either of the following:

5 (i) A septic tank.

6 (ii) A structure or a wastewater treatment plant at which the
7 disposal of septage waste is prohibited by order of the department
8 under section 11708 or 11715b.

9 (Q) ~~(s)~~—"Receiving facility service area" or "service area"
10 means the territory for which a receiving facility has the capacity
11 and is available to receive and treat septage waste, subject to the
12 following:

13 (i) Beginning October 12, 2005 and before the 2011 state fiscal
14 year, the geographic service area of a receiving facility shall not
15 extend more than 15 radial miles from the receiving facility.

16 (ii) After the 2010 state fiscal year, the geographic service
17 area of a receiving facility shall not extend more than 25 radial
18 miles from the receiving facility.

19 (R) ~~(t)~~—"Sanitary sewer cleanout septage" means sanitary
20 sewage or cleanout residue removed from a separate sanitary sewer
21 collection system that is not land applied and that is transported
22 by a vehicle licensed under this part elsewhere within the same
23 system or to a receiving facility that is approved by the
24 department.

25 (S) ~~(u)~~—"Septage waste" means the fluid mixture of untreated
26 and partially treated sewage solids, liquids, and sludge of human
27 or domestic origin that is removed from a wastewater system.

1 Septage waste consists only of food establishment septage, domestic
2 septage, domestic treatment plant septage, or sanitary sewer
3 cleanout septage, or any combination of these.

4 (T) ~~(v)~~—"Septage waste servicing license" means a septage
5 waste servicing license as provided for under sections 11703 and
6 11706.

7 (U) ~~(w)~~—"Septage waste vehicle" means a vehicle that is self-
8 propelled or towed and that includes a tank used to transport
9 septage waste. Septage waste vehicle does not include an implement
10 of husbandry as defined in section 21 of the Michigan vehicle code,
11 1949 PA 300, MCL 257.21.

12 (V) ~~(x)~~—"Septage waste vehicle license" means a septage waste
13 vehicle license as provided for under sections 11704 and 11706.

14 (W) ~~(y)~~—"Septic tank" means a septic toilet, chemical closet,
15 or other enclosure used for the decomposition of domestic sewage.

16 (X) ~~(z)~~—"Service" or "servicing" means cleaning, removing,
17 transporting, or disposing, by application to land or otherwise, of
18 septage waste.

19 (Y) ~~(aa)~~—"Site" means a location or locations on a parcel or
20 tract, as those terms are defined in section 102 of the land
21 division act, 1967 PA 288, MCL 560.102, proposed or used for the
22 disposal of septage waste on land.

23 (Z) ~~(bb)~~—"Site permit" means a permit issued under section
24 11709 authorizing the application of septage waste to a site.

25 (AA) ~~(cc)~~—"Storage facility" means a structure that receives
26 septage waste for storage but not for treatment.

27 (BB) ~~(dd)~~—"Tank" means an enclosed container placed on a

1 septage waste vehicle to carry or transport septage waste.

2 (CC) ~~(ee)~~ "Type I public water supply", "type IIa public water
3 supply", "type IIb public water supply", and "type III public water
4 supply" mean those terms, respectively, as described in R 325.10502
5 of the Michigan administrative code.

6 (DD) ~~(ff)~~ "Type III marine sanitation device" means that term
7 as defined in 33 CFR 159.3.

8 Sec. 11715d. ~~(1) Within 60 days after the effective date of~~
9 ~~the amendatory act that added this section, the department shall~~
10 ~~convene an advisory committee to make recommendations on septage~~
11 ~~waste storage facility management practices, including, but not~~
12 ~~limited to, storage facility inspections. The advisory committee~~
13 ~~shall include at least all of the following:~~

14 ~~—— (a) A storage facility operator.~~

15 ~~—— (b) A receiving facility operator.~~

16 ~~—— (c) A generator of septage waste.~~

17 ~~—— (d) A representative of township government.~~

18 ~~—— (e) A representative of an environmental protection~~
19 ~~organization.~~

20 ~~—— (f) A licensed Michigan septage waste hauler.~~

21 ~~—— (2) Within 18 months after the effective date of this section,~~
22 ~~the~~

23 (1) **THE** department shall establish generally accepted septage
24 storage facility management practices and post the management
25 practices on the department's website.

26 (2) ~~(3)~~ A person shall not construct a septage waste storage
27 facility without written approval from the department.

1 Sec. 12101. As used in this part:

2 (a) "Biofuel" means any renewable liquid or gas fuel offered
3 for sale as a fuel that is derived from recently living organisms
4 or their metabolic by-products and meets applicable quality
5 standards, including, but not limited to, ethanol, ethanol-blended
6 fuel, biodiesel, and biodiesel blends.

7 (b) "Biogas" means a biofuel that is a gas.

8 (c) "Brine" means a liquid produced as a by-product of oil or
9 natural gas production or exploration.

10 (d) "Container" means any portable device in which a liquid
11 industrial waste is stored, transported, treated, or otherwise
12 handled.

13 ~~(e) "Department" means the department of environmental~~
14 ~~quality.~~

15 **(E)** ~~(f)~~ "Designated facility" means a treatment facility,
16 storage facility, disposal facility, or reclamation facility that
17 receives liquid industrial waste from off-site.

18 ~~(g) "Director" means the director of the department.~~

19 **(F)** ~~(h)~~ "Discarded" means any of the following:

20 (i) Abandoned by being disposed of, burned, or incinerated; or
21 accumulated, stored, or treated before, or instead of, being
22 abandoned.

23 (ii) Accumulated, stored, or treated before being managed in 1
24 of the following ways:

25 (A) By being used or reused in a manner constituting disposal
26 by being applied to or placed on land or by being used to produce
27 products that are applied to or placed on land.

1 (B) By being burned to recover energy or used to produce a
2 fuel.

3 (C) By reclamation.

4 (G) ~~(i)~~—"Discharge" means the accidental or intentional
5 spilling, leaking, pumping, releasing, pouring, emitting, emptying,
6 or dumping of liquid industrial waste into the land, air, or water.

7 (H) ~~(j)~~—"Disposal" means the abandonment, discharge, deposit,
8 injection, dumping, spilling, leaking, or placing of a liquid
9 industrial waste into or on land or water in such a manner that the
10 liquid industrial waste may enter the environment, or be emitted
11 into the air, or discharged into surface water or groundwater.

12 (I) ~~(k)~~—"Disposal facility" means a facility or a part of a
13 facility at which liquid industrial waste is disposed.

14 (J) ~~(l)~~—"Facility" means all contiguous land and structures,
15 other appurtenances, and improvements on land for treating,
16 storing, disposing of, or reclamation of liquid industrial waste.

17 (K) ~~(m)~~—"Generator" means a person whose act or process
18 produces liquid industrial waste.

19 (L) ~~(n)~~—"Liquid industrial waste" means any brine, by-product,
20 industrial wastewater, leachate, off-specification commercial
21 chemical product, sludge, sanitary sewer clean-out residue, storm
22 sewer clean-out residue, grease trap clean-out residue, spill
23 residue, used oil, or other liquid waste that is produced by, is
24 incident to, or results from industrial, commercial, or
25 governmental activity or any other activity or enterprise
26 determined to be liquid by method 9095 (paint filter liquids test)
27 as described in "Test methods for evaluating solid wastes,

1 physical/chemical methods," United States environmental protection
2 agency publication no. SW-846, and which is discarded. Liquid
3 industrial waste does not include any of the following:

4 (i) Hazardous waste regulated and required to be manifested
5 under part 111.

6 (ii) Septage waste regulated under part 117.

7 (iii) Medical waste regulated under part 138 of the public
8 health code, 1978 PA 368, MCL 333.13801 to 333.13831.

9 (iv) A discharge to the waters of the state in accordance with
10 a permit, order, or rule under part 31.

11 (v) A liquid generated by a household.

12 (vi) A liquid regulated under 1982 PA 239, MCL 287.651 to
13 287.683.

14 (vii) Material managed in accordance with section 12102a.

15 Sec. 14301. As used in this part:

16 ~~— (a) "Department" means the department of environmental~~
17 ~~quality.~~

18 (A) ~~(b)~~ "Environmental wastes" means all environmental
19 pollutants, wastes, discharges, and emissions, regardless of how
20 they are regulated and regardless of whether they are released to
21 the general environment or the workplace environment.

22 (B) ~~(c)~~ "Pollution prevention" means all of the following:

23 (i) "Source reduction" as defined in the pollution prevention
24 act of 1990, subtitle G of title VI of the omnibus budget
25 reconciliation act of 1990, Public Law 101-508, 42 U.S.C. ~~USC~~ 13101
26 to 13109.

27 (ii) "Pollution prevention" as described in the United States

1 environmental protection agency's pollution prevention statement
2 dated June 15, 1993.

3 (iii) Environmentally sound on-site or off-site reuse or
4 recycling.

5 Sec. 14501. As used in this part:

6 (a) "Agricultural biomass" means residue and waste generated
7 on a farm or by farm co-operative members from the production and
8 processing of agricultural products, animal wastes, food processing
9 wastes, or other materials as approved by the director.

10 ~~— (b) "Department" means the department of environmental~~
11 ~~quality.~~

12 ~~— (c) "Director" means the director of the department of~~
13 ~~environmental quality.~~

14 (B) ~~(d)~~—"Eligible farmer or agricultural processor" means a
15 person who processes agricultural products or a person who is
16 engaged as an owner-operator of a farm in the production of
17 agricultural goods as defined by section 35(1)(h) of the former
18 single business tax act, 1975 PA 228, or by section 207(1)(d) of
19 the Michigan business tax act, 2007 PA 36, MCL 208.1207.

20 (C) ~~(e)~~—"Environmental wastes" means all environmental
21 pollutants, wastes, discharges, and emissions, regardless of how
22 they are regulated and regardless of whether they are released to
23 the general environment or the workplace environment.

24 (D) ~~(f)~~—"Pollution prevention" means all of the following:

25 (i) "Source reduction" as defined in 42 USC 13102.

26 (ii) "Pollution prevention" as described in the United States
27 environmental protection agency's pollution prevention statement

1 dated June 15, 1993.

2 (iii) Environmentally sound on-site or off-site reuse or
3 recycling including, but not limited to, the use of agricultural
4 biomass by qualified agricultural energy production systems.

5 (E) ~~(g)~~—"Qualified agricultural energy production system"
6 means the structures, equipment, and apparatus to be used to
7 produce a gaseous fuel from the noncombustive decomposition of
8 agricultural biomass and the apparatus and equipment used to
9 generate electricity or heat from the gaseous fuel or store the
10 gaseous fuel for future generation of electricity or heat.
11 Qualified agricultural energy production system may include, but is
12 not limited to, a methane digester, biomass gasification
13 technology, or thermal depolymerization technology.

14 (F) ~~(h)~~—"RETAP" means the retired engineers technical
15 assistance program created in section 14511.

16 (G) ~~(i)~~—"Retap"—**RETAP** fund" means the retired engineers
17 technical assistance program fund created in section 14512.

18 (H) ~~(j)~~—"Small business" means a business that is not dominant
19 in its field as described in 13 CFR part 121 and meets both of the
20 following requirements:

21 (i) Is independently owned or operated, by a person that
22 employs 500 or fewer individuals.

23 (ii) Is a small business concern as defined in 15 USC 632.
24 Sec. 14701. As used in this subpart:

25 ~~—(a) "Department" means the department of environmental~~
26 ~~quality.~~

27 (A) ~~(b)~~—"PCB" means the class of chlorinated biphenyl,

1 terphenyl, higher polyphenyl, or mixtures of these compounds
2 produced by replacing 2 or more hydrogen atoms on the biphenyl,
3 terphenyl, or higher polyphenyl molecule with chlorine atoms. PCB
4 does not include chlorinated biphenyls, terphenyls, higher
5 polyphenyls, or mixtures of these compounds that have functional
6 groups attached other than chlorine unless that functional group on
7 the chlorinated biphenyls, terphenyls, higher polyphenyls, or
8 mixtures of these compounds is determined to be dangerous to the
9 public health, safety, and welfare under section 14703.

10 (B) ~~(e)~~ "Ppm" means parts per million.

11 Sec. 14721. (1) As used in this subpart:

12 ~~—— (a) "Department" means the department of environmental~~
13 ~~quality.~~

14 (A) ~~(b)~~ "Octa-BDE" means octabromodiphenyl ether.

15 (B) ~~(e)~~ "PBDE" means polybrominated diphenyl ether.

16 (C) ~~(d)~~ "Penta-BDE" means pentabromodiphenyl ether.

17 (2) This subpart may be cited as the "Mary Beth Doyle PBDE
18 act".

19 Sec. 14802. (1) The owner or operator of a facility, or an
20 employee or agent of the owner or operator on behalf of the owner
21 or operator, at any time may conduct an environmental audit and may
22 create an environmental audit report.

23 (2) Except as provided in subsection (3), an environmental
24 audit report created pursuant to this part is privileged and
25 protected from disclosure under this part.

26 (3) The privilege described in subsection (2) does not extend
27 to any of the following regardless of whether or not they are

1 included within an environmental audit report:

2 (a) Documents, communication, data, reports, or other
3 information required to be collected, maintained, or made available
4 or reported to a regulatory agency or any other person by statute,
5 rule, ordinance, permit, order, consent agreement, or as otherwise
6 provided by law.

7 (b) Information obtained by observation, sampling, or
8 monitoring by any regulatory agency.

9 (c) Pretreatment monitoring results which a publicly owned
10 treatment works or control authority requires any industrial user
11 to report to a publicly owned treatment works or control authority,
12 including, but not limited to, results establishing a violation of
13 the industrial user's discharge permit or applicable local
14 ordinance.

15 (d) Information legally obtained from a source independent of
16 the environmental audit or from a person who did not obtain the
17 information from the environmental audit.

18 (e) Machinery and equipment maintenance records.

19 (f) Information in instances where the privilege is asserted
20 for a fraudulent purpose.

21 (g) Information in instances where the material shows evidence
22 of noncompliance with state, federal, regional, or local
23 environmental laws, permits, consent agreements, regulations,
24 ordinances, or orders and the owner or operator failed to either
25 take prompt corrective action or eliminate any violation of law
26 identified during the environmental audit within a reasonable time,
27 but not exceeding 3 years after discovery of the noncompliance or

1 violation unless a longer period of time is set forth in a schedule
2 of compliance in an order issued by the department, ~~of~~
3 ~~environmental quality~~, after notice in the department's calendar,
4 and following the department's determination that acceptable
5 progress is being made.

6 (4) Except as otherwise provided in this part, a person who
7 conducts an environmental audit and a person to whom the
8 environmental audit results are disclosed shall not be compelled to
9 testify regarding any information obtained solely through the
10 environmental audit which is a privileged portion of the
11 environmental audit report. Except as otherwise provided in this
12 part, the privileged portions of an environmental audit report are
13 not subject to discovery and are not admissible as evidence in any
14 civil or administrative proceeding.

15 Sec. 14804. (1) A request by state or local law enforcement
16 authorities for disclosure of an environmental audit report shall
17 be made by a written request delivered by certified mail or a
18 demand by lawful subpoena. Within 30 business days after receipt of
19 a request for disclosure or subpoena, the person asserting the
20 privilege may make a written objection to the disclosure of the
21 environmental audit report on the basis that the environmental
22 audit report is privileged. Upon receipt of such an objection, the
23 state or local law enforcement authorities may file with the
24 circuit court, and serve upon the person, a petition requesting an
25 in camera hearing on whether the environmental audit report or
26 portions of the environmental audit report are privileged or
27 subject to disclosure. The motion shall be brought in camera and

1 under seal. The circuit court has jurisdiction over a petition
2 filed under this subsection requesting a hearing. Failure of the
3 person asserting the privilege to make an objection to disclosure
4 waives the privilege as to that person.

5 (2) Upon the filing of a petition for an in camera hearing
6 under subsection (1), the person asserting the privilege in
7 response to a request for disclosure or subpoena under this section
8 shall provide a copy of the environmental audit report to the court
9 and shall demonstrate in the in camera hearing all of the
10 following:

11 (a) The year the environmental audit report was prepared.

12 (b) The identity of the person conducting the audit.

13 (c) The name of the audited facility or facilities.

14 (d) A brief description of the portion or portions of the
15 environmental audit report for which privilege is claimed.

16 (3) Upon the filing of a petition for an in camera hearing
17 under subsection (1), the court shall issue an order under seal
18 scheduling, within 45 days after the filing of the petition, an in
19 camera hearing to determine whether the environmental audit report
20 or portions of the environmental audit report are privileged or
21 subject to disclosure. The counsel for the state or local law
22 enforcement agency seeking disclosure of the information contained
23 in the environmental audit report and the counsel for the person
24 asserting the privilege shall participate in the in camera hearing
25 but shall not disclose the contents of the environmental audit
26 report for which privilege is claimed unless the court so orders.

27 (4) The court, after in camera review, shall require

1 disclosure of material for which privilege is asserted, if the
2 court determines that either of the following exists:

3 (a) The privilege is asserted for a fraudulent purpose.

4 (b) Even if subject to the privilege, the material shows
5 evidence of noncompliance with state, federal, regional, or local
6 environmental laws, permits, consent agreements, regulations,
7 ordinances, or orders and the owner or operator failed to either
8 take prompt corrective action or eliminate any violation of law
9 identified during the environmental audit within a reasonable time,
10 but not exceeding 3 years after discovery of the noncompliance or
11 violation unless a longer period of time is set forth in a schedule
12 of compliance in an order issued by the department, ~~of~~
13 ~~environmental quality~~, after notice in the department's calendar,
14 and following the department's determination that acceptable
15 progress is being made.

16 (5) The court, after in camera review, shall require
17 disclosure of material for which privilege is asserted if the court
18 determines that the material is not subject to the privilege.

19 (6) If the court determines under this section that the
20 material is not privileged, but the party asserting the privilege
21 files an application for leave to appeal of this finding, the
22 material, motions, and pleadings shall be disclosed unless the
23 court specifically determines that all or a portion of such
24 information shall be kept under seal during the pendency of the
25 appeal.

26 Sec. 14810. ~~(1) The department of environmental quality shall~~
27 establish and maintain a data base of the voluntary disclosures

1 made under this part. The data base shall include the number of
2 voluntary disclosures made on an annual basis and shall summarize
3 in general categories the types of violations and the time needed
4 to achieve compliance. The department of ~~environmental quality~~
5 shall annually publish a report containing the information in this
6 data base.

7 ~~—— (2) Within 5 years after the effective date of this part, the~~
8 ~~department of environmental quality shall prepare and submit to the~~
9 ~~standing committees of the legislature with jurisdiction over~~
10 ~~issues pertaining to natural resources and the environment a report~~
11 ~~evaluating the effectiveness of this part and specifically~~
12 ~~detailing whether this part has been effective in encouraging the~~
13 ~~use of environmental audits and in identifying and correcting~~
14 ~~environmental problems and conditions.~~

15 Sec. 16901. (1) As used in this part:

16 (a) "Abandoned scrap tires" means an accumulation of scrap
17 tires on property where the property owner is not responsible in
18 whole or in part for the accumulation of the scrap tires. For the
19 purposes of this subdivision, an owner who purchased or willingly
20 took possession of an existing scrap tire collection site shall be
21 considered by the department to be responsible in whole or in part
22 for the accumulation of the scrap tires.

23 (b) "Automotive recycler" means that term as defined in
24 section 2a of the Michigan vehicle code, 1949 PA 300, MCL 257.2a.

25 (c) "Bond" means a performance bond from a surety company
26 authorized to transact business in this state, a certificate of
27 deposit, a cash bond, or an irrevocable letter of credit, in favor

1 of the department.

2 (d) "Collection site" means a site, other than a disposal area
3 licensed under part 115, a racecourse, or a feed storage location,
4 consisting of a parcel or adjacent parcels of real property where
5 any of the following are accumulated:

6 (i) 500 or more scrap tires. This subparagraph does not apply
7 if that property is owned or leased by and associated with the
8 operations of a retailer or automotive recycler or a commercial
9 contractor as described in subparagraph (iv).

10 (ii) 1,500 or more scrap tires if that property is owned or
11 leased by and associated with the operations of a retailer. This
12 subparagraph does not apply if the site is owned or leased by and
13 associated with the operations of an automotive recycler.

14 (iii) 2,500 or more scrap tires if that property is owned or
15 leased by and associated with the operations of an automotive
16 recycler.

17 (iv) More than 150 cubic yards of tire chips if that property
18 is owned or leased by and associated with the operations of a
19 commercial contractor that is authorized to use the tire chips as
20 an aggregate replacement in a manner approved by a designation of
21 inertness for scrap tires or is otherwise authorized for such use
22 by the department under part 115.

23 (e) "Commodity" means crumb rubber, tire chips, a ring or slab
24 cut from a tire for use as a weight, or a product die-cut or
25 punched from a tire, or any other product that, as determined by
26 the department based on the product's production cost and value, is
27 not likely to result in an accumulation, at the site of production

1 or use, that poses a threat to public health or the environment. A
2 product is not a commodity unless it meets published national
3 standards or specifications that the department determines are
4 relevant to accomplishing the purposes of this part.

5 (f) "Commodity storage area" means 1 or more locations within
6 a collection site where a commodity is stored.

7 (g) "Crumb rubber" means rubber material derived from tires
8 that is less than 1/8 inch by 1/8 inch in size and is free of steel
9 and fiber.

10 ~~— (h) "Department" means the department of environmental~~
11 ~~quality.~~

12 (H) ~~(i)~~—"End-user" means any of the following:

13 (i) A person who possesses a permit to burn tires under part
14 55.

15 (ii) The owner or operator of a landfill that is authorized
16 under the landfill's operating license to use scrap tires.

17 (iii) A person who uses a commodity to make a product that is
18 sold in the market.

19 (iv) A person who is authorized by this part to accumulate
20 scrap tires, who acquires scrap tires, and who converts scrap tires
21 into a product that is sold in the market or reused in a manner
22 authorized by this part.

23 (I) ~~(j)~~—"Farm" means that term as defined in section 2 of the
24 Michigan right to farm act, 1981 PA 93, MCL 286.472.

25 (J) ~~(k)~~—"Farm operation" means that term as defined in section
26 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

27 (K) ~~(l)~~—"Feed storage location" means a location on 1 or more

1 parcels of adjacent real property containing a farm operation where
2 not more than 3,000 scrap tires are used to secure stored feed.

3 (I) ~~(m)~~—"Fund" means the scrap tire regulatory fund created in
4 section 16908.

5 (M) ~~(n)~~—"Landfill" means a landfill as defined in section
6 11504 that is licensed under part 115.

7 (N) ~~(o)~~—"Outdoor" or "outdoors" means in a place other than a
8 building or covered vehicle.

9 (O) ~~(p)~~—"Portable shredding operation" means a person who
10 operates scrap tire shredding equipment, which produces a commodity
11 or tire shreds, if the shredding equipment can be moved from site
12 to site.

13 (P) ~~(q)~~—"Racecourse" means a commercially operated track for
14 go-carts, vehicles, off-road recreational vehicles, or motorcycles
15 that uses not more than 3,000 scrap tires for bumpers along the
16 track for safety purposes.

17 (Q) ~~(r)~~—"Retailer" means a person who sells or offers for sale
18 new, retreaded, or remanufactured tires to consumers in this state.

19 (R) ~~(s)~~—"Retreader" means a person who retreads, recases, or
20 recaps tire casings for reuse.

21 (S) ~~(t)~~—"Scrap tire" means a tire that is no longer being used
22 for its original intended purpose including, but not limited to, a
23 used tire, a reusable tire casing, or portions of a tire. Scrap
24 tire does not include a vehicle support stand.

25 (T) ~~(u)~~—"Scrap tire hauler" means a person who transports more
26 than 7 scrap tires at once in a vehicle on a public road or street.
27 Scrap tire hauler does not include any of the following:

1 (i) A person who is transporting his or her own tires to a
2 location authorized in section 16902(1).

3 (ii) A member of a nonprofit service organization who is
4 participating in a community service project and is transporting
5 scrap tires to a location authorized in section 16902(1).

6 (iii) The owner of a farm who is transporting only scrap tires
7 that originated from his or her farm operation, to a location
8 authorized in section 16902(1), or that are intended for use in a
9 feed storage location.

10 (iv) A solid waste hauler that is transporting solid waste to a
11 disposal area licensed under part 115.

12 (v) A person who is transporting only a commodity.

13 (vi) A retreader.

14 (U) ~~(v)~~—"Scrap tire processor" means either of the following:

15 (i) A person who is authorized by this part to accumulate scrap
16 tires and is engaged in the business of buying or otherwise
17 acquiring scrap tires and reducing their volume by shredding or
18 otherwise facilitating recycling or resource recovery techniques
19 for scrap tires.

20 (ii) A portable shredding operation.

21 (V) ~~(w)~~—"Solid waste hauler" means a solid waste hauler as
22 defined in part 115 who transports less than 25% by weight or
23 volume of scrap tires along with other solid waste in any truckload
24 to a disposal area licensed under part 115.

25 (W) ~~(x)~~—"Tire" means a continuous solid or pneumatic rubber
26 covering encircling the wheel of a tractor or other farm machinery
27 or of a vehicle.

1 **(X)** ~~(y)~~—"Tire chip" means a portion of a tire that is any of
2 the following:

3 (i) Not more than 2 inches by 2 inches in size and meets
4 requirements for size, metal content, and cleanliness as specified
5 in an executed contract for delivery of the material by the scrap
6 tire processor.

7 (ii) Not more than 3/8 inch by 3/8 inch in size and
8 sufficiently free from steel to be used in the construction and
9 modification of sports surfaces such as golf course turf, athletic
10 field turf, athletic tracks, hiking surfaces, livestock show arena
11 surfaces, and playgrounds.

12 (iii) To be used in a drain field approved under a district or
13 county sanitary code.

14 (iv) To be used as ground cover or mulch, if, in aggregate, 95%
15 of the material is equal to or less than 3/4 inch in size in any
16 dimension and the material contains less than 1% by weight or
17 volume of steel and fiber.

18 (v) Approved by the department for use at a landfill as daily
19 cover or a leachate collection system protective layer or for
20 access road construction within a lined cell.

21 **(Y)** ~~(z)~~—"Tire shred" means a portion of a tire that is not a
22 commodity.

23 **(Z)** ~~(aa)~~—"Tire storage area" means a location within a
24 collection site where tires are accumulated.

25 **(AA)** ~~(bb)~~—"Vehicle" means a device in, upon, or by which a
26 person or property is or may be transported or drawn upon a
27 highway. Vehicle does not include a device that is exclusively

1 moved by human power or used exclusively upon stationary rails or
2 tracks or a mobile home as defined in section 2 of the mobile home
3 commission act, 1987 PA 96, MCL 125.2302.

4 (BB) ~~(ee)~~ "Vehicle support stand" means equipment used to
5 support a stationary vehicle consisting of an inflated tire and
6 wheel that is attached to another wheel.

7 (2) A reference in this part to a number of scrap tires means
8 either of the following, or an equivalent combination thereof:

9 (a) That number of whole tires or reusable tire casings.

10 (b) A quantity of a commodity or tire shreds equivalent in
11 weight to that number of whole tires.

12 Sec. 16903. (1) A person who owns or operates a collection
13 site where less than 2,500 scrap tires are accumulated outdoors
14 shall comply with all of the following:

15 (a) Scrap tires shall be stored in the tire storage area
16 identified on the scrap tire collection site registration
17 application map and approved by the department.

18 (b) Only scrap tires shall be accumulated in the tire storage
19 area.

20 (c) Subject to subdivision (f), the scrap tires shall be
21 accumulated in piles no greater than 15 feet in height with
22 horizontal dimensions no greater than 200 by 40 feet.

23 (d) Subject to subdivision (f), the scrap tires shall not be
24 within 20 feet of the property line or within 60 feet of a building
25 or structure.

26 (e) Subject to subdivision (f), there shall be a minimum
27 separation of 30 feet between scrap tire piles. The open space

1 between the piles shall at all times be free of rubbish, equipment,
2 and other materials.

3 (f) Scrap tire piles shall be accessible to fire fighting
4 equipment. If the requirement of this subdivision is met, the local
5 fire department that serves the jurisdiction in which the
6 collection site is located may grant a variance from the
7 requirements of subdivisions (c), (d), and (e). A variance under
8 this subsection shall be in writing.

9 (g) Scrap tires shall be isolated from other stored materials
10 that may create hazardous products if there is a fire, including,
11 but not limited to, lead acid batteries, fuel tanks, solvent
12 barrels, and pesticide containers.

13 (h) Except for scrap tires that are a commodity used to create
14 a storage pad for, or a roadway for access to, other scrap tires
15 that are also a commodity, scrap tires shall not be placed in the
16 open spaces between tire piles or used to construct on-site roads.

17 (i) The owner or operator of the collection site shall allow
18 the local fire department that serves the jurisdiction in which the
19 collection site is located to inspect the collection site at any
20 reasonable time.

21 (j) All persons employed to work at the collection site shall
22 be trained in emergency response operations. The owner or operator
23 of the collection site shall maintain training records and shall
24 make these records available to the local fire department that
25 serves the jurisdiction in which the collection site is located.

26 (2) A person who owns or operates a collection site where at
27 least 2,500 but less than 100,000 scrap tires are accumulated

1 outdoors shall comply with all of the following:

2 (a) All of the requirements of subsection (1).

3 (b) The tire storage area shall be completely enclosed with a
4 fence that is at least 6 feet tall with lockable gates and that is
5 designed to prevent easy access.

6 (c) An earthen berm not less than 5 feet in height shall
7 completely enclose the tire storage area except to allow for
8 necessary ingress and egress from roadways and buildings.

9 (d) The collection site shall contain sufficient drainage so
10 that water does not pool or collect on the property.

11 (e) The approach road to the tire storage area and on-site
12 access roads to the tire storage area shall be of all-weather
13 construction and maintained in good condition and free of debris
14 and equipment so that it is passable at all times for fire fighting
15 and other emergency vehicles. If the local fire department for the
16 jurisdiction where the collection site is located submits to the
17 department a written determination that the on-site access roads do
18 not ensure that the site is accessible to emergency vehicles at all
19 times during the year, the department ~~of environmental quality~~
20 shall consider the on-site access roads to be in violation of this
21 requirement.

22 (f) Tire storage areas shall be mowed regularly or otherwise
23 kept free of weeds, vegetation, and other growth at all times.

24 (g) An emergency procedures plan shall be prepared and
25 displayed at the collection site. The plan shall include telephone
26 numbers of the local fire and police departments. The plan shall be
27 reviewed by the local fire department prior to being posted.

1 (h) Scrap tires shall not be accumulated in excess of 10,000
2 cubic yards of scrap tires per acre.

3 (3) A person who owns or operates a collection site where
4 100,000 or more scrap tires are accumulated outdoors shall comply
5 with all of the requirements of subsections (1) and (2) and that
6 person shall operate as a scrap tire processor.

7 (4) Except as otherwise provided in subsection (5) and section
8 16903b, a person who owns a collection site shall maintain a bond
9 in favor of the department. The amount of the bond shall be not
10 less than the sum of \$25,000.00 per quarter acre, or fraction
11 thereof, of outdoor tire storage area, and \$2.00 per square foot of
12 tire storage area in a building. However, for collection sites with
13 fewer than 2,500 tires, the bond shall not exceed \$2,500.00. A
14 person who elects to use a certificate of deposit as bond shall
15 receive any accrued interest on that certificate of deposit upon
16 release of the bond by the department. A person who elects to post
17 cash as bond shall accrue interest on that bond at the annual rate
18 of 6%, to be accrued quarterly, except that the interest rate
19 payable to an applicant shall not exceed the rate of interest
20 accrued on the state common cash fund for the quarter in which an
21 accrual is determined. Interest shall be paid to the applicant upon
22 release of the bond by the department. Any interest greater than 6%
23 shall be deposited into the fund. The department may utilize a bond
24 required under this subsection for removing scrap tires from a
25 collection site, for other costs of cleanup at the collection site,
26 and for costs of fire suppression and costs associated with
27 responding to a fire or an emergency at a collection site, if there

1 is an emergency at the collection site, if the collection site
2 owner becomes insolvent, or if the owner or operator of the
3 collection site fails to comply with the requirements of this
4 section and does not cause the removal of the tires at the
5 direction of a court of competent jurisdiction.

6 (5) A bond is not required under subsection (4) for a
7 commodity storage area that meets all of the following
8 requirements:

9 (a) The commodity is stored in accordance with the
10 requirements of subsection (1).

11 (b) Not less than 75% of the commodity, by weight or volume,
12 that is stored at the collection site each calendar year is removed
13 from the collection site to a market during that year, and the
14 collection site owner or operator certifies compliance with this
15 subparagraph on a form approved by the department.

16 (c) The areas of the collection site that are used for storage
17 of the commodity are not larger than a total of 1 acre and those
18 areas are indicated on a survey by a registered professional
19 engineer submitted to the department as part of the collection site
20 registration.

21 Sec. 16903a. The department ~~of environmental quality~~ shall
22 prepare and implement a statewide response plan for responding to
23 fires at collection sites.

24 Sec. 16908a. The department ~~of environmental quality~~ shall
25 assist owners and operators of collection sites and scrap tire
26 processors in this state in developing markets for scrap tires.

27 Sec. 17203. (1) The department ~~of environmental quality~~ shall

1 enforce this part.

2 (2) A person who violates this part is guilty of a misdemeanor
3 punishable by imprisonment for not more than 60 days or a fine of
4 not more than \$1,000.00, or both, plus the costs of prosecution.

5 Sec. 17301. As used in this part:

6 (a) "Collector" means a person who receives covered electronic
7 devices from consumers and arranges for the delivery of the covered
8 electronic devices to a recycler.

9 (b) "Computer" means a desktop personal computer or laptop
10 computer, a computer monitor, or beginning April 1, 2011, a
11 printer. Computer does not include any of the following:

12 (i) A personal digital assistant device or mobile telephone.

13 (ii) A computer peripheral device, including a mouse or other
14 similar pointing device, or a detachable or wireless keyboard.

15 (c) "Computer takeback program" means a program required under
16 section 17305(c).

17 (d) "Consumer" means a person who used a covered electronic
18 device primarily for personal or small business purposes in this
19 state.

20 (e) "Covered computer" means a computer that was or will be
21 used primarily for personal or small business purposes in this
22 state. Covered computer does not include a device that is
23 functionally or physically a part of, or connected to, or
24 integrated within a larger piece of equipment or system designed
25 and intended for use in an industrial, governmental, commercial,
26 research and development, or medical setting, including, but not
27 limited to, diagnostic, monitoring, or control products, medical

1 products approved under the federal food, drug, and cosmetic act,
2 21 USC 301 to 399, equipment used for security, sensing,
3 monitoring, antiterrorism, or emergency services purposes, or
4 equipment designed and intended primarily for use by professional
5 users.

6 (f) "Covered electronic device" means a covered computer or
7 covered video display device.

8 (g) "Covered video display device" means a video display
9 device that was or will be used primarily for personal or small
10 business purposes in this state. Covered video display device does
11 not include a device that is functionally or physically a part of,
12 or connected to, or integrated within a larger piece of equipment
13 or system designed and intended for transportation or use in an
14 industrial, governmental, commercial, research and development, or
15 medical setting, including, but not limited to, diagnostic,
16 monitoring, or control products, medical products approved under
17 the federal food, drug, and cosmetic act, 21 USC 301 to 399,
18 equipment used for security, sensing, monitoring, antiterrorism, or
19 emergency services purposes, or equipment designed and intended
20 primarily for use by professional users.

21 ~~— (h) "Department" means the department of environmental~~
22 ~~quality.~~

23 (H) ~~(i)~~ "Electronic device takeback program" or "takeback
24 program" means a computer takeback program or a video display
25 device takeback program.

26 (I) ~~(j)~~ "Manufacturer", subject to subdivision ~~(k)~~ (J), means
27 any of the following:

1 (i) The person who owns the brand with which a covered computer
2 is labeled.

3 (ii) The person who owns or is licensed to use the brand with
4 which a covered video display device is labeled.

5 (iii) If the brand owner does not do business in the United
6 States, the person on whose account a covered electronic device was
7 imported into the United States.

8 (iv) A person who contractually assumes the responsibilities
9 and obligations of a person described under subparagraph (i), (ii),
10 or (iii).

11 **(J)** ~~(K)~~ Manufacturer does not include a person unless the
12 person manufactured, sold, or imported more than 50 covered
13 computers in 2000 or any subsequent calendar year or more than 50
14 covered video display devices in the previous calendar year.

15 **(K)** ~~(I)~~ "Printer" means a printer or a multifunction or "all-
16 in-one" device that in addition to printing performs 1 or more
17 other operations such as copying, scanning, or faxing, that is
18 designed to be placed on a desk or other work surface, and that may
19 use any of various print technologies, such as laser and LED
20 (electrographic), ink jet, dot matrix, thermal, or digital
21 sublimation. Printer does not include a floor-standing printer, a
22 printer with an optional floor stand, a point of sale (POS) receipt
23 printer, a household printer such as a calculator with printing
24 capabilities or a label maker, or a non-stand-alone printer that is
25 embedded into a product other than a covered computer.

26 **(I)** ~~(M)~~ "Recycler" means a person who as a principal component
27 of business operations acquires covered electronic devices and

1 sorts and processes the covered electronic devices to facilitate
2 recycling or resource recovery techniques. Recycler does not
3 include a collector, hauler, or electronics shop.

4 (M) ~~(n)~~—"Retailer" means a person that sells a covered
5 electronic device to a consumer by any means, including
6 transactions conducted through sales outlets, catalogs, mail order,
7 or the internet, whether or not the person has a physical presence
8 in this state.

9 (N) ~~(o)~~—"Small business" means a business with 10 or fewer
10 employees.

11 (O) ~~(p)~~—"Video display device" means an electronic device with
12 a viewable screen of 4 inches or larger that contains a tuner that
13 locks on to a selected carrier frequency and is capable of
14 receiving and displaying television or video programming via
15 broadcast, cable, or satellite. Video display device includes, but
16 is not limited to, a direct view or projection television whose
17 display technology is based on cathode ray tube (CRT), plasma,
18 liquid crystal (LCD), digital light processing (DLP), liquid
19 crystal on silicon (LCOS), silicon crystal reflective display
20 (SXRD), light emitting diode (LED), or similar technology.

21 (P) ~~(q)~~—"Video display device takeback program" means a
22 program required under section 17305(d).

23 Sec. 17327. (1) The electronic waste recycling fund is created
24 within the state treasury.

25 (2) The state treasurer may receive money or other assets from
26 any source for deposit into the fund. The state treasurer shall
27 direct the investment of the fund. The state treasurer shall credit

1 to the fund interest and earnings from fund investments.

2 (3) Money in the fund at the close of the fiscal year shall
3 remain in the fund and shall not lapse to the general fund.

4 (4) The department ~~of environmental quality~~ shall be the
5 administrator of the fund for auditing purposes.

6 (5) Money from the fund shall be expended, upon appropriation,
7 for the administrative expenses of the department in implementing
8 this part.

9 Sec. 19601. As used in this part:

10 (a) "Bonds" means the bonds authorized under the clean
11 Michigan initiative act.

12 (b) "Corrective action" means that term as it is defined in
13 part 213.

14 ~~—— (c) "Department" means the department of environmental~~
15 ~~quality.~~

16 (C) ~~(d)~~ "Facility" means that term as it is defined in part
17 201.

18 (D) ~~(e)~~ "Fund" means the clean Michigan initiative bond fund
19 created in section 19606.

20 (E) ~~(f)~~ "Gaming facility" means a gaming facility regulated
21 under the Michigan gaming control and revenue act, ~~the Initiated~~
22 ~~Law of 1996 IL 1~~, MCL 432.201 to 432.226.

23 (F) ~~(g)~~ "Local unit of government" means a county, city,
24 village, or township, or an agency of a county, city, village, or
25 township; or an authority or other public body created by or
26 pursuant to state law.

27 (G) ~~(h)~~ "Response activity" means that term as it is defined

1 in part 201.

2 Sec. 19701. As used in this part:

3 (a) "Bonds" means the bonds authorized under the Great Lakes
4 water quality bond authorization act.

5 ~~—— (b) "Department" means the department of environmental~~
6 ~~quality.~~

7 (B) ~~(e)~~ "Fund" means the Great Lakes water quality bond fund
8 created in section 19706.

9 Sec. 20101. (1) As used in this part:

10 (a) "Act of God" means an unanticipated grave natural disaster
11 or other natural phenomenon of an exceptional, inevitable, and
12 irresistible character, the effects of which could not have been
13 prevented or avoided by the exercise of due care or foresight.

14 (b) "Agricultural property" means real property used for
15 farming in any of its branches, including cultivating of soil;
16 growing and harvesting of any agricultural, horticultural, or
17 floricultural commodity; dairying; raising of livestock, bees,
18 fish, fur-bearing animals, or poultry; turf and tree farming; and
19 performing any practices on a farm as an incident to, or in
20 conjunction with, these farming operations. Agricultural property
21 does not include property used for commercial storage, processing,
22 distribution, marketing, or shipping operations.

23 (c) "Attorney general" means the department of the attorney
24 general.

25 (d) "Baseline environmental assessment" means an evaluation of
26 environmental conditions which exist at a facility at the time of
27 purchase, occupancy, or foreclosure that reasonably defines the

1 existing conditions and circumstance at the facility so that, in
2 the event of a subsequent release, there is a means of
3 distinguishing the new release from existing contamination.

4 (e) "Board" means the brownfield redevelopment board created
5 in section 20104a.

6 ~~—— (f) "Department" means the director of the department of
7 environmental quality or his or her designee to whom the director
8 delegates a power or duty by written instrument.~~

9 ~~—— (g) "Director" means the director of the department of
10 environmental quality.~~

11 (F) ~~(h)~~ "Directors" means the directors or their designees of
12 the departments of ~~environmental quality~~ **NATURAL RESOURCES**,
13 community health, agriculture, and state police.

14 (G) ~~(i)~~ "Disposal" means the discharge, deposit, injection,
15 dumping, spilling, leaking, or placing of any hazardous substance
16 into or on any land or water so that the hazardous substance or any
17 constituent of the hazardous substance may enter the environment or
18 be emitted into the air or discharged into any groundwater or
19 surface water.

20 (H) ~~(j)~~ "Enforcement costs" means court expenses, reasonable
21 attorney fees of the attorney general, and other reasonable
22 expenses of an executive department that are incurred in relation
23 to enforcement under this part or rules promulgated under this
24 part, or both.

25 (I) ~~(k)~~ "Environment" or "natural resources" means land,
26 surface water, groundwater, subsurface, strata, air, fish,
27 wildlife, or biota within the state.

1 (J) ~~(I)~~—"Environmental contamination" means the release of a
2 hazardous substance, or the potential release of a discarded
3 hazardous substance, in a quantity which is or may become injurious
4 to the environment or to the public health, safety, or welfare.

5 (K) ~~(m)~~—"Evaluation" means those activities including, but not
6 limited to, investigation, studies, sampling, analysis, development
7 of feasibility studies, and administrative efforts that are needed
8 to determine the nature, extent, and impact of a release or threat
9 of release and necessary response activities.

10 (L) ~~(n)~~—"Exacerbation" means the occurrence of either of the
11 following caused by an activity undertaken by the person who owns
12 or operates the property, with respect to existing contamination:

13 (i) Contamination that has migrated beyond the boundaries of
14 the property which is the source of the release at levels above
15 cleanup criteria specified in section 20120a(1)(a) unless a
16 criterion is not relevant because exposure is reliably restricted
17 pursuant to section 20120b.

18 (ii) A change in facility conditions that increases response
19 activity costs.

20 (M) ~~(o)~~—"Facility" means any area, place, or property where a
21 hazardous substance in excess of the concentrations which satisfy
22 the requirements of section 20120a(1)(a) or (17) or the cleanup
23 criteria for unrestricted residential use under part 213 has been
24 released, deposited, disposed of, or otherwise comes to be located.
25 Facility does not include any area, place, or property at which
26 response activities have been completed which satisfy the cleanup
27 criteria for the residential category provided for in section

1 20120a(1)(a) and (17) or at which corrective action has been
2 completed under part 213 which satisfies the cleanup criteria for
3 unrestricted residential use.

4 (N) ~~(p)~~—"Feasibility study" means a process for developing,
5 evaluating, and selecting appropriate response activities.

6 (O) ~~(q)~~—"Foreclosure" means possession of a property by a
7 lender on which it has foreclosed on a security interest or the
8 expiration of a lawful redemption period, whichever occurs first.

9 (P) ~~(r)~~—"Free product" means a hazardous substance in a liquid
10 phase equal to or greater than 1/8 inch of measurable thickness
11 that is not dissolved in water and that has been released into the
12 environment.

13 (Q) ~~(s)~~—"Fund" means the cleanup and redevelopment fund
14 established in section 20108.

15 (R) ~~(t)~~—"Hazardous substance" means 1 or more of the
16 following, but does not include fruit, vegetable, or field crop
17 residuals or processing by-products, or aquatic plants, that are
18 applied to the land for an agricultural use or for use as an animal
19 feed, if the use is consistent with generally accepted agricultural
20 management practices developed pursuant to the Michigan right to
21 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
22 ~~286.471 to 286.474 of the Michigan Compiled Laws 1981 PA 93, MCL~~
23 **286.471 TO 286.474:**

24 (i) Any substance that the department demonstrates, on a case
25 by case basis, poses an unacceptable risk to the public health,
26 safety, or welfare, or the environment, considering the fate of the
27 material, dose-response, toxicity, or adverse impact on natural

1 resources.

2 (ii) Hazardous substance as defined in the comprehensive
3 environmental response, compensation, and liability act of 1980,
4 Public Law 96-510, 94 Stat. 2767.

5 (iii) Hazardous waste as defined in part 111.

6 (iv) Petroleum as described in part 213.

7 (S) ~~(u)~~—"Interim response activity" means the cleanup or
8 removal of a released hazardous substance or the taking of other
9 actions, prior to the implementation of a remedial action, as may
10 be necessary to prevent, minimize, or mitigate injury to the public
11 health, safety, or welfare, or to the environment. Interim response
12 activity also includes, but is not limited to, measures to limit
13 access, replacement of water supplies, and temporary relocation of
14 people as determined to be necessary by the department. In
15 addition, interim response activity means the taking of other
16 actions as may be necessary to prevent, minimize, or mitigate a
17 threatened release.

18 (T) ~~(v)~~—"Lender" means any of the following:

19 (i) A state or nationally chartered bank.

20 (ii) A state or federally chartered savings and loan
21 association or savings bank.

22 (iii) A state or federally chartered credit union.

23 (iv) Any other state or federally chartered lending institution
24 or regulated affiliate or regulated subsidiary of any entity listed
25 in this subparagraph or subparagraphs (i) to (iii).

26 (v) An insurance company authorized to do business in this
27 state pursuant to the insurance code of 1956, ~~Act No. 218 of the~~

~~Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws 1956 PA 218, MCL 500.100 TO 500.8302.~~

(vi) A motor vehicle finance company subject to the motor vehicle finance act, ~~Act No. 27 of the Extra Session of 1950, being sections 492.101 to 492.141 of the Michigan Compiled Laws 1950 (EX SESS) PA 27, MCL 492.101 TO 492.141,~~ with net assets in excess of \$50,000,000.00.

(vii) A foreign bank.

(viii) A retirement fund regulated pursuant to state law or a pension fund regulated pursuant to federal law with net assets in excess of \$50,000,000.00.

(ix) A state or federal agency authorized by law to hold a security interest in real property or a local unit of government holding a reversionary interest in real property.

(x) A nonprofit tax exempt organization created to promote economic development in which a majority of the organization's assets are held by a local unit of government.

(xi) Any other person who loans money for the purchase of or improvement of real property.

(xii) Any person who retains or receives a security interest to service a debt or to secure a performance obligation.

(U) ~~(w)~~ "Local health department" means that term as defined in section 1105 of the public health code, ~~Act No. 368 of the Public Acts of 1978, being section 333.1105 of the Michigan Compiled Laws 1978 PA 368, MCL 333.1105.~~

(V) ~~(x)~~ "Local unit of government" means a county, city, township, or village, an agency of a local unit of government, an

1 authority or any other public body or entity created by or pursuant
2 to state law. Local unit of government does not include the state
3 or federal government or a state or federal agency.

4 (W) ~~(y)~~—"Operator" means a person who is in control of or
5 responsible for the operation of a facility. Operator does not
6 include either of the following:

7 (i) A person who holds indicia of ownership primarily to
8 protect the person's security interest in the facility, unless that
9 person participates in the management of the facility as described
10 in section 20101a.

11 (ii) A person who is acting as a fiduciary in compliance with
12 section 20101b.

13 (X) ~~(z)~~—"Owner" means a person who owns a facility. Owner does
14 not include either of the following:

15 (i) A person who holds indicia of ownership primarily to
16 protect the person's security interest in the facility, including,
17 but not limited to, a vendor's interest under a recorded land
18 contract, unless that person participates in the management of the
19 facility as described in section 20101a.

20 (ii) A person who is acting as a fiduciary in compliance with
21 section 20101b.

22 (Y) ~~(aa)~~—"Permitted release" means 1 or more of the following:

23 (i) A release in compliance with an applicable, legally
24 enforceable permit issued under state law.

25 (ii) A lawful and authorized discharge into a permitted waste
26 treatment facility.

27 (iii) A federally permitted release as defined in the

1 comprehensive environmental response, compensation, and liability
2 act of 1980, Public Law 96-510, 94 Stat. 2767.

3 (Z) ~~(bb)~~ "Release" includes, but is not limited to, any
4 spilling, leaking, pumping, pouring, emitting, emptying,
5 discharging, injecting, escaping, leaching, dumping, or disposing
6 of a hazardous substance into the environment, or the abandonment
7 or discarding of barrels, containers, and other closed receptacles
8 containing a hazardous substance. Release does not include any of
9 the following:

10 (i) A release that results in exposure to persons solely within
11 a workplace, with respect to a claim that these persons may assert
12 against their employers.

13 (ii) Emissions from the engine exhaust of a motor vehicle,
14 rolling stock, aircraft, or vessel.

15 (iii) A release of source, by-product, or special nuclear
16 material from a nuclear incident, as those terms are defined in the
17 atomic energy act of 1954, chapter 1073, 68 Stat. 919, if the
18 release is subject to requirements with respect to financial
19 protection established by the nuclear regulatory commission under
20 section 170 of chapter 14 of title I of the atomic energy act of
21 1954, chapter 1073, 71 Stat. 576, 42 ~~U.S.C.~~ **USC** 2210, or any
22 release of source by-product or special nuclear material from any
23 processing site designated under section 102(a)(1) of title I or
24 302(a) of title III of the uranium mill tailings radiation control
25 act of 1978, Public Law 95-604, 42 ~~U.S.C.~~ **USC** 7912 and 7942.

26 (iv) If applied according to label directions and according to
27 generally accepted agricultural and management practices, the

1 application of a fertilizer, soil conditioner, agronomically
2 applied manure, or pesticide, or fruit, vegetable, or field crop
3 residuals or processing by-products, aquatic plants, or a
4 combination of these substances. As used in this subparagraph,
5 fertilizer and soil conditioner have the meaning given to these
6 terms in part 85, and pesticide has the meaning given to that term
7 in part 83.

8 (v) A release does not include fruits, vegetables, field crop
9 processing by-products, or aquatic plants, that are applied to the
10 land for an agricultural use or for use as an animal feed, if the
11 use is consistent with generally accepted agricultural and
12 management practices developed pursuant to the Michigan right to
13 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
14 ~~286.471 to 286.474 of the Michigan Compiled Laws 1981 PA 93, MCL~~
15 ~~286.471 TO 286.474.~~

16 (AA) ~~(ee)~~ "Remedial action" includes, but is not limited to,
17 cleanup, removal, containment, isolation, destruction, or treatment
18 of a hazardous substance released or threatened to be released into
19 the environment, monitoring, maintenance, or the taking of other
20 actions that may be necessary to prevent, minimize, or mitigate
21 injury to the public health, safety, or welfare, or to the
22 environment.

23 (BB) ~~(dd)~~ "Remedial action plan" means a work plan for
24 performing remedial action under this part.

25 (CC) ~~(ee)~~ "Response activity" means evaluation, interim
26 response activity, remedial action, demolition, or the taking of
27 other actions necessary to protect the public health, safety, or

1 welfare, or the environment or the natural resources. Response
2 activity also includes health assessments or health effect studies
3 carried out under the supervision, or with the approval of, the
4 department of ~~public~~**COMMUNITY** health and enforcement actions
5 related to any response activity.

6 **(DD)** ~~(ff)~~—"Response activity costs" or "costs of response
7 activity" means all costs incurred in taking or conducting a
8 response activity, including enforcement costs.

9 **(EE)** ~~(gg)~~—"Security interest" means any interest, including a
10 reversionary interest, in real property created or established for
11 the purpose of securing a loan or other obligation. Security
12 interests include, but are not limited to, mortgages, deeds of
13 trusts, liens, and title pursuant to lease financing transactions.
14 Security interests may also arise from transactions such as sale
15 and leasebacks, conditional sales, installment sales, trust receipt
16 transactions, certain assignments, factoring agreements, accounts
17 receivable financing arrangements, consignments, or any other
18 transaction in which evidence of title is created if the
19 transaction creates or establishes an interest in real property for
20 the purpose of securing a loan or other obligation.

21 **(FF)** ~~(hh)~~—"Site" means the location of environmental
22 contamination.

23 **(GG)** ~~(ii)~~—"Threatened release" or "threat of release" means
24 any circumstance that may reasonably be anticipated to cause a
25 release.

26 (2) As used in this part, the phrase "a person who is liable"
27 includes a person who is described as being subject to liability in

1 section 20126. The phrase "a person who is liable" does not presume
2 that liability has been adjudicated.

3 Sec. 20104a. (1) The brownfield redevelopment board is created
4 within the department of ~~environmental quality~~ **NATURAL RESOURCES**.

5 (2) The board shall consist of the following members:

6 (a) The director ~~of the department of environmental quality~~ or
7 his or her designee.

8 (b) The director of the department of management and budget or
9 his or her designee.

10 (c) The chief executive officer of the ~~jobs commission~~
11 **MICHIGAN ECONOMIC DEVELOPMENT CORPORATION** or his or her designee.

12 (3) A majority of the members of the board constitute a quorum
13 for the transaction of business at a meeting of the board.

14 (4) The business which the board may perform shall be
15 conducted at a public meeting of the board held in compliance with
16 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
17 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws 1976~~
18 **PA 267, MCL 15.261 TO 15.275.**

19 (5) A writing prepared, owned, used, in the possession of, or
20 retained by the board in the performance of an official function is
21 subject to the freedom of information act, ~~Act No. 442 of the~~
22 ~~Public Acts of 1976, being sections 15.231 to 15.246 of the~~
23 ~~Michigan Compiled Laws 1976~~ **PA 442, MCL 15.231 TO 15.246.**

24 (6) The board shall implement the duties and responsibilities
25 as provided in this part and as otherwise provided by law.

26 Sec. 20503. As used in this part:

27 (a) "Analytical data" means the qualitative or quantitative

1 measurements generated by chemical, physical, biological,
2 microbiological, radiological, or other scientific determination.

3 (b) "Calibration" means a set of operations that establish,
4 under specified conditions, the relationship between values of
5 quantities indicated by a measuring instrument or measuring system,
6 or values represented by a material measure or a reference
7 material, and the corresponding values realized by standards
8 established as follows:

9 (i) In calibration of support equipment, through the use of
10 reference standards that are traceable to the international system
11 of units.

12 (ii) In calibration according to analytical methods, typically
13 through the use of reference materials that are either purchased by
14 the laboratory with a certificate of analysis or purity, or
15 prepared by the laboratory using support equipment that has been
16 calibrated or verified to meet specifications.

17 (c) "Commercial laboratory" means a privately owned laboratory
18 that generates analytical data required under this act pertaining
19 to the operations of a third person regulated under this act.

20 ~~—— (d) "Council" means the laboratory data quality assurance~~
21 ~~advisory council created in section 20517.~~

22 ~~—— (e) "Department" means the department of environmental~~
23 ~~quality.~~

24 ~~—— (f) "Director" means the director of the department.~~

25 (D) ~~(g)~~ "Fund" means the laboratory data quality recognition
26 program fund created in section 20509.

27 (E) ~~(h)~~ "In-house laboratory" means a privately owned

1 laboratory that generates analytical data required under this act
2 pertaining to the operations of the owner of that laboratory or an
3 affiliate of the owner.

4 (F) ~~(i)~~—"Laboratory" means a body that engages in calibration
5 or testing, or both, at a specified location.

6 (G) ~~(j)~~—"Proficiency testing" means a method of evaluating a
7 laboratory's performance under controlled conditions relative to a
8 given set of criteria through analysis of unknown samples provided
9 by an external source.

10 (H) ~~(k)~~—"Public laboratory" means a municipal or other
11 publicly owned laboratory that generates analytical data for
12 submission to the department under this act.

13 (I) ~~(l)~~—"Quality recognition program" means the laboratory data
14 quality recognition program provided for in section 20505.

15 Sec. 21101. As used in this part:

16 ~~—(a) "Department" means the department of natural resources,~~
17 ~~underground storage tank division.~~

18 (A) ~~(b)~~—"Fund" means the underground storage tank regulatory
19 enforcement fund created in section 21104.

20 (B) ~~(c)~~—"Local unit of government" means a municipality,
21 county, or governmental authority or any combination of
22 municipalities, counties, or governmental authorities.

23 (C) ~~(d)~~—"Natural gas" means natural gas, synthetic gas, and
24 manufactured gas.

25 (D) ~~(e)~~—"Operator" means a person who is presently, or was at
26 the time of a release, in control of or responsible for the
27 operation of an underground storage tank system.

1 **(E)** ~~(F)~~—"Owner" means a person who holds, or at the time of a
2 release who held, a legal, equitable, or possessory interest of any
3 kind in an underground storage tank system or in the property on
4 which an underground storage tank system is located, including, but
5 not limited to, a trust, vendor, vendee, lessor, or lessee.
6 However, owner does not include a person or a regulated financial
7 institution who, without participating in the management of an
8 underground storage tank system and who is not otherwise engaged in
9 petroleum production, refining, or marketing relating to the
10 underground storage tank system, is acting in a fiduciary capacity
11 or who holds indicia of ownership primarily to protect the person's
12 or the regulated financial institution's security interest in the
13 underground storage tank system or the property on which it is
14 located. This exclusion does not apply to a grantor, beneficiary,
15 remainderman, or other person who could directly or indirectly
16 benefit financially from the exclusion other than by the receipt of
17 payment for fees and expenses related to the administration of a
18 trust.

19 **(F)** ~~(G)~~—"Regulated substance" means any of the following:

20 (i) A substance defined in section 101(14) of title I of the
21 comprehensive environmental response, compensation, and liability
22 act of 1980, Public Law 96-510, 42 ~~U.S.C.~~**USC** 9601, but not
23 including a substance regulated as a hazardous waste under subtitle
24 C of the solid waste disposal act, title II of Public Law 89-272,
25 42 ~~U.S.C.~~**USC** 6921 to 6931 and 6933 to 6939b.

26 (ii) Petroleum, including crude oil or any fraction of crude
27 oil that is liquid at standard conditions of temperature and

1 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch
2 absolute). Petroleum includes but is not limited to mixtures of
3 petroleum with de minimis quantities of other regulated substances,
4 and petroleum-based substances composed of a complex blend of
5 hydrocarbons derived from crude oil through processes of
6 separation, conversion, upgrading, or finishing such as motor
7 fuels, jet fuels, distillate fuel oils, residual fuel oils,
8 lubricants, and petroleum solvents.

9 (iii) A substance listed in section 112 of part A of title I of
10 the clean air act, chapter 360, 84 Stat. 1685, 42 ~~U.S.C.~~ **USC** 7412.

11 (G) ~~(h)~~—"Release" means any spilling, leaking, emitting,
12 discharging, escaping, leaching, or disposing from an underground
13 storage tank system into groundwater, surface water, or subsurface
14 soils.

15 (H) ~~(i)~~—"Underground storage tank system" means a tank or
16 combination of tanks, including underground pipes connected to the
17 tank or tanks, which is, was, or may have been used to contain an
18 accumulation of regulated substances, and the volume of which,
19 including the volume of the underground pipes connected to the tank
20 or tanks, is 10% or more beneath the surface of the ground. An
21 underground storage tank system does not include any of the
22 following:

23 (i) A farm or residential tank of 1,100 gallons or less
24 capacity used for storing motor fuel for noncommercial purposes.

25 (ii) A tank used for storing heating oil for consumptive use on
26 the premises where the tank is located.

27 (iii) A septic tank.

1 (iv) A pipeline facility, including gathering lines regulated
2 under either of the following:

3 (A) The natural gas pipeline safety act of 1968, Public Law
4 90-481, 49 ~~U.S.C.—USC~~ Appx 1671 to 1677, 1679a to 1682, and 1683 to
5 1687.

6 (B) Sections 201 to 215 and 217 of the hazardous liquid
7 pipeline safety act of 1979, title II of Public Law 96-129, 49
8 ~~U.S.C.—USC~~ Appx 2001 to 2015.

9 (v) A surface impoundment, pit, pond, or lagoon.

10 (vi) A storm water or wastewater collection system.

11 (vii) A flow-through process tank.

12 (viii) A liquid trap or associated gathering lines directly
13 related to oil or gas production and gathering operations.

14 (ix) A storage tank situated in an underground area, such as a
15 basement, cellar, mineworking, drift, shaft, or tunnel if the
16 storage tank is situated upon or above the surface of the floor.

17 (x) Any pipes connected to a tank that is described in
18 subparagraphs (i) to (xvi).

19 (xi) An underground storage tank system holding hazardous
20 wastes listed or identified under subtitle C of the solid waste
21 disposal act, title II of Public Law 89-272, 42 ~~U.S.C.—USC~~ 6921 to
22 6931 and 6933 to 6939b, or a mixture of such hazardous waste and
23 other regulated substances.

24 (xii) A wastewater treatment tank system that is part of a
25 wastewater treatment facility regulated under section 307(b) of
26 title III or section 402 of title IV of the federal water pollution
27 control act, 33 ~~U.S.C.—USC~~ 1317 and 1342.

1 (xiii) Equipment or machinery that contains regulated substances
2 for operational purposes such as hydraulic lift tanks and
3 electrical equipment tanks.

4 (xiv) An underground storage tank system with a capacity of 110
5 gallons or less.

6 (xv) An underground storage tank system that contains a de
7 minimis concentration of regulated substances.

8 (xvi) An emergency spill or overflow containment underground
9 storage tank system that is expeditiously emptied after use.

10 Sec. 21501. For purposes of this part, the words and phrases
11 defined in sections 21502 and 21503 have the meanings ascribed to
12 them in those sections.

13 Sec. 21502. As used in this part:

14 (a) "Administrator" means the fund administrator provided for
15 in section 21513.

16 ~~(b) "Advisory board" means the temporary reimbursement program~~
17 ~~advisory board established under section 21562.~~

18 **(B)** ~~(c)~~ "Approved claim" means a claim that is approved
19 pursuant to section 21515.

20 **(C)** ~~(d)~~ "Authority" means the Michigan underground storage
21 tank financial assurance authority created in section 21523.

22 ~~(e) "Board" means the Michigan underground storage tank~~
23 ~~financial assurance policy board created in section 21541.~~

24 **(D)** ~~(f)~~ "Board of directors" means the board of directors of
25 the authority.

26 **(E)** ~~(g)~~ "Bond proceeds account" means the account or fund to
27 which proceeds of bonds or notes issued under this part have been

1 credited.

2 (F) ~~(h)~~—"Bonds or notes" means the bonds, notes, commercial
3 paper, other obligations of indebtedness, or any combination of
4 these, issued by the authority pursuant to this part.

5 (G) ~~(i)~~—"Claim" means the submission by the owner or operator
6 or his or her representative of documentation on an application
7 requesting payment from the fund. A claim shall include, at a
8 minimum, a completed and signed claim form and the name, address,
9 telephone number, and federal tax identification number of the
10 consultant retained by the owner or operator to carry out
11 responsibilities pursuant to part 213.

12 (H) ~~(j)~~—"Class 1 site" means a site posing the highest degree
13 of threat to the public and environment as determined by the
14 department, based on the classification system developed by the
15 department pursuant to section 21314a.

16 (I) ~~(k)~~—"Class 2 site" means a site posing the second highest
17 degree of threat to the public and environment as determined by the
18 department, based on the classification system developed by the
19 department pursuant to section 21314a.

20 (J) ~~(l)~~—"Consultant" means a person on the list of qualified
21 underground storage tank consultants prepared pursuant to section
22 21542.

23 (K) ~~(m)~~—"Co-pay amount" means the co-pay amount provided for
24 in section 21514.

25 (L) ~~(n)~~—"Corrective action" means the investigation,
26 assessment, cleanup, removal, containment, isolation, treatment, or
27 monitoring of regulated substances released into the environment or

1 the taking of such other actions as may be necessary to prevent,
2 minimize, or mitigate injury to the public health, safety, or
3 welfare, the environment, or natural resources.

4 ~~—(o) "Department" means the department of environmental~~
5 ~~quality.~~

6 (M) ~~(p)~~—"Eligible person" means an owner or operator who meets
7 the eligibility requirements in section 21556 or 21557 and received
8 approval of his or her precertification application by the
9 department.

10 (N) ~~(q)~~—"Financial responsibility requirements" means the
11 financial responsibility for taking corrective action and for
12 compensating third parties for bodily injury and property damage
13 caused by a release from an underground storage tank system that
14 the owner or operator of an underground storage tank system must
15 demonstrate under part 211 and the rules promulgated under that
16 part.

17 (O) ~~(r)~~—"Fund" means the Michigan underground storage tank
18 financial assurance fund created in section 21506.

19 (P) ~~(s)~~—"Heating oil" means petroleum that is No. 1, No. 2,
20 No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6
21 technical grades of fuel oil; other residual fuel oils including
22 navy special fuel oil and bunker C; and other fuels when used as
23 substitutes for 1 of these fuel oils.

24 (Q) ~~(t)~~—"Indemnification" means indemnification of an owner or
25 operator for a legally enforceable judgment entered against the
26 owner or operator by a third party, or a legally enforceable
27 settlement entered between the owner or operator and a third party,

1 compensating that third party for bodily injury or property damage,
2 or both, caused by an accidental release as those terms are defined
3 in R 29.2163 of the Michigan administrative code.

4 (R) ~~(u)~~—"Location" means a facility or parcel of property
5 where petroleum underground storage tank systems are registered
6 pursuant to part 211.

7 (S) ~~(v)~~—"Operator" means a person who was, at the time of
8 discovery of a release, in control of or responsible for the
9 operation of a petroleum underground storage tank system or a
10 person to whom an approved claim has been assigned or transferred.

11 (T) ~~(w)~~—"Owner" means a person, other than a regulated
12 financial institution, who, at the time of discovery of a release,
13 held a legal, equitable, or possessory interest of any kind in an
14 underground storage tank system or in the property on which an
15 underground storage tank system is located, including, but not
16 limited to, a trust, vendor, vendee, lessor, or lessee. Owner
17 includes a person to whom an approved claim is assigned or
18 transferred. Owner does not include a person or a regulated
19 financial institution who, without participating in the management
20 of an underground storage tank system and without being otherwise
21 engaged in petroleum production, refining, or marketing relating to
22 the underground storage tank system, is acting in a fiduciary
23 capacity or who holds indicia of ownership primarily to protect the
24 person's or the regulated financial institution's security interest
25 in the underground storage tank system or the property on which it
26 is located. This exclusion does not apply to a grantor,
27 beneficiary, remainderman, or other person who could directly or

1 indirectly benefit financially from the exclusion other than by the
2 receipt of payment for fees and expenses related to the
3 administration of a trust.

4 (U) ~~(*)~~ "Oxygenate" means an organic compound containing
5 oxygen and having properties as a fuel that are compatible with
6 petroleum, including, but not limited to, ethanol, methanol, or
7 methyl tertiary butyl ether (MTBE).

8 Sec. 21506. (1) The Michigan underground storage tank
9 financial assurance fund is created in the state treasury.

10 (2) The state treasurer shall direct the investment of the
11 fund. Interest and earnings from fund investments shall be credited
12 to the fund.

13 (3) Money in the fund at the close of the fiscal year shall
14 remain in the fund and shall not lapse to the general fund.

15 (4) Except as provided in subsections (5) and (6), money in
16 the fund shall be expended only as follows and in the following
17 order of priority:

18 (a) To defease principal and interest due and owing on bonds
19 issued by the authority pursuant to this part that are outstanding
20 ~~on the effective date of the 2004 amendatory act that amended this~~
21 ~~section~~ **OCTOBER 12, 2004.**

22 (b) For the reasonable administrative cost of implementing
23 this part by the department, the department of treasury, the
24 department of attorney general, and the authority as annually
25 appropriated by the legislature. ~~Administrative costs include the~~
26 ~~actual and necessary expenses incurred by the board and its members~~
27 ~~in carrying out the duties imposed by this part. Total~~

1 administrative costs expended under this subdivision shall not
2 exceed 7% of the fund's projected revenues in any year. Costs
3 incurred by the authority for the issuance of bonds or notes which
4 may also be payable from the proceeds of the bonds or notes shall
5 not be considered administrative costs.

6 (c) For payment of rewards under section 21549.

7 (d) For the interest subsidy program established in section
8 21522. The money expended under this subdivision shall not exceed
9 10% of the fund's projected revenues in any year. However, 10% of
10 the revenue of the fund during the first year of the fund's
11 operation shall be expended on the interest subsidy program. If
12 this money is not expended during the first year, this money shall
13 be carried over for expenditure in the succeeding years of the
14 fund's operation. Additional fund revenue shall not be set aside
15 for the interest subsidy program until all of the first year
16 revenue is expended.

17 (e) For corrective action and indemnification including all of
18 the following:

19 (i) Payments for work invoices submitted prior to 5 p.m. on
20 June 29, 1995 and approved by the department pursuant to this part.

21 (ii) Payments for requests for indemnification submitted prior
22 to 5 p.m. on June 29, 1995 and approved by the department pursuant
23 to this part.

24 (iii) Payments for work invoices or requests for indemnification
25 that were submitted prior to 5 p.m. on June 29, 1995 and denied by
26 the department pursuant to this part but which denials were
27 subsequently reversed on appeal.

1 (5) All revenue collected during the state fiscal years ending
2 September 30, 2003 and September 30, 2004 from the environmental
3 protection regulatory fee imposed under section 21508 shall be
4 allocated and expended by the state treasurer for the purchase of
5 United States treasury obligations in an amount sufficient,
6 together with interest on the obligations, to implement subsection
7 (4) (a) .

8 (6) Upon determination by the state treasurer of the amount of
9 money needed to satisfy all obligations listed in subsection (4),
10 the state treasurer shall transfer all remaining money in the fund
11 to the refined petroleum fund created in section 21506a.

12 ~~—— (7) The board shall make recommendations to the appropriations~~
13 ~~committees in the senate and house of representatives on the~~
14 ~~distribution and amount of administrative costs under subsection~~
15 ~~(4) (b) . The board shall provide a copy of these recommendations to~~
16 ~~each affected department.~~

17 Sec. 21515. (1) To receive money from the fund or bond
18 proceeds account for corrective action, the owner or operator, or a
19 consultant retained by the owner or operator, shall follow the
20 procedures outlined in this section and shall submit reports, work
21 plans, feasibility analyses, hydrogeological studies, and
22 corrective action plans prepared under part 213 and rules
23 promulgated under that part to the department, and shall provide
24 other information required by the administrator relevant to
25 determining compliance with this part.

26 (2) To receive money from the fund for corrective action, an
27 owner or operator shall submit a claim to the administrator. An

1 owner or operator shall not submit a claim until work invoices in
2 excess of \$5,000.00 of the costs of corrective action have been
3 incurred.

4 (3) Upon receipt of a completed claim pursuant to subsection
5 (2), the administrator shall make all of the following
6 determinations:

7 (a) Whether the department ~~of environmental quality,~~
8 ~~underground storage tank division~~ has objected to payment on the
9 claim because the work performed or proposed to be performed is not
10 consistent with the requirements of part 213 and rules promulgated
11 under that part.

12 (b) Whether the work performed is necessary and appropriate
13 considering conditions at the site of the release.

14 (c) Whether the cost of performing the work is reasonable.

15 (d) Whether the owner or operator is eligible to receive
16 funding under this part.

17 (e) Whether the consultant retained by the owner or operator
18 has complied with section 21517.

19 (4) If the administrator fails to make the determinations
20 required under this section within 30 days after receipt of
21 certification from the department ~~of environmental quality,~~
22 ~~underground storage tank division~~ that the owner or operator has
23 met the requirements of section 21510(1)(b) and (c), the claim is
24 considered to be approved.

25 (5) If the administrator determines under subsection (3) that
26 the work invoices included with the claim are necessary and
27 appropriate considering conditions at the site of the release and

1 reasonable in terms of cost and the owner or operator is eligible
2 for funding under this part, the administrator shall approve the
3 claim and notify the owner or operator who submitted the claim of
4 the approval. If the administrator determines that the work
5 described on the work invoices submitted was not necessary or
6 appropriate or the cost of the work is not reasonable, or that the
7 owner or operator is not eligible for funding under this part, the
8 administrator shall deny the claim or any portion of the work
9 invoices submitted and give notice of the denial to the owner or
10 operator who submitted the claim.

11 (6) The owner or operator may submit additional work invoices
12 to the administrator after approval of a claim under subsection
13 (5). Within 45 days after receipt of a work invoice, the
14 administrator shall make the following determinations:

15 (a) Whether the work invoice complies with subsection (3).

16 (b) Whether the owner or operator is currently in compliance
17 with the registration and fee requirements of part 211 and the
18 rules promulgated under that part for the underground storage tank
19 system from which the release occurred.

20 (7) If the administrator determines that the work invoice does
21 not meet the requirements of subsection (6), he or she shall deny
22 the work invoice and give written notice of the denial to the owner
23 or operator who submitted the work invoice.

24 (8) The administrator shall keep records of approved work
25 invoices. If the owner or operator has not exceeded the allowable
26 amount of expenditure provided in section 21512, the administrator
27 shall forward payment vouchers to the state treasurer within 45

1 days of making the determinations under subsection (6).

2 (9) The administrator may approve a reimbursement for a work
3 invoice that was submitted by an owner or operator for corrective
4 action taken if the work invoice meets the requirements of this
5 part for an approved claim and an approved work invoice.

6 (10) Except as provided in subsection (11) or as otherwise
7 provided in this subsection, upon receipt of a payment voucher, the
8 state treasurer or the authority shall make a payment jointly to
9 the owner or operator and the consultant within 30 days if

10 sufficient money exists in the fund or a bond proceeds account.

11 However, the owner or operator may submit to the fund administrator
12 a signed affidavit stating that the consultant listed on a work
13 invoice has been paid in full. The affidavit shall list the work
14 invoice and claim to which the affidavit applies, a statement that
15 the owner or operator has mailed a copy of the affidavit by first-
16 class mail to the consultant listed on the work invoice, and the
17 date that the affidavit was mailed to the consultant. The

18 department is not required to verify affidavits submitted under
19 this subsection. If, within 14 days after the affidavit was mailed
20 to the consultant under this subsection, the fund administrator has
21 not received an objection in writing from the consultant listed on
22 the work invoice, the state treasurer or the authority shall make
23 the payment directly to the owner or operator. If a check has
24 already been issued to the owner or operator and the consultant,
25 the owner or operator may return the original check to the fund
26 administrator along with the affidavit. If within 14 days after the
27 affidavit was mailed to the consultant the fund administrator has

1 not received an objection from the consultant listed on the check,
2 the state treasurer or the authority shall reissue a check to the
3 owner or operator. If a consultant objects to an affidavit received
4 under this subsection, and notifies the fund administrator in
5 writing within 14 days after the affidavit was mailed to the
6 consultant, the fund administrator shall notify the state treasurer
7 and the authority, and the state treasurer or the authority shall
8 issue or reissue the check to the owner or operator and the
9 consultant. The grounds for an objection by a consultant under this
10 subsection must be that the consultant has not been paid in full
11 and the objection must be made by affidavit. The state treasurer or
12 the authority shall issue checks under this subsection within 60
13 days after an affidavit has been received by the fund
14 administrator. Once payment has been made under this section, the
15 fund is not liable for any claim on the basis of that payment.

16 (11) Upon direction of the administrator, the state treasurer
17 or the authority may withhold partial payment of money on payment
18 vouchers if there is reasonable cause to believe that there are
19 suspected violations of section 21548 or if necessary to assure
20 acceptable completion of the proposed work.

21 (12) The department ~~of environmental quality~~ shall prepare and
22 make available to owners and operators and consultants standardized
23 claim and work invoice forms.

24 Sec. 21521. (1) If the administrator denies a claim or work
25 invoice, or a request for indemnification, the owner or operator
26 who submitted the claim, work invoice, or request for
27 indemnification may, within 14 days following the denial, request

1 review by the department. ~~Upon receipt of a request for review~~
2 ~~under this subsection, the department shall forward the request to~~
3 ~~the board for a preliminary review. The board shall conduct a~~
4 ~~review of the denial and shall submit a recommendation to the~~
5 ~~department as to whether the claim, work invoice, or request for~~
6 ~~indemnification substantially complies with this part. Following~~
7 ~~review by the board, the~~ **THE** department shall approve the claim,
8 work invoice, or request for indemnification if the department
9 determines that the claim, work invoice, or request for
10 indemnification substantially complies with the requirements of
11 this part. ~~In making its determination, the department shall give~~
12 ~~substantial consideration to the recommendations of the board.~~
13 However, the department shall not approve a claim, work invoice, or
14 request for indemnification for a release that was discovered prior
15 to July 18, 1989.

16 (2) If the department approves a claim based upon substantial
17 compliance pursuant to subsection (1), the department may refuse to
18 pay for costs incurred during the time the owner or operator was
19 not in strict compliance with this part.

20 (3) A person who is denied approval by the department after
21 review under subsection (1) may appeal the decision directly to the
22 circuit court for the county of Ingham.

23 Sec. 21522. (1) The department of treasury ~~in cooperation with~~
24 ~~the board~~ shall establish an interest subsidy program through
25 rules. This program shall provide for interest subsidies, upon
26 application, to the owner or operator of a petroleum underground
27 storage tank system who meets the applicable requirements of

1 section 21510(1). Money in the fund shall not be used for loans but
2 shall be used to provide interest subsidies to lenders on loans for
3 the replacement of a petroleum underground storage tank system.

4 (2) Interest subsidies shall be made under this section, upon
5 application, for the replacement of existing petroleum underground
6 storage tank systems with petroleum underground storage tank
7 systems that meet the requirements of subtitle I of title II of the
8 solid waste disposal act, Public Law 89-272, 42 U.S.C.—USC 6991 to
9 6991i, for new underground storage tank systems installed after
10 January 1, 1989, and the rules promulgated under part 211.

11 (3) Applications for the interest subsidy program under this
12 section shall be submitted prior to December 22, 1998.

13 (4) Beginning August 1, 1993, the department of treasury shall
14 provide all applicants who otherwise qualify for the interest
15 subsidy program, an interest rate subsidy 1% above the 6-month
16 United States treasury bill rate in effect at the beginning of the
17 calendar quarter in which an owner or operator is eligible, but no
18 more than the actual interest rate paid. The maximum loan amount
19 that an interest rate subsidy will be provided for is \$200,000.00.
20 The maximum loan period is 10 years.

21 Sec. 21541. ~~(1) The Michigan underground storage tank~~
22 ~~financial assurance policy board is created in the department of~~
23 ~~natural resources.~~

24 ~~— (2) The board shall consist of the following:~~

25 ~~— (a) The director of the department of management and budget or~~
26 ~~his or her designee.~~

27 ~~— (b) The director of the department of natural resources or his~~

1 ~~or her designee.~~

2 ~~—— (c) The director of the department of state police or his or~~
3 ~~her designee.~~

4 ~~—— (d) The state treasurer or his or her designee.~~

5 ~~—— (e) Eight individuals appointed by the governor with the~~
6 ~~advice and consent of the senate, as follows:~~

7 ~~—— (i) One individual representing an independent petroleum~~
8 ~~wholesale distributor marketer trade association.~~

9 ~~—— (ii) One individual representing a petroleum refiner supplier~~
10 ~~trade association.~~

11 ~~—— (iii) One individual representing a service station dealers'~~
12 ~~trade association.~~

13 ~~—— (iv) One individual representing a truck stop operators trade~~
14 ~~association.~~

15 ~~—— (v) One individual representing an environmental public~~
16 ~~interest organization who is not associated with any of the~~
17 ~~organizations listed in subparagraphs (i) to (iv).~~

18 ~~—— (vi) Two individuals representing the general public who are~~
19 ~~not associated with any of the organizations listed in~~
20 ~~subparagraphs (i) to (iv).~~

21 ~~—— (vii) One individual representing local government.~~

22 ~~—— (3) An individual appointed to the board shall serve for a~~
23 ~~term of 2 years.~~

24 ~~—— (4) A vacancy on the board shall be filled in the same manner~~
25 ~~as the original appointment.~~

26 ~~—— (5) The first meeting of the board shall be called by the~~
27 ~~department. At its first meeting, the board shall elect from among~~

~~its members a chairperson and other officers as it considers necessary. After the first meeting, a meeting of the board shall be called by the chairperson on his or her own initiative or by the chairperson on petition of 3 or more members. Upon receipt of a petition of 3 or more members, a meeting shall be called for a date no later than 14 days after the date of receipt of the petition.~~

~~—— (6) The business that the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.~~

~~—— (7) A majority of the members of the board constitutes a quorum for the transaction of business at a meeting of the board. Action by the board shall be by a majority of the votes cast.~~

~~—— (8) The board shall advise the department and the administrator on all matters related to the implementation of this part.~~

~~(1) (9) The administrator or the department may submit to the board, for its review and evaluation, **EVALUATE** the competitive bidding process employed by a consultant pursuant to section 21517. In conducting this review and evaluation, the ~~board~~ **DEPARTMENT** may convene a peer review panel. Following completion of its review and evaluation, the ~~board~~ **DEPARTMENT** shall forward a copy of its findings to ~~the department,~~ the administrator, ~~and~~ the consultant. If the ~~board~~ **DEPARTMENT** finds the practices employed by a consultant to be inappropriate, the ~~board~~ **DEPARTMENT** may ~~recommend that the department~~ remove the consultant from the list of qualified consultants.~~

1 (2) ~~(10) Upon request of the administrator or the department,~~
2 ~~the board shall make a recommendation to the~~ **THE** department ~~on~~
3 **SHALL DETERMINE** whether a consultant should be removed from the
4 list of qualified consultants. Prior to making this ~~recommendation~~
5 **DETERMINATION**, the ~~board~~ **DEPARTMENT** may convene a peer review panel
6 to evaluate the conduct of the consultant with regard to compliance
7 with this part.

8 ~~—— (11) A member of the board shall abstain from voting on any~~
9 ~~matter in which that member has a conflict of interest.~~

10 Sec. 21542. (1) The department ~~, after consultation with the~~
11 ~~board,~~ shall prepare and annually update a list of qualified
12 underground storage tank consultants who, based on department
13 guidelines, are qualified to carry out the responsibilities of
14 consultants as provided in part 213 and to oversee corrective
15 actions. However, in preparing this list of consultants, the
16 department is not responsible or liable for the performance of the
17 consultants. The department shall make this list of consultants
18 available to a person upon request.

19 (2) The department shall include a person on the list of
20 qualified consultants upon application, if the person meets all of
21 the following requirements:

22 (a) The person demonstrates experience in all phases of
23 underground storage tank work, including tank removal oversight,
24 site assessment, soil removal, feasibility, design, remedial system
25 installation, remediation management activities, and site closure.

26 (b) The person has 1 or more individuals actively on staff who
27 are certified underground storage tank professionals. Each

1 certified underground storage tank professional shall provide a
2 letter declaring that he or she is employed by the applicant and
3 that the individual has an active operational role in the daily
4 activities of the applicant.

5 (c) The person demonstrates that the person has or will be
6 able to obtain, if approved, all of the following:

7 (i) Workers' compensation insurance.

8 (ii) Professional liability errors and omissions insurance.

9 This policy may not exclude bodily injury, property damage, or
10 claims arising out of pollution for environmental work and shall be
11 issued with a limit of not less than \$1,000,000.00 per occurrence.

12 (iii) Contractor pollution liability insurance with limits of
13 not less than \$1,000,000.00 per occurrence, if not included under
14 the professional liability errors and omissions insurance required
15 under subparagraph (ii). The insurance requirement under this
16 subparagraph is not required for consultants who do not perform
17 contracting functions.

18 (iv) Commercial general liability insurance with limits of not
19 less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

20 (v) Automobile liability insurance with limits of not less
21 than \$1,000,000.00 per occurrence.

22 Deductibles in excess of 10% of the insurance limits provided
23 in this subdivision, or the use of self-insurance, must be approved
24 by the department. Insurance policies must be written by carriers
25 authorized to write such business, or approved as an eligible
26 surplus lines insurer, by the state. The insurance utilized must be
27 placed with an insurer listed in A.M. Best's with a rating of no

1 less than B+ VII.

2 (d) The person demonstrates compliance with the occupational
3 safety and health act of 1970, Public Law 91-596, 84 Stat. 1590,
4 and the regulations promulgated under that act, and the Michigan
5 occupational safety and health act, ~~Act No. 154 of the Public Acts~~
6 ~~of 1974, being sections 408.1001 to 408.1094 of the Michigan~~
7 ~~Compiled Laws 1974 PA 154, MCL 408.1001 TO 408.1094~~, and the rules
8 promulgated under that act, and demonstrates that all such rules
9 and regulations have been complied with during the person's
10 previous corrective action activity.

11 (3) A person applying to be placed on the list of qualified
12 consultants under this section shall submit an application to the
13 department along with documentation that the person meets the
14 requirements of subsection (2). If the person is a corporation, the
15 person shall include a copy of its most recent annual report.

16 (4) After submitting an application under this section, or any
17 time after a consultant is included on the list of qualified
18 consultants, the person shall notify the department within 10 days
19 of a change in any of the requirements of subsection (2), or any
20 material change in the person's operations or organizational status
21 that might affect the person's ability to operate as a consultant.

22 (5) A consultant shall be suspended or removed from the list
23 of qualified consultants for fraud or other cause as determined by
24 the department, including, but not limited to, failing to select
25 and employ the most cost effective corrective action measures. As
26 used in this subsection, "cost effective" includes a consideration
27 of timeliness of implementation of the corrective action measures.

1 Sec. 21551. Notwithstanding any provision of this part, prior
2 to December 22, 1998, the state treasurer shall reserve enough
3 money in the fund to pay interest subsidies pursuant to section
4 21522, and for work invoices and requests for indemnification that
5 were denied by the administrator, if subsequent to the denial the
6 owner or operator requested review by the **FORMER MICHIGAN**
7 **UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE POLICY** board,
8 requested a contested case hearing, or filed a lawsuit related to
9 the denial, and the case is still pending. This money shall be used
10 to pay interest subsidies, and for work invoices and requests for
11 indemnification in cases in which an owner or operator is
12 successful in persuading the board, the department, or a court that
13 the administrator's denial was in error.

14 Sec. 21561. (1) If the department denies a precertification
15 application or a work invoice submitted under the temporary
16 reimbursement program, the applicant who submitted the
17 precertification application or the eligible person who submitted
18 the work invoice may, within 14 days following the denial, request
19 review by the department. ~~Upon receipt of a request for review~~
20 ~~under this subsection, the department shall forward the request to~~
21 ~~the advisory board for a preliminary review. The advisory board~~
22 ~~shall conduct a review of the denial and shall submit a~~
23 ~~recommendation to the department as to whether the precertification~~
24 ~~application or the work invoice complies with this part. Not later~~
25 ~~than 21 days following ITS RECEIPT OF A REQUEST FOR review, by the~~
26 ~~advisory board,~~ the department shall approve the precertification
27 application or the work invoice if the department determines that

1 the precertification application or the work invoice substantially
2 complies with the requirements of this part. ~~In making its~~
3 ~~determination, the department shall give substantial consideration~~
4 ~~to the recommendations of the advisory board.~~

5 (2) An eligible person or applicant who submitted a
6 precertification application who is denied approval by the
7 department after review under subsection (1) may appeal the
8 decision pursuant to section 631 of the revised judicature act of
9 1961, 1961 PA 236, MCL 600.631, directly to the circuit court for
10 the county of Ingham.

11 Sec. 21562. ~~(1) The temporary reimbursement program advisory~~
12 ~~board is created. The advisory board shall conduct reviews of~~
13 ~~denied work invoices upon the request of eligible persons and~~
14 ~~provide recommendations to the department upon completion of such~~
15 ~~reviews. The advisory board shall also advise the department on all~~
16 ~~matters related to the implementation of the temporary~~
17 ~~reimbursement program.~~

18 ~~— (2) The advisory board shall consist of the following:~~

19 ~~— (a) Three individuals appointed by the governor, not more than~~
20 ~~2 of whom are employed by state departments.~~

21 ~~— (b) Two individuals appointed by the speaker of the house of~~
22 ~~representatives.~~

23 ~~— (c) Two individuals appointed by the senate majority leader.~~

24 ~~— (3) An individual appointed to the advisory board shall serve~~
25 ~~for a term of 3 years, commencing on the initiation date of the~~
26 ~~temporary reimbursement program.~~

27 ~~— (4) A vacancy on the advisory board shall be filled in the~~

1 ~~same manner as the original appointment was made.~~

2 ~~—— (5) The first meeting of the advisory board shall be called by~~
3 ~~the department. At its first meeting, the advisory board shall~~
4 ~~elect from among its members a chairperson and other officers as it~~
5 ~~considers necessary. After the first meeting, a meeting of the~~
6 ~~advisory board shall be called by the chairperson on his or her own~~
7 ~~initiative or by the chairperson on petition of 3 or more members.~~
8 ~~Upon receipt of a petition of 3 or more members, a meeting shall be~~
9 ~~called for a date not later than 21 days after the date of receipt~~
10 ~~of the petition.~~

11 ~~—— (6) The business that the advisory board may perform shall be~~
12 ~~conducted at a public meeting of the advisory board held in~~
13 ~~compliance with the open meetings act, 1976 PA 267, MCL 15.261 to~~
14 ~~15.275.~~

15 ~~—— (7) A majority of the members of the advisory board constitute~~
16 ~~a quorum for the transaction of business at a meeting of the~~
17 ~~advisory board. Action by the advisory board shall be by a majority~~
18 ~~of the votes cast.~~

19 ~~(8) The department may submit to the advisory board, for its~~
20 ~~review and evaluation, **EVALUATE** the competitive bidding process~~
21 ~~employed by a consultant pursuant to section 21558. In conducting~~
22 ~~this review and evaluation, the advisory board **DEPARTMENT** may~~
23 ~~convene a peer review panel. Following completion of its review and~~
24 ~~evaluation, the advisory board **DEPARTMENT** shall forward a copy of~~
25 ~~its findings to the department and the consultant. If the advisory~~
26 ~~board **DEPARTMENT** finds the practices employed by a consultant to be~~
27 ~~inappropriate, the advisory board may recommend that the department~~

1 **MAY** revoke the consultant's certification.

2 ~~—— (9) A member of the advisory board shall abstain from voting~~
3 ~~on any matter in which that member has a conflict of interest.~~

4 Sec. 30101. As used in this part:

5 (a) "Bottomland" means the land area of an inland lake or
6 stream that lies below the ordinary high-water mark and that may or
7 may not be covered by water.

8 (b) "Bulkhead line" means a line that is established pursuant
9 to this part beyond which dredging, filling, or construction of any
10 kind is not allowed without a permit.

11 (c) "Dam" means an artificial barrier, including dikes,
12 embankments, and appurtenant works, that impounds, diverts, or is
13 designed to impound or divert water.

14 ~~—— (d) "Department" means the department of environmental~~
15 ~~quality.~~

16 (D) ~~(e)~~ "Fund" means the land and water management permit fee
17 fund created in section 30113.

18 (E) ~~(f)~~ "Height of the dam" means the difference in elevation
19 measured vertically between the natural bed of an inland lake or
20 stream at the downstream toe of the dam, or, if it is not across a
21 stream channel or watercourse, from the lowest elevation of the
22 downstream toe of the dam, to the design flood elevation or to the
23 lowest point of the top of the dam, whichever is less.

24 (F) ~~(g)~~ "Impoundment" means water held back by a dam, dike,
25 floodgate, or other barrier.

26 (G) ~~(h)~~ "Inland lake or stream" means a natural or artificial
27 lake, pond, or impoundment; a river, stream, or creek which may or

1 may not be serving as a drain as defined by the drain code of 1956,
2 1956 PA 40, MCL 280.1 to 280.630; or any other body of water that
3 has definite banks, a bed, and visible evidence of a continued flow
4 or continued occurrence of water, including the St. Marys, St.
5 Clair, and Detroit rivers. Inland lake or stream does not include
6 the Great Lakes, Lake St. Clair, or a lake or pond that has a
7 surface area of less than 5 acres.

8 (H) ~~(i)~~—"Marina" means a facility that is owned or operated by
9 a person, extends into or over an inland lake or stream, and offers
10 service to the public or members of the marina for docking,
11 loading, or other servicing of recreational watercraft.

12 (I) ~~(j)~~—"Minor offense" means either of the following
13 violations of this part if the project involved in the offense is a
14 minor project as listed in R 281.816 of the Michigan administrative
15 code or the department determines that restoration of the affected
16 property is not required:

17 (i) The failure to obtain a permit under this part.

18 (ii) A violation of a permit issued under this part.

19 (J) ~~(k)~~—"Ordinary high-water mark" means the line between
20 upland and bottomland that persists through successive changes in
21 water levels, below which the presence and action of the water is
22 so common or recurrent that the character of the land is marked
23 distinctly from the upland and is apparent in the soil itself, the
24 configuration of the surface of the soil, and the vegetation. On an
25 inland lake that has a level established by law, it means the high
26 established level. Where water returns to its natural level as the
27 result of the permanent removal or abandonment of a dam, it means

1 the natural ordinary high-water mark.

2 (K) ~~(I)~~—"Project" means an activity that requires a permit
3 pursuant to section 30102.

4 (L) ~~(M)~~—"Property owners' association" means any group of
5 organized property owners publishing a directory of their
6 membership, the majority of which are riparian owners and are
7 located on the inland lake or stream that is affected by the
8 proposed project.

9 (M) ~~(N)~~—"Riparian owner" means a person who has riparian
10 rights.

11 (N) ~~(O)~~—"Riparian rights" means those rights which are
12 associated with the ownership of the bank or shore of an inland
13 lake or stream.

14 (O) ~~(P)~~—"Seasonal structure" includes any type of dock, boat
15 hoist, ramp, raft, or other recreational structure that is placed
16 into an inland lake or stream and removed at the end of the boating
17 season.

18 (P) ~~(Q)~~—"Structure" includes a marina, wharf, dock, pier, dam,
19 weir, stream deflector, breakwater, groin, jetty, sewer, pipeline,
20 cable, and bridge.

21 (Q) ~~(R)~~—"Upland" means the land area that lies above the
22 ordinary high-water mark.

23 Sec. 30301. As used in this part:

24 (a) "Beach" means the area landward of the shoreline of the
25 Great Lakes as the term shoreline is defined in section 32301.

26 (b) "Beach maintenance activities" means any of the following
27 in the area of Great Lakes bottomlands lying below the ordinary

high-water mark and above the water's edge:

(i) Manual or mechanized leveling of sand.

(ii) Mowing of vegetation.

(iii) Manual de minimis removal of vegetation.

(iv) Grooming of soil.

(v) Construction and maintenance of a path.

(c) "Debris" means animal or fish carcasses, zebra mussel shells, dead vegetation, trash, and discarded materials of human-made origin.

~~(d) "Department" means the department of environmental quality.~~

~~(e) "Director" means the director of the department.~~

(D) ~~(f)~~ "Fill material" means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.

(E) ~~(g)~~ "Environmental area" means an environmental area as defined in section 32301.

(F) ~~(h)~~ "Grooming of soil" means raking or dragging, pushing, or pulling metal teeth through the top 4 inches of soil without disturbance of or destruction to plant roots, for the purpose of removing debris.

(G) ~~(i)~~ "Leveling of sand" means the relocation of sand within areas being leveled that are predominantly free of vegetation, including the redistribution, grading, and spreading of sand that has been deposited through wind or wave action onto upland riparian property.

(H) ~~(j)~~ "Minor drainage" includes ditching and tiling for the

1 removal of excess soil moisture incidental to the planting,
2 cultivating, protecting, or harvesting of crops or improving the
3 productivity of land in established use for agriculture,
4 horticulture, silviculture, or lumbering.

5 (I) ~~(k)~~—"Mowing of vegetation" means the cutting of vegetation
6 to a height of not less than 2 inches, without disturbance of soil
7 or plant roots.

8 (J) ~~(l)~~—"Ordinary high-water mark" means that term as it is
9 defined in section 32502.

10 (K) ~~(m)~~—"Path" means a temporary access walkway from the
11 upland riparian property directly to the shoreline across swales
12 with standing water, not exceeding 6 feet in bottom width and
13 consisting of sand and pebbles obtained from the exposed,
14 nonvegetated bottomlands or from the upland riparian property.

15 (L) ~~(n)~~—"Person" means an individual, sole proprietorship,
16 partnership, corporation, association, municipality, this state, an
17 instrumentality or agency of this state, the federal government, an
18 instrumentality or agency of the federal government, or other legal
19 entity.

20 (M) ~~(o)~~—"Removal of vegetation" means the manual or mechanized
21 removal of vegetation, other than the manual de minimis removal of
22 vegetation.

23 (N) ~~(p)~~—"Wetland" means land characterized by the presence of
24 water at a frequency and duration sufficient to support, and that
25 under normal circumstances does support, wetland vegetation or
26 aquatic life, and is commonly referred to as a bog, swamp, or marsh
27 and which is any of the following:

1 (i) Contiguous to the Great Lakes or Lake St. Clair, an inland
2 lake or pond, or a river or stream.

3 (ii) Not contiguous to the Great Lakes, an inland lake or pond,
4 or a river or stream; and more than 5 acres in size. ~~; except this~~
5 ~~subparagraph shall not be of effect, except for the purpose of~~
6 ~~inventorying, in counties of less than 100,000 population until the~~
7 ~~department certifies to the commission it has substantially~~
8 ~~completed its inventory of wetlands in that county.~~

9 (iii) Not contiguous to the Great Lakes, an inland lake or pond,
10 or a river or stream; and 5 acres or less in size if the department
11 determines that protection of the area is essential to the
12 preservation of the natural resources of the state from pollution,
13 impairment, or destruction and the department has so notified the
14 owner. ~~; except this subparagraph may be utilized regardless of~~
15 ~~wetland size in a county in which subparagraph (ii) is of no effect;~~
16 ~~except for the purpose of inventorying, at the time.~~

17 Sec. 30321. (1) The department shall make or cause to be made
18 a preliminary inventory of all wetland in this state on a county by
19 county basis and file the inventory with the agricultural extension
20 office, register of deeds, and county clerk.

21 (2) At least 2 hearings shall be held in each state planning
22 and development region created by Executive Directive No. 1973-1.
23 The hearing shall be held by the department after publication and
24 due notice so that interested parties may comment on the inventory.
25 After the hearings, the department shall issue a final inventory
26 which shall be sent and kept by the agricultural extension office,
27 register of deeds, and county clerk. Legislators shall receive an

1 inventory of a county or regional classification for their
2 districts including both preliminary and final inventories unless
3 the legislators request not to receive the materials.

4 (3) Before an inventory is made of a county, a person who owns
5 or leases a parcel of property located in that county may request
6 that the department ~~of environmental quality~~ assess whether the
7 parcel of property or a portion of the parcel is wetland. The
8 request shall satisfy all of the following requirements:

9 (a) Be made on a form provided by the department.

10 (b) Be signed by the person who owns or leases the property.

11 (c) Contain a legal description of the parcel and, if only a
12 portion of the parcel is to be assessed, a description of the
13 portion to be assessed.

14 (d) Include a map showing the location of the parcel.

15 (e) Grant the department or its agent permission to enter on
16 the parcel for the purpose of conducting the assessment.

17 (4) The department shall assess the parcel within a reasonable
18 time after the request is made. The department may enter upon the
19 parcel to conduct the assessment. Upon completion of the
20 assessment, the department shall provide the person with a written
21 assessment report. The assessment report shall do all of the
22 following:

23 (a) Identify in detail the location of any wetland in the area
24 assessed.

25 (b) If wetland is present in the area assessed, describe the
26 types of activities that require a permit under this part.

27 (c) If the assessment report determines that the area assessed

1 or part of the area assessed is not wetland, state that the
2 department lacks jurisdiction under this part as to the area that
3 the report determines is not wetland and that this determination is
4 binding on the department for 3 years from the date of the
5 assessment.

6 (d) Contain the date of the assessment.

7 (e) Advise that the person may request the department to
8 reassess the parcel or any part of the parcel that the person
9 believes was erroneously determined to be wetland if the request is
10 accompanied by evidence pertaining to wetland vegetation, soils, or
11 hydrology that is different from or in addition to the information
12 relied upon by the department.

13 (f) Advise that the assessment report does not constitute a
14 determination of wetland that may be regulated under local
15 ordinance or wetland areas that may be regulated under federal law
16 and advise how a determination of wetland areas regulated under
17 federal law may be obtained.

18 (g) List regulatory programs that may limit land use
19 activities on the parcel, advise that the list is not exhaustive,
20 and advise that the assessment report does not constitute a
21 determination of jurisdiction under those programs. The regulatory
22 programs listed shall be those under the following parts:

23 (i) Part 31, with respect to floodplains and floodways.

24 (ii) Part 91.

25 (iii) Part 301.

26 (iv) Part 323.

27 (v) Part 325.

1 (vi) Part 353.

2 (5) A person may request the department to reassess any area
3 assessed under subsections (3) and (4) that the person believes the
4 department erroneously determined to be wetland. The requirements
5 of subsections (3) and (4) apply to the request, assessment, and
6 assessment report. However, the request shall be accompanied by
7 evidence pertaining to wetland vegetation, soils, or hydrology that
8 is different from or in addition to the information relied upon by
9 the department. The assessment report shall not contain the
10 information required by subsection (4)(e).

11 (6) If an assessment report determines that the area assessed
12 or part of the area assessed is not a wetland regulated by the
13 department under this part, then the area determined by the
14 assessment report not to be a wetland is not a wetland regulated by
15 the department under this part for a period of 3 years after the
16 date of the assessment.

17 (7) The department may charge a fee for an assessment
18 requested under subsection (3) based upon the cost to the
19 department of conducting an assessment.

20 Sec. 31701. As used in this part:

21 (a) "Agricultural well" means a high capacity well that is
22 used for an agricultural purpose.

23 (b) "Complaint" means a complaint submitted under section
24 31702 alleging a potential groundwater dispute.

25 (c) "Construction" means the process of building a building,
26 road, utility, or another structure, including all of the
27 following:

1 (i) Assembling materials.

2 (ii) Disassembling and removing a structure.

3 (iii) Preparing the construction site.

4 (iv) Work related to any of the items described in
5 subparagraphs (i) to (iii).

6 (d) "Dewatering well" means a well or pump that is used for a
7 limited time period as part of a construction project to remove or
8 pump water from a surface or subsurface area and ceases to be used
9 upon completion of the construction project or shortly after
10 completion of the construction project.

11 (e) "Director" means the director of the department ~~of~~
12 ~~environmental quality~~ or his or her designee.

13 (f) "Farm" means that term as it is defined in section 2 of
14 the Michigan right to farm act, 1981 PA 93, MCL 286.472.

15 (g) "Fund" means the aquifer protection revolving fund created
16 in section 31710.

17 (h) "Groundwater" means the water in the zone of saturation
18 that fills all of the pore spaces of the subsurface geologic
19 material.

20 (i) "Groundwater dispute" means a groundwater dispute declared
21 by order of the director under section 31703.

22 (j) "High capacity well" means 1 or more water wells
23 associated with an industrial or processing facility, an irrigation
24 facility, a farm, or a public water supply system that, in the
25 aggregate from all sources and by all methods, have the capability
26 of withdrawing 100,000 or more gallons of groundwater in 1 day.

27 ~~—— (k) "Industrial or processing facility" means that term as it~~

1 ~~is defined in section 32701.~~

2 ~~—— (l) "Irrigation facility" means that term as it is defined in~~
3 ~~section 32701.~~

4 (K) ~~(m)~~ "Local health department" means that term as it is
5 defined in section 1105 of the public health code, 1978 PA 368, MCL
6 333.1105.

7 (l) ~~(n)~~ "Owner" means either of the following:

8 (i) The owner of an interest in property.

9 (ii) A person in possession of property.

10 (M) ~~(o)~~ "Potable water" means water that at the point of use
11 is acceptable for human consumption.

12 (N) ~~(p)~~ "Public water supply system" means a water system that
13 provides water for human consumption or other purposes to persons
14 other than the supplier of water.

15 (O) ~~(q)~~ "Small quantity well" means 1 or more water wells of a
16 person at the same location that, in the aggregate from all sources
17 and by all methods, have the capability of withdrawing less than
18 100,000 gallons of groundwater in 1 day.

19 (P) ~~(r)~~ "Water well" means an opening in the surface of the
20 earth, however constructed, that is used for the purpose of
21 withdrawing groundwater. Water well does not include a drain as
22 defined in section 3 of the drain code of 1956, 1956 PA 40, MCL
23 280.3.

24 (Q) ~~(s)~~ "Well drilling contractor" means a well drilling
25 contractor registered under part 127 of the public health code,
26 1978 PA 368, MCL 333.12701 to 333.12771.

27 Sec. 32501. As used in this part:

1 (a) "Beach" means the area landward of the shoreline of the
2 Great Lakes as the term shoreline is defined in section 32301.

3 (b) "Beach maintenance activities" means any of the following
4 in the area of Great Lakes bottomlands lying below the ordinary
5 high-water mark and above the water's edge:

6 (i) Manual or mechanized leveling of sand.

7 (ii) Mowing of vegetation.

8 (iii) Manual de minimis removal of vegetation.

9 (iv) Grooming of soil.

10 (v) Construction and maintenance of a path.

11 (c) "Debris" means animal or fish carcasses, zebra mussel
12 shells, dead vegetation, trash, and discarded materials of human-
13 made origin.

14 ~~—— (d) "Department" means the department of environmental~~
15 ~~quality.~~

16 ~~—— (e) "Director" means the director of the department.~~

17 (D) ~~(f)~~ "Environmental area" means an environmental area as
18 defined in section 32301.

19 (E) ~~(g)~~ "Grooming of soil" means raking or dragging, pushing,
20 or pulling metal teeth through the top 4 inches of soil without
21 disturbance of or destruction to plant roots, for the purpose of
22 removing debris.

23 (F) ~~(h)~~ "Leveling of sand" means the relocation of sand within
24 areas being leveled that are predominantly free of vegetation,
25 including the redistribution, grading, and spreading of sand that
26 has been deposited through wind or wave action onto upland riparian
27 property.

1 (G) ~~(i)~~—"Marina purposes" means an operation making use of
2 submerged bottomlands or filled-in bottomlands of the Great Lakes
3 for the purpose of service to boat owners or operators, which
4 operation may restrict or prevent the free public use of the
5 affected bottomlands or filled-in lands.

6 (H) ~~(j)~~—"Mowing of vegetation" means the cutting of vegetation
7 to a height of not less than 2 inches, without disturbance of soil
8 or plant roots.

9 (I) ~~(k)~~—"Path" means a temporary access walkway from the
10 upland riparian property directly to the shoreline across swales
11 with standing water, not exceeding 6 feet in bottom width and
12 consisting of sand and pebbles obtained from the exposed,
13 nonvegetated bottomlands or from the upland riparian property.

14 (J) ~~(l)~~—"Removal of vegetation" means the manual or mechanized
15 removal of vegetation other than the de minimis removal of
16 vegetation.

17 (K) ~~(m)~~—"Wetland" means that term as it is defined in section
18 30301.

19 Sec. 32513. (1) Before any work or connection specified in
20 section 32512 or 32512a is undertaken, a person shall file an
21 application with the department of ~~environmental quality~~ setting
22 forth the following:

23 (a) The name and address of the applicant.

24 (b) The legal description of the lands included in the
25 project.

26 (c) A summary statement of the purpose of the project.

27 (d) A map or diagram showing the proposal on an adequate scale

1 with contours and cross-section profiles of the waterway to be
2 constructed.

3 (e) Other information required by the department. ~~of~~
4 ~~environmental quality.~~

5 (2) Except as provided in subsections (3) and (4), until
6 October 1, 2011, an application for a permit under this section
7 shall be accompanied by a fee according to the following schedule:

8 (a) For a project in a category of activities for which a
9 general permit is issued under section 32512a, a fee of \$100.00.

10 (b) For activities included in the minor project category as
11 described in rules promulgated under this part and for a permit for
12 the removal of vegetation in an area that is not more than 100 feet
13 wide or the width of the property, whichever is less, or the mowing
14 of vegetation in excess of what is allowed in section
15 32512(2)(a)(ii), in the area between the ordinary high-water mark
16 and the water's edge, a fee of \$50.00.

17 (c) For construction or expansion of a marina, a fee of:

18 (i) \$50.00 for an expansion of 1-10 slips to an existing
19 permitted marina.

20 (ii) \$100.00 for a new marina with 1-10 proposed marina slips.

21 (iii) \$250.00 for an expansion of 11-50 slips to an existing
22 permitted marina, plus \$10.00 for each slip over 50.

23 (iv) \$500.00 for a new marina with 11-50 proposed marina slips,
24 plus \$10.00 for each slip over 50.

25 (v) \$1,500.00 if an existing permitted marina proposes
26 maintenance dredging of 10,000 cubic yards or more or the addition
27 of seawalls, bulkheads, or revetments of 500 feet or more.

1 (d) For major projects other than a project described in
2 subdivision (c) (v), involving any of the following, a fee of
3 \$2,000.00:

4 (i) Dredging of 10,000 cubic yards or more.

5 (ii) Filling of 10,000 cubic yards or more.

6 (iii) Seawalls, bulkheads, or revetment of 500 feet or more.

7 (iv) Filling or draining of 1 acre or more of coastal wetland.

8 (v) New dredging or upland boat basin excavation in areas of
9 suspected contamination.

10 (vi) New breakwater or channel jetty.

11 (vii) Shore protection, such as groins and underwater
12 stabilizers, that extend 150 feet or more on Great Lakes
13 bottomlands.

14 (viii) New commercial dock or wharf of 300 feet or more in
15 length.

16 (e) For all other projects not listed in subdivisions (a)
17 ~~through~~ **TO** (d), \$500.00.

18 (3) A project that requires review and approval under this
19 part and 1 or more of the following is subject to only the single
20 highest permit fee required under this part or the following:

21 (a) Part 301.

22 (b) Part 303.

23 (c) Part 323.

24 (d) Section 3104.

25 (e) Section 117 of the land division act, 1967 PA 288, MCL
26 560.117.

27 (4) If work has been done in violation of a permit requirement

1 under this part and restoration is not ordered by the department,
2 ~~of environmental quality, the department of environmental quality~~
3 may accept an application for a permit if the application is
4 accompanied by a fee equal to 2 times the permit fee required under
5 this section.

6 (5) The department ~~of environmental quality~~ shall forward all
7 fees collected under this section to the state treasurer for
8 deposit into the land and water management permit fee fund created
9 in section 30113.

10 Sec. 32601. As used in this part:

11 (a) "Bottomlands" means land in the Great Lakes, and bays and
12 harbors of the Great Lakes, lying below and lakeward of the
13 ordinary high-water mark as described in section 32502.

14 ~~—— (b) "Department" means the department of environmental~~
15 ~~quality.~~

16 (B) ~~(e)~~ "Fair market value" means the price based upon the
17 unique historical and physical properties, including, but not
18 limited to, species, growth rates, volume, and condition of the
19 submerged logs as calculated at dockside following delivery to
20 shore.

21 (C) ~~(d)~~ "Fund" means the submerged log recovery fund created
22 in section 32610.

23 (D) ~~(e)~~ "Great Lakes" means Lake Superior, Lake Michigan, Lake
24 Huron, and Lake Erie, and includes Lake St. Clair.

25 (E) ~~(f)~~ "Ordinary high-water mark" means the elevations
26 described in section 32502. When the soil, configuration of the
27 surface, or vegetation has been altered by human activity, the

1 ordinary high-water mark is located where it would have been if
2 this alteration had not occurred.

3 (F) ~~(g)~~—"Patented lands" means any bottomlands lying within a
4 specific government grant area, including a private claim patent or
5 federal patent.

6 (G) ~~(h)~~—"Riparian owner" means a person who owns frontage
7 bordering bottomlands.

8 (H) ~~(i)~~—"Riparian rights" means those rights that are
9 associated with the ownership of frontage bordering bottomlands,
10 subject to the public trust.

11 (I) ~~(j)~~—"Submerged log" means a portion of the trunk of a
12 felled tree that has not been further processed for any end use and
13 is located on, in, over, or under bottomlands. Submerged log does
14 not include a portion of a tree that is located in the Great Lakes
15 or on, in, over, or under bottomlands that poses a navigational or
16 safety hazard or is of no or little commercial value.

17 (J) ~~(k)~~—"Unpatented lands" means all bottomlands except
18 patented lands.

19 Sec. 32701. (1) As used in this part:

20 (a) "Adverse resource impact" means any of the following:

21 (i) Until February 1, 2009, decreasing the flow of a river or
22 stream by part of the index flow such that the river's or stream's
23 ability to support characteristic fish populations is functionally
24 impaired.

25 (ii) Beginning February 1, 2009, subject to subparagraph (vi),
26 decreasing the flow of a cold river system by part of the index
27 flow as follows:

1 (A) For a cold stream, the withdrawal will result in a 3% or
2 more reduction in the density of thriving fish populations as
3 determined by the thriving fish curve.

4 (B) For a cold small river, the withdrawal will result in a 1%
5 or more reduction in the density of thriving fish populations as
6 determined by the thriving fish curve.

7 (iii) Beginning February 1, 2009, subject to subparagraph (vi),
8 decreasing the flow of a cold-transitional river system by part of
9 the index flow such that the withdrawal will result in a 5% or more
10 reduction in the density of thriving fish populations as determined
11 by the thriving fish curve.

12 (iv) Beginning February 1, 2009, subject to subparagraph (vi),
13 decreasing the flow of a cool river system by part of the index
14 flow as follows:

15 (A) For a cool stream, the withdrawal will result in a 10% or
16 more reduction in the abundance of characteristic fish populations
17 as determined by the characteristic fish curve.

18 (B) For a cool small river, the withdrawal will result in a
19 15% or more reduction in the density of thriving fish populations
20 as determined by the thriving fish curve.

21 (C) For a cool large river, the withdrawal will result in a
22 12% or more reduction in the density of thriving fish populations
23 as determined by the thriving fish curve.

24 (v) Beginning February 1, 2009, subject to subparagraph (vi),
25 decreasing the flow of a warm river system by part of the index
26 flow as follows:

27 (A) For a warm stream, the withdrawal will result in a 5% or

1 more reduction in the abundance of characteristic fish populations
2 as determined by the characteristic fish curve.

3 (B) For a warm small river, the withdrawal will result in a
4 10% or more reduction in the abundance of characteristic fish
5 populations as determined by the characteristic fish curve.

6 (C) For a warm large river, the withdrawal will result in a
7 10% or more reduction in the abundance of characteristic fish
8 populations as determined by the characteristic fish curve.

9 (vi) Beginning February 1, 2009, decreasing the flow of a
10 stream or river by more than 25% of its index flow.

11 (vii) Decreasing the level of a lake or pond with a surface
12 area of 5 acres or more through a direct withdrawal from the lake
13 or pond in a manner that would impair or destroy the lake or pond
14 or the uses made of the lake or pond, including the ability of the
15 lake or pond to support characteristic fish populations, or such
16 that the ability of the lake or pond to support characteristic fish
17 populations is functionally impaired. As used in this subparagraph,
18 lake or pond does not include a retention pond or other
19 artificially created surface water body.

20 (b) "Agricultural purpose" means the agricultural production
21 of plants and animals useful to human beings and includes, but is
22 not limited to, forages and sod crops, grains and feed crops, field
23 crops, dairy animals and dairy products, poultry and poultry
24 products, cervidae, livestock, including breeding and grazing,
25 equine, fish and other aquacultural products, bees and bee
26 products, berries, herbs, fruits, vegetables, flowers, seeds,
27 grasses, nursery stock, trees and tree products, mushrooms, and

1 other similar products, or any other product, as determined by the
2 commission of agriculture, that incorporates the use of food, feed,
3 fiber, or fur.

4 (c) "Assessment tool" means the water withdrawal assessment
5 tool provided for in section 32706a.

6 (d) "Baseline capacity", subject to subsection (2), means any
7 of the following, which shall be considered the existing withdrawal
8 approval amount under section 4.12.2 of the compact:

9 (i) The following applicable withdrawal capacity as reported to
10 the department or the department of agriculture, as appropriate, by
11 the person making the withdrawal in the annual report submitted
12 under section 32707 not later than April 1, 2009 or in the water
13 use conservation plan submitted under section 32708 not later than
14 April 1, 2009:

15 (A) Unless reported under a different provision of this
16 subparagraph, for a quarry or mine that holds an authorization to
17 discharge under part 31 that includes a discharge volume, the
18 discharge volume stated in that authorization on February 28, 2006.

19 (B) The system capacity used or developed to make a withdrawal
20 on February 28, 2006, if the system capacity and a description of
21 the system capacity are included in an annual report that is
22 submitted under this part not later than April 1, 2009.

23 (ii) If the person making the withdrawal does not report under
24 subparagraph (i), the highest annual amount of water withdrawn as
25 reported under this part for calendar year 2002, 2003, 2004, or
26 2005. However, for a person who is required to report by virtue of
27 the 2008 amendments to section 32705(2)(d), baseline capacity means

1 the person's withdrawal capacity as reported in the April 1, 2009
2 annual report submitted under section 32707.

3 (iii) For a community supply, the total designed withdrawal
4 capacity for the community supply under the safe drinking water
5 act, 1976 PA 399, MCL 325.1001 to 325.1023, on February 28, 2006 as
6 reported to the department in a report submitted not later than
7 April 1, 2009.

8 (e) "Characteristic fish curve" means a fish functional
9 response curve that describes the abundance of characteristic fish
10 populations in response to reductions in index flow as published in
11 the document entitled "Report to the Michigan Legislature in
12 response to 2006 Public Act 34" by the former groundwater
13 conservation advisory council dated July 2007, which is
14 incorporated by reference.

15 (f) "Characteristic fish population" means the fish species,
16 including thriving fish, typically found at relatively high
17 densities in stream reaches having specific drainage area, index
18 flow, and summer temperature characteristics.

19 (g) "Cold river system" means a stream or small river that has
20 the appropriate summer water temperature that, based on statewide
21 averages, sustains a fish community composed predominantly of cold-
22 water fish species, and where small increases in water temperature
23 will not cause a decline in these populations, as determined by a
24 scientific methodology adopted by order of the commission.

25 (h) "Cold-transitional river system" means a stream or river
26 that has the appropriate summer water temperature that, based on
27 statewide averages, sustains a fish community composed

1 predominantly of cold-water fish species, and where small increases
2 in water temperature will cause a decline in the proportion of
3 cold-water species, as determined by a scientific methodology
4 adopted by order of the commission.

5 (i) "Community supply" means that term as it is defined in
6 section 2 of the safe drinking water act, 1976 PA 399, MCL
7 325.1002.

8 (j) "Compact" means the Great Lakes-St. Lawrence river basin
9 water resources compact provided for in part 342.

10 (k) "Consumptive use" means that portion of water withdrawn or
11 withheld from the Great Lakes basin and assumed to be lost or
12 otherwise not returned to the Great Lakes basin due to evaporation,
13 incorporation into products or agricultural products, use as part
14 of the packaging of products or agricultural products, or other
15 processes. Consumptive use includes a withdrawal of waters of the
16 Great Lakes basin that is packaged within the Great Lakes basin in
17 a container of 5.7 gallons (20 liters) or less and is bottled
18 drinking water as defined in the food code, 2005 recommendations of
19 the food and drug administration of the United States public health
20 service.

21 (l) "Cool river system" means a stream or river that has the
22 appropriate summer water temperature that, based on statewide
23 averages, sustains a fish community composed mostly of warm-water
24 fish species, but also contains some cool-water species or cold-
25 water species, or both, as determined by a scientific methodology
26 adopted by order of the commission.

27 (m) "Council" means the Great Lakes-St. Lawrence river basin

1 water resources council created in the compact.

2 ~~—— (n) "Department" means the department of environmental~~
3 ~~quality.~~

4 (N) ~~(e)~~—"Designated trout stream" means a trout stream
5 identified on the document entitled "Designated Trout Streams for
6 the State of Michigan", as issued under order of the director of
7 the department of natural resources, FO-210.04, on October 10,
8 2003.

9 (O) ~~(p)~~—"Diversion" means a transfer of water from the Great
10 Lakes basin into another watershed, or from the watershed of 1 of
11 the Great Lakes into that of another by any means of transfer,
12 including, but not limited to, a pipeline, canal, tunnel, aqueduct,
13 channel, modification of the direction of a water course, tanker
14 ship, tanker truck, or rail tanker but does not apply to water that
15 is used in the Great Lakes basin or a Great Lake watershed to
16 manufacture or produce a product that is then transferred out of
17 the Great Lakes basin or watershed. Diverted has a corresponding
18 meaning. Diversion includes a transfer of water withdrawn from the
19 waters of the Great Lakes basin that is removed from the Great
20 Lakes basin in a container greater than 5.7 gallons (20 liters).
21 Diversion does not include any of the following:

22 (i) A consumptive use.

23 (ii) The supply of vehicles, including vessels and aircraft,
24 whether for the needs of the persons or animals being transported
25 or for ballast or other needs related to the operation of vehicles.

26 (iii) Use in a noncommercial project on a short-term basis for
27 firefighting, humanitarian, or emergency response purposes.

1 (iv) A transfer of water from a Great Lake watershed to the
2 watershed of its connecting waterways.

3 (P) ~~(q)~~—"Environmentally sound and economically feasible water
4 conservation measures" means those measures, methods, technologies,
5 or practices for efficient water use and for reduction of water
6 loss and waste or for reducing a withdrawal, consumptive use, or
7 diversion that meet all of the following:

8 (i) Are environmentally sound.

9 (ii) Reflect best practices applicable to the water use sector.

10 (iii) Are technically feasible and available.

11 (iv) Are economically feasible and cost-effective based on an
12 analysis that considers direct and avoided economic and
13 environmental costs.

14 (v) Consider the particular facilities and processes involved,
15 taking into account the environmental impact, the age of equipment
16 and facilities involved, the process employed, energy impacts, and
17 other appropriate factors.

18 (Q) ~~(r)~~—"Farm" means that term as it is defined in section 2
19 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

20 (R) ~~(s)~~—"Flow-based safety factor" means a protective measure
21 of the assessment tool that reduces the portion of index flow
22 available for a withdrawal to 1/2 of the index flow for the purpose
23 of minimizing the risk of adverse resource impacts caused by
24 statistical uncertainty.

25 (S) ~~(t)~~—"Great Lakes" means Lakes Superior, Michigan and
26 Huron, Erie, and Ontario and their connecting waterways including
27 the St. Marys river, Lake St. Clair, the St. Clair river, and the

1 Detroit river. For purposes of this definition, Lakes Huron and
2 Michigan shall be considered a single Great Lake.

3 (T) ~~(u)~~—"Great Lakes basin" means the watershed of the Great
4 Lakes and the St. Lawrence river.

5 (U) ~~(v)~~—"Great Lakes charter" means the document establishing
6 the principles for the cooperative management of the Great Lakes
7 water resources, signed by the governors and premiers of the Great
8 Lakes region on February 11, 1985.

9 (V) ~~(w)~~—"Great Lakes region" means the geographic region
10 composed of the states of Illinois, Indiana, Michigan, Minnesota,
11 New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania,
12 and the provinces of Ontario and Quebec, Canada.

13 (W) ~~(x)~~—"Index flow" means the 50% exceedance flow for the
14 lowest summer flow month of the flow regime, for the applicable
15 stream reach, as determined over the period of record or
16 extrapolated from analyses of the United States geological survey
17 flow gauges in Michigan. Beginning on October 1, 2008, index flow
18 shall be calculated as of that date.

19 (X) ~~(y)~~—"Intrabasin transfer" means a diversion of water from
20 the source watershed of a Great Lake prior to its use to the
21 watershed of another Great Lake.

22 (Y) ~~(z)~~—"Lake augmentation well" means a water well used to
23 withdraw groundwater for the purpose of maintaining or raising
24 water levels of an inland lake or stream as defined in section
25 30101.

26 (Z) ~~(aa)~~—"Large quantity withdrawal" means 1 or more
27 cumulative total withdrawals of over 100,000 gallons of water per

1 day average in any consecutive 30-day period that supply a common
2 distribution system.

3 (AA) ~~(bb)~~ "Large river" means a river with a drainage area of
4 300 or more square miles.

5 (BB) ~~(cc)~~ "New or increased large quantity withdrawal" means a
6 new water withdrawal of over 100,000 gallons of water per day
7 average in any consecutive 30-day period or an increase of over
8 100,000 gallons of water per day average in any consecutive 30-day
9 period beyond the baseline capacity of a withdrawal.

10 (CC) ~~(dd)~~ "New or increased withdrawal capacity" means new or
11 additional water withdrawal capacity to supply a common
12 distribution system that is an increase from the person's baseline
13 capacity. New or increased capacity does not include maintenance or
14 replacement of existing withdrawal capacity.

15 (DD) ~~(ee)~~ "Online registration process" means the online
16 registration process provided for in section 32706.

17 (EE) ~~(ff)~~ "Preventative measure" means an action affecting a
18 stream or river that prevents an adverse resource impact by
19 diminishing the effect of a withdrawal on stream or river flow or
20 the temperature regime of the stream or river.

21 (FF) ~~(gg)~~ "Registrant" means a person who has registered a
22 water withdrawal under section 32705.

23 (GG) ~~(hh)~~ "River" means a flowing body of water with a
24 drainage area of 80 or more square miles.

25 (HH) ~~(ii)~~ "Site-specific review" means the department's
26 independent review under section 32706c to determine whether the
27 withdrawal is a zone A, zone B, zone C, or zone D withdrawal and

1 whether a withdrawal is likely to cause an adverse resource impact.

2 (II) ~~(jj)~~—"Small river" means a river with a drainage area of
3 less than 300 square miles.

4 (JJ) ~~(kk)~~—"Source watershed" means the watershed from which a
5 withdrawal originates. If water is withdrawn directly from a Great
6 Lake, then the source watershed shall be considered to be the
7 watershed of that Great Lake and its connecting waterways. If water
8 is withdrawn from the watershed of a direct tributary to a Great
9 Lake, then the source watershed shall be considered to be the
10 watershed of that Great Lake and its connecting waterways, with a
11 preference for returning water to the watershed of the direct
12 tributary from which it was withdrawn.

13 (KK) ~~(ll)~~—"Stream" means a flowing body of water with a
14 drainage area of less than 80 square miles.

15 (ll) ~~(mm)~~—"Stream reach" means a segment of a stream or river.

16 (MM) ~~(nn)~~—"Thriving fish curve" means a fish functional
17 response curve that describes the initial decline in density of
18 thriving fish populations in response to reductions in index flow
19 as published in the document entitled "Report to the Michigan
20 Legislature in response to 2006 Public Act 34" by the former
21 groundwater conservation advisory council dated July 2007, which is
22 incorporated by reference.

23 (NN) ~~(oo)~~—"Thriving fish population" means the fish species
24 that are expected to flourish at very high densities in stream
25 reaches having specific drainage area, index flow, and summer
26 temperature characteristics.

27 (OO) ~~(pp)~~—"Warm river system" means a stream or river that has

1 the appropriate summer water temperature that, based on statewide
2 averages, sustains a fish community composed predominantly of warm-
3 water fish species, as determined by a scientific methodology
4 adopted by order of the commission.

5 (PP) ~~(qq)~~—"Waters of the Great Lakes basin" means the Great
6 Lakes and all streams, rivers, lakes, connecting channels, and
7 other bodies of water, including groundwater, within the Great
8 Lakes basin.

9 (QQ) ~~(rr)~~—"Waters of the state" means groundwater, lakes,
10 rivers, and streams and all other watercourses and waters,
11 including the Great Lakes, within the territorial boundaries of the
12 state. Waters of the state do not include drainage ways and ponds
13 designed and constructed solely for wastewater conveyance,
14 treatment, or control.

15 (RR) ~~(ss)~~—"Withdrawal" means the removal of water from surface
16 water or groundwater.

17 (SS) ~~(tt)~~—"Zone A withdrawal" means the following:

18 (i) For a cold river system, as follows:

19 (A) For a cold stream, less than a 1% reduction in the density
20 of thriving fish populations as determined by the thriving fish
21 curve.

22 (B) For a cold small river, less than 50% of the withdrawal
23 that would result in an adverse resource impact.

24 (ii) For a cold-transitional river system, there is not a zone
25 A withdrawal.

26 (iii) For a cool river system, as follows:

27 (A) For a cool stream, less than a 10% reduction in the

1 density of thriving fish populations as determined by the thriving
2 fish curve.

3 (B) For a cool small river, less than a 5% reduction in the
4 density of thriving fish populations as determined by the thriving
5 fish curve.

6 (C) For a cool large river, less than an 8% reduction in the
7 density of thriving fish populations as determined by the thriving
8 fish curve.

9 (iv) For a warm river system, less than a 10% reduction in the
10 density of thriving fish populations as determined by the thriving
11 fish curve.

12 **(TT)** ~~(uu)~~—"Zone B withdrawal" means the following:

13 (i) There is not a zone B withdrawal for a cold stream or small
14 river.

15 (ii) For a cold-transitional river system, less than a 5%
16 reduction in the density of thriving fish populations as determined
17 by the thriving fish curve.

18 (iii) For a cool river system, as follows:

19 (A) For a cool stream, a 10% or more but less than a 20%
20 reduction in the density of thriving fish populations as determined
21 by the thriving fish curve.

22 (B) For a cool small river, a 5% or more but less than a 10%
23 reduction in the density of thriving fish populations as determined
24 by the thriving fish curve.

25 (C) For a cool large river, an 8% or more but less than a 10%
26 reduction in the density of thriving fish populations as determined
27 by the thriving fish curve.

(iv) For a warm river system, as follows:

(A) For a warm stream, a 10% or more but less than a 15% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a warm small river or a warm large river, a 10% or more but less than a 20% reduction in the density of thriving fish populations as determined by the thriving fish curve.

~~(UU)~~ ~~(vv)~~ "Zone C withdrawal" means the following as long as the withdrawal will not decrease the flow of a stream or river by more than 25% of its index flow:

(i) For a cold river system, as follows:

(A) For a cold stream, a 1% or more but less than a 3% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, 50% or more of the withdrawal that would result in an adverse resource impact but less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(ii) There is not a zone C withdrawal for a cold-transitional river system.

(iii) For a cool river system, as follows:

(A) For a cool stream, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For cool small rivers, a 10% or more but less than a 15%

1 reduction in the density of thriving fish populations as determined
2 by the thriving fish curve.

3 (C) For cool large rivers, a 10% or more but less than a 12%
4 reduction in the density of thriving fish populations as determined
5 by the thriving fish curve.

6 (iv) For warm river systems, as follows:

7 (A) For warm streams, a 15% or more reduction in the density
8 of thriving fish populations as determined by the thriving fish
9 curve but less than a 5% reduction in the abundance of
10 characteristic fish populations as determined by the characteristic
11 fish curve.

12 (B) For warm small rivers and warm large rivers, a 20% or more
13 reduction in the density of thriving fish populations as determined
14 by the thriving fish curve but less than a 10% reduction in the
15 abundance of characteristic fish populations as determined by the
16 characteristic fish curve.

17 (VV) ~~(ww)~~ "Zone D withdrawal" means, beginning February 1,
18 2009, a withdrawal that is likely to cause an adverse resource
19 impact.

20 (2) For purposes of determining baseline capacity, a person
21 who replaces his or her surface water withdrawal capacity with the
22 same amount of groundwater withdrawal capacity from the drainage
23 area of the same stream reach may retain the baseline capacity
24 established under this section.

25 Sec. 32801. As used in this part:

26 (a) "Annex 2001" means the Great Lakes charter annex signed by
27 the governors and premiers of the Great Lakes region on June 18,

1 2001.

2 (b) "Aquifer" means any water bearing bed or stratum of earth
3 or rock capable of yielding groundwater to a water well in
4 sufficient quantities that can be withdrawn.

5 (c) "Base flow" means groundwater discharge to rivers and
6 streams.

7 (d) "Conflict areas" means an aquifer or a portion of an
8 aquifer in which the department has determined that there is
9 reasonable, scientifically based evidence of a pattern of
10 groundwater withdrawal conflicts or a single extended groundwater
11 withdrawal conflict.

12 (e) "Council" means the water resources conservation advisory
13 council created under section 32803.

14 ~~—— (f) "Department" means the department of environmental~~
15 ~~quality.~~

16 ~~—— (g) "Director" means the director of the department.~~

17 (F) ~~(h)~~ "Groundwater" means water below the land surface in a
18 zone of saturation.

19 (G) ~~(i)~~ "Groundwater withdrawal conflict" means the failure of
20 an existing water well that was constructed in compliance with part
21 127 of the public health code, 1978 PA 368, MCL 333.12701 to
22 333.12771, to furnish its normal supply of groundwater because of a
23 progressive decline of the static water level within the aquifer
24 due to the withdrawal of groundwater from the aquifer by a high-
25 capacity well or sump, as determined based on reasonable,
26 scientifically based evidence.

27 (H) ~~(j)~~ "Static water level" means the distance between the

1 ground surface and the water level within a well that is not being
2 pumped.

3 Sec. 32803. (1) The water resources conservation advisory
4 council is created within the department. ~~of natural resources.~~ The
5 council shall consist of all of the following members:

6 (a) Four individuals appointed by the senate majority leader
7 as follows:

8 (i) One individual representing business and manufacturing
9 interests.

10 (ii) One individual representing public utilities.

11 (iii) One individual representing a statewide angler
12 association.

13 (iv) One individual representing a statewide agricultural
14 organization.

15 (b) Four individuals appointed by the speaker of the house of
16 representatives as follows:

17 (i) One individual representing registered well drilling
18 contractors with hydrology experience.

19 (ii) One individual representing local units of government.

20 (iii) One individual representing agricultural interests.

21 (iv) One individual with knowledge and expertise in limnology.

22 (c) Five individuals appointed by the governor as follows:

23 (i) One individual representing municipal water suppliers.

24 (ii) One individual representing a statewide conservation
25 organization.

26 (iii) One individual representing a statewide riparian
27 landowners association.

1 (iv) One individual representing a statewide tourism
2 organization.

3 (v) One individual representing Indian tribes.

4 (d) Four individuals appointed by the director as follows:

5 (i) One individual representing nonagriculture irrigators.

6 (ii) One individual representing the aggregate industry.

7 (iii) One individual representing environmental organizations.

8 (iv) One individual representing the general public.

9 (e) ~~Four~~ **THREE** individuals representing the department, the
10 department of agriculture, ~~the department of natural resources,~~ and
11 the attorney general.

12 (2) The appointments to the council under subsection (1) shall
13 be made not later than ~~30 days after the effective date of the~~
14 ~~amendatory act that added this subsection~~ **AUGUST 7, 2008**. The
15 person making the appointment under subsection (1) shall give
16 consideration and deference to individuals who served on the former
17 groundwater conservation advisory council.

18 (3) The council shall appoint a technical advisory committee
19 of individuals with specific technical and legal expertise relevant
20 to the council's responsibilities.

21 (4) The council shall do all of the following:

22 (a) Not later than ~~6 months after the effective date of the~~
23 ~~amendatory act that added this subdivision~~ **JANUARY 9, 2009**, study
24 and make recommendations to the senate majority leader, the speaker
25 of the house of representatives, and the standing committees of the
26 legislature with jurisdiction primarily related to natural
27 resources and the environment, and the department on how the

1 assessment tool could be updated to reconcile differences between
2 baseline capacity and actual withdrawal amounts to assure the
3 accuracy of the assessment tool's determinations.

4 (b) When the department makes the assessment tool available
5 for testing and evaluation, conduct testing and evaluate the
6 operation and the accuracy of the assessment tool, including
7 implications of section 32706e. Not later than ~~9 months after the~~
8 ~~effective date of the amendatory act that added this subdivision~~
9 **APRIL 9, 2009**, submit a report to the senate majority leader, the
10 speaker of the house of representatives, and the standing
11 committees of the legislature with jurisdiction primarily related
12 to natural resources and the environment, and the department that
13 contains the results of its testing and evaluation and any
14 recommendations that the council has to improve the operation of
15 the assessment tool.

16 (c) Study and make recommendations regarding the development
17 and refinement of the assessment tool.

18 (d) Study and make recommendations on whether and how the
19 definition of adverse resource impact in section 32701 should be
20 modified to more specifically address potential impacts to the
21 Great Lakes, inland lakes, and other aquatic systems due to large
22 quantity withdrawals.

23 (e) Make recommendations on reconciling conflicts in state
24 laws related to the use of the waters of the state.

25 (f) Make recommendations on the development and implementation
26 of the state's water conservation and efficiency program under
27 section 4.2 of the compact.

1 (g) Develop a framework for evaluating preventative measures
2 designed to prevent adverse resource impacts.

3 (h) In consultation with academic institutions and other
4 nonprofit organizations, make recommendations regarding educational
5 materials related to the use and availability of water resources.

6 (i) ~~Not earlier than 3 years after the effective date of the~~
7 ~~amendatory act that added this subdivision~~ **JULY 9, 2011**, submit a
8 report to the senate majority leader, the speaker of the house of
9 representatives, and the standing committees of the legislature
10 with jurisdiction primarily related to natural resources and the
11 environment that makes recommendations regarding how the water
12 withdrawal assessment process under part 327 could be improved in
13 order to more accurately assess adverse resource impacts. The
14 report shall contain specific recommendations on the use of the
15 assessment tool, the site-specific review process, the permitting
16 process, and any other measure that the council determines would
17 improve the water withdrawal assessment process.

18 (5) The council shall submit the following reports, approved
19 by a majority of the voting members of the council, to the senate
20 majority leader, the speaker of the house of representatives, and
21 the standing committees of the legislature with jurisdiction
22 primarily related to natural resources and the environment and to
23 the department:

24 (a) Not later than February 8, 2009, a progress report on the
25 council's findings and recommendations under subsection (4)(c) to
26 (h) as of that date.

27 (b) Not later than August 8, 2009, the council's final report

1 on its findings and recommendations under subsection (4)(c) to (h).

2 (6) As used in this section, "assessment tool" means the water
3 withdrawal assessment tool provided for in part 327.

4 Sec. 33911. (1) Upon application of a person that holds a
5 lease from this state of any portion or portions of the real
6 property described in this part, the department may execute and
7 deliver to the applicant a deed conveying all of the right, title,
8 and interest of this state in and to that real property, subject to
9 the paramount rights of hunting, fishing, and navigation, which
10 remain in the general public and in the government as recognized by
11 law. The deeds shall contain the same provisions as to use and
12 occupancy now set forth in all the leases previously granted under
13 former 1913 PA 326 or under this part. The department shall not
14 grant a deed under this part unless the lessee of the subject
15 property agrees to cancel the lease and relinquishes all rights
16 under the lease.

17 (2) The department shall not grant a deed under this part for
18 a lot that contains a structure unless the structure and the lot
19 subject to the deed, including seawalls where present, comply with
20 the applicable township building code and county and state
21 sanitation codes and part 325, and the structure is located on a
22 parcel of land that is adequately protected from erosion.

23 (3) A deed granted under this part shall not include a portion
24 of the original lease that is submerged or lies below the elevation
25 of 575.3 International Great Lakes Datum (IGLD 1985). The
26 department ~~of environmental quality~~ shall perform a site inspection
27 and set stakes, if necessary, to identify the boundaries of the

1 area of the leased lot to be deeded. The applicant shall provide a
2 boundary survey, completed by a professional surveyor, that
3 delineates the area of the real property to be deeded. The state
4 shall retain proprietary ownership in trust over the portion of the
5 leased lot below the ordinary high-water mark of Lake St. Clair at
6 the time of the conveyance.

7 (4) A deed shall not be granted under this part at less than
8 the estimated land value of the real property as determined by the
9 township in which the real property is located. Appraisal
10 procedures and practices may include utilizing independent fee
11 appraisal contractors. The appraisal shall not include improvements
12 such as buildings, seawalls, and docks. Credit shall not be granted
13 to the lessee for the years remaining on an unexpired lease when
14 determining the sale value to the state. The applicant shall remit
15 the full consideration within 1 year after being notified in
16 writing of the selling price by the department. If the applicant
17 does not remit the full consideration for the deed within 1 year,
18 the department shall close the file and a new application must be
19 submitted.

20 (5) If the applicant is not satisfied with the fair market
21 value determined by the department under subsection (4), the
22 applicant, within 30 days after receiving the determination, may
23 submit a petition in writing to the circuit court in the thirty-
24 first judicial circuit, and the court shall appoint an appraiser or
25 appraisers from the department's approved listing to conduct an
26 appraisal of the parcel. The decision of the court is final. The
27 applicant shall pay all costs associated with this additional

1 appraisal.

2 (6) A request for a deed shall be on a form provided by the
3 department ~~of environmental quality~~ and shall be accompanied by an
4 application fee of \$500.00.

5 Sec. 33924. As used in this part:

6 ~~— (a) "Department" means the department of natural resources~~
7 ~~unless expressly indicated otherwise.~~

8 (A) ~~(b)~~ "Possession", "occupancy", and "improvement" include
9 dredging or ditching, the throwing up of embankments, sheetpiling,
10 filling in, the erection of fences, a boathouse, land made by
11 dredging and filling, or building structures.

12 (B) ~~(c)~~ "Person" means an individual, partnership,
13 corporation, association, or other nongovernmental legal entity.

14 (C) ~~(d)~~ "Well maintained" means that any structure on the land
15 complies with township building codes and current county and state
16 sanitation codes and part 325 and that the land is adequately
17 protected from erosion.

18 Sec. 33929. (1) Each sale or transfer of a lease shall contain
19 a specific statement of the purpose for which the property leased
20 is to be used by the purchaser or assignee. A sale or transfer of a
21 lease for other than club or residence purposes is not valid unless
22 and until the sale or transfer is approved by the department. ~~of~~
23 ~~environmental quality.~~

24 (2) Before selling or transferring a property that is subject
25 to a lease under this part, the parties involved shall apply to the
26 department ~~of environmental quality~~ for approval of the transfer of
27 the lease to the purchaser. The application shall be made on a form

1 provided by the department ~~of environmental quality~~ and shall be
2 accompanied by a fee of \$250.00. Upon approval by the department,
3 ~~of environmental quality~~, an assignment of lease form shall be
4 recorded with the county register of deeds.

5 Sec. 35301. As used in this part:

6 (a) "Contour change" includes any grading, filling, digging,
7 or excavating that significantly alters the physical characteristic
8 of a critical dune area, except that which is involved in sand dune
9 mining as defined in part 637.

10 (b) "Crest" means the line at which the first lakeward facing
11 slope of a critical dune ridge breaks to a slope of less than 1-
12 foot vertical rise in a 5-1/2-foot horizontal plane for a distance
13 of at least 20 feet, if the areal extent where this break occurs is
14 greater than 1/10 acre in size.

15 (c) "Critical dune area" means a geographic area designated in
16 the "atlas of critical dune areas" dated February 1989 that was
17 prepared by the department.

18 ~~—— (d) "Department" means the department of environmental~~
19 ~~quality.~~

20 (D) ~~(e)~~ "Foredune" means 1 or more low linear dune ridges that
21 are parallel and adjacent to the shoreline of a Great Lake and are
22 rarely greater than 20 feet in height. The lakeward face of a
23 foredune is often gently sloping and may be vegetated with dune
24 grasses and low shrub vegetation or may have an exposed sand face.

25 (E) ~~(f)~~ "Model zoning plan" means the model zoning plan
26 provided for in sections 35312 to 35324.

27 (F) ~~(g)~~ "Planning commission" means the body or entity within

1 a local government that is responsible for zoning and land use
2 planning for the local unit of government.

3 (G) ~~(h)~~—"Restabilization" means restoration of the natural
4 contours of a critical dune to the extent practicable, and the
5 restoration of the protective vegetative cover of a critical dune
6 through the establishment of indigenous vegetation, and the
7 placement of snow fencing or other temporary sand trapping measures
8 for the purpose of preventing erosion, drifting, and slumping of
9 sand.

10 (H) ~~(i)~~—"Special use project" means any of the following:

11 (i) A proposed use in a critical dune area for an industrial or
12 commercial purpose regardless of the size of the site.

13 (ii) A multifamily use of more than 3 acres.

14 (iii) A multifamily use of 3 acres or less if the density of use
15 is greater than 4 individual residences per acre.

16 (iv) A proposed use in a critical dune area, regardless of size
17 of the use, that the planning commission, or the department if a
18 local unit of government does not have an approved zoning
19 ordinance, determines would damage or destroy features of
20 archaeological or historical significance.

21 (I) ~~(j)~~—"Use" means a developmental, silvicultural, or
22 recreational activity done or caused to be done by a person that
23 significantly alters the physical characteristic of a critical dune
24 area or a contour change done or caused to be done by a person. Use
25 does not include sand dune mining as defined in part 637.

26 (J) ~~(k)~~—"Zoning ordinance" means an ordinance of a local unit
27 of government that regulates the development of critical dune areas

1 within the local unit of government pursuant to the requirements of
2 this part.

3 Sec. 40107c. (1) To reduce cormorant damage, the department
4 shall administer a program to control and manage double-crested
5 cormorants. The department shall administer the program in
6 cooperation with federal agencies and in a manner that complies
7 with the cormorant depredation order.

8 ~~(2) In consultation with the department of environmental~~
9 ~~quality, the~~ **THE** department shall participate in a federally
10 recognized organization of states, such as the Mississippi flyway
11 council, to coordinate a regional effort to reduce cormorant damage
12 that includes urging the federal government to do both of the
13 following:

14 (a) Expand state options for double-crested cormorant control
15 by revising the cormorant depredation order.

16 (b) Seek to amend the migratory bird convention with Mexico to
17 designate the double-crested cormorant as a game species.

18 (3) The department shall seek funding from the Great Lakes
19 protection fund authorized under part 331 for deposit in the
20 cormorant control fund created in section 40107d.

21 Sec. 41303. (1) Subject to subsection (2), a person shall not
22 knowingly possess a live organism if the organism is a prohibited
23 species or restricted species, except under 1 or more of the
24 following circumstances:

25 (a) The person intends to present a specimen of the prohibited
26 species or restricted species, for identification or similar
27 purposes, to a person who is a certified applicator or registered

1 applicator under part 83, to a public or private institution of
2 higher education, or to the department, ~~of natural resources,~~ the
3 department of agriculture, or any other state, local, or federal
4 agency with responsibility for the environment, natural resources,
5 or agriculture.

6 (b) The person has been presented with a specimen of a
7 prohibited species or restricted species for identification or
8 similar purposes under subdivision (a).

9 (c) The person possesses the prohibited species or restricted
10 species in conjunction with otherwise lawful activity to eradicate
11 or control the prohibited species or restricted species.

12 (d) If the prohibited species or restricted species is not an
13 insect or plant species, the possession is pursuant to a permit
14 issued for education or research purposes by the department ~~of~~
15 ~~natural resources~~ under section 41306. If the prohibited species or
16 restricted species is an insect or plant species, the possession is
17 pursuant to a permit issued for education or research purposes by
18 the department of agriculture under section 41306 or by the United
19 States department of agriculture.

20 (2) A person described in subsection (1)(b) or (c) shall
21 notify the department ~~of natural resources,~~ **OR** the department of
22 agriculture, ~~or the department of environmental quality~~ if the
23 prohibited species or restricted species was found at a location
24 where it was not previously known to be present.

25 Sec. 61501. Unless the context requires a different meaning,
26 the words defined in this section have the following meanings when
27 used in this part:

1 ~~— (a) "Department" means the department of environmental~~
2 ~~quality.~~

3 (A) ~~(b)~~—"Field" means an underground reservoir or reservoirs
4 containing oil or gas, or both. Field also includes the same
5 general surface area that is underlaid or appears to be underlaid
6 by at least 1 pool. Field and pool have the same meaning if only 1
7 underground reservoir is involved. However, field, unlike pool, may
8 relate to 2 or more pools.

9 (B) ~~(c)~~—"Fund" means the oil and gas regulatory fund created
10 in section 61525b.

11 (C) ~~(d)~~—"Gas" means a mixture of hydrocarbons and varying
12 quantities of nonhydrocarbons in a gaseous state which may or may
13 not be associated with oil, and includes those liquids resulting
14 from condensation.

15 (D) ~~(e)~~—"Illegal container" means a receptacle that contains
16 illegal oil or gas or illegal products.

17 (E) ~~(f)~~—"Illegal conveyance" means a conveyance by or through
18 which illegal oil or gas or illegal products are being transported.

19 (F) ~~(g)~~—"Illegal oil or gas" means oil or gas that has been
20 produced by an owner or producer in violation of this part, a rule
21 promulgated under this part, or an order of the supervisor issued
22 under this part.

23 (G) ~~(h)~~—"Illegal product" means a product of oil or gas or any
24 part of a product of oil or gas that was knowingly processed or
25 derived in whole or in part from illegal oil or gas.

26 (H) ~~(i)~~—"Market demand" means the actual demand for oil or gas
27 from any particular pool or field for current requirements for

1 current consumption and use within or outside the state, together
2 with the demand for such amounts as are necessary for building up
3 or maintaining reasonable storage reserves of oil or gas or the
4 products of oil or gas.

5 (I) ~~(j)~~—"Oil" means natural crude oil or petroleum and other
6 hydrocarbons, regardless of gravity, that are produced at the well
7 in liquid form by ordinary production methods and that are not the
8 result of condensation of gas after it leaves the underground
9 reservoir.

10 (J) ~~(k)~~—"Owner" means the person who has the right to drill a
11 well into a pool, to produce from a pool, and to receive and
12 distribute the value of the production from the pool for himself or
13 herself either individually or in combination with others.

14 (K) ~~(l)~~—"Pool" means an underground reservoir containing a
15 common accumulation of oil or gas, or both. Pool includes a
16 productive zone of a general structure that is completely separated
17 from any other zone in the structure, or is declared to be a pool
18 by the supervisor of wells.

19 (L) ~~(m)~~—"Producer" means the operator, whether owner or not, of
20 a well or wells capable of producing oil or gas or both in paying
21 quantities.

22 (M) ~~(n)~~—"Product" means any commodity or thing made or
23 manufactured from oil or gas, and all derivatives of oil or gas,
24 including refined crude oil, crude tops, topped crude, processed
25 crude petroleum, residue treated crude oil, residuum, gas oil,
26 naphtha, distillate, gasoline, casing-head gasoline, natural gas
27 gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil,

1 and blends or mixtures of oil or gas or any derivatives of oil or
2 gas whether enumerated or not.

3 (N) ~~(e)~~—"Supervisor" or "supervisor of wells" means the
4 department.

5 (O) ~~(p)~~—"Tender" means a permit or certificate of clearance,
6 approved and issued or registered under the authority of the
7 supervisor, for the transportation of oil or gas or products.

8 (P) ~~(q)~~—"Waste" in addition to its ordinary meaning includes
9 all of the following:

10 (i) "Underground waste", as those words are generally
11 understood in the oil business, and including all of the following:

12 (A) The inefficient, excessive, or improper use or dissipation
13 of the reservoir energy, including gas energy and water drive, of
14 any pool, and the locating, spacing, drilling, equipping,
15 operating, or producing of a well or wells in a manner to reduce or
16 tend to reduce the total quantity of oil or gas ultimately
17 recoverable from any pool.

18 (B) Unreasonable damage to underground fresh or mineral
19 waters, natural brines, or other mineral deposits from operations
20 for the discovery, development, and production and handling of oil
21 or gas.

22 (ii) "Surface waste", as those words are generally understood
23 in the oil business, and including all of the following:

24 (A) The unnecessary or excessive surface loss or destruction
25 without beneficial use, however caused, of gas, oil, or other
26 product, but including the loss or destruction, without beneficial
27 use, resulting from evaporation, seepage, leakage, or fire,

1 especially a loss or destruction incident to or resulting from the
2 manner of spacing, equipping, operating, or producing a well or
3 wells, or incident to or resulting from inefficient storage or
4 handling of oil.

5 (B) The unnecessary damage to or destruction of the surface;
6 soils; animal, fish, or aquatic life; property; or other
7 environmental values from or by oil and gas operations.

8 (C) The unnecessary endangerment of public health, safety, or
9 welfare from or by oil and gas operations.

10 (D) The drilling of unnecessary wells.

11 (iii) "Market waste", which includes the production of oil or
12 gas in any field or pool in excess of the market demand as defined
13 in this part.

14 Sec. 62501. As used in this part:

15 (a) "Artificial brine" means mineralized water formed by
16 dissolving rock salt or other readily soluble rocks or minerals.

17 (b) "Brine well" means a well drilled or converted for the
18 purpose of producing natural or artificial brine.

19 ~~— (c) "Department" means the department of environmental~~
20 ~~quality.~~

21 (C) ~~(d)~~—"Disposal well" means a well drilled or converted for
22 subsurface disposal of waste products or processed brine and its
23 related surface facilities.

24 (D) ~~(e)~~—"Exploratory purposes" means test well drilling for
25 the specific purpose of discovering or outlining an orebody or
26 mineable mineral resource.

27 (E) ~~(f)~~—"Fund" means the mineral well regulatory fund created

1 in section 62509b.

2 (F) ~~(g)~~—"Mineral well" means any well subject to this part.

3 (G) ~~(h)~~—"Natural brine" means naturally occurring mineralized
4 water other than potable or fresh water.

5 (H) ~~(i)~~—"Operator" means the person, whether owner or not,
6 supervising or responsible for the drilling, operating, repairing,
7 abandoning, or plugging of wells subject to this part.

8 (I) ~~(j)~~—"Owner" means the person who has the right to drill,
9 convert, or operate any well subject to this part.

10 (J) ~~(k)~~—"Pollution" means damage or injury from the loss,
11 escape, or unapproved disposal of any substance at any well subject
12 to this part.

13 (K) ~~(l)~~—"Storage well" means a well drilled into a subsurface
14 formation to develop an underground storage cavity for subsequent
15 use in storage operations. Storage well does not include a storage
16 well drilled pursuant to part 615.

17 (L) ~~(m)~~—"Supervisor of mineral wells" means the state
18 geologist.

19 (M) ~~(n)~~—"Surface waste" means damage to, injury to, or
20 destruction of surface waters, soils, animal, fish, and aquatic
21 life, or surface property from unnecessary seepage or loss
22 incidental to or resulting from drilling, equipping, or operating a
23 well or wells subject to this part.

24 (N) ~~(o)~~—"Test well" means a well, core hole, core test,
25 observation well, or other well drilled from the surface to
26 determine the presence of a mineral, mineral resource, ore, or rock
27 unit, or to obtain geological or geophysical information or other

1 subsurface data related to mineral exploration and extraction. Test
2 well does not include holes drilled in the operation of a quarry,
3 open pit, or underground mine, or any wells not related to mineral
4 exploration or extraction.

5 (O) ~~(p)~~—"Underground storage cavity" means a cavity formed by
6 dissolving rock salt or other readily soluble rock or mineral, by
7 nuclear explosion, or by any other method for the purpose of
8 storage or disposal.

9 (P) ~~(q)~~—"Underground waste" means damage or injury to potable
10 water, mineralized water, or other subsurface resources.

11 (Q) ~~(r)~~—"Waste product" means waste or by-product resulting
12 from municipal or industrial operations or waste from any trade,
13 manufacture, business, or private pursuit that could cause
14 pollution and for which underground disposal may be feasible or
15 practical.

16 Sec. 63101. As used in this part:

17 (a) "Administratively complete" means an application for a
18 mining permit under this part that is determined by the department
19 to satisfy all of the conditions of this part and rules promulgated
20 under this part.

21 ~~—— (b) "Department" means the department of environmental~~
22 ~~quality.~~

23 (B) ~~(e)~~—"Life of the mine" means the period of time from
24 issuance of a permit under this part through the completion of
25 reclamation as required by this part.

26 (C) ~~(d)~~—"Metallic mineral" means ferrous ore or material mined
27 for its ferrous content.

1 (D) ~~(e)~~—"Metallic mineral operator" means a person who owns or
2 leases the plant and equipment utilized in a metallic mineral
3 mining area and is engaged in the business of mining metallic
4 minerals or preparing to engage in mining operations for metallic
5 minerals.

6 (E) ~~(f)~~—"Metallic product" means a commercially salable
7 metallic mineral in its final marketable form or state.

8 (F) ~~(g)~~—"Mineral" means any substance to be excavated from the
9 natural deposits on or in the earth for commercial, industrial, or
10 construction purposes, including gypsum, limestone, dolostone,
11 sandstone, shale, metallic mineral, or other solid materials.
12 However, mineral does not include clay, gravel, marl, peat, inland
13 sand or sand mined for commercial or industrial purposes, from sand
14 dune areas regulated under part 637, coal regulated under part 635,
15 or nonferrous metallic mineral regulated under part 632.

16 (G) ~~(h)~~—"Mining area" or "area subjected to mining" means an
17 area of land from which material is removed in connection with the
18 production or extraction of minerals by surface or open pit mining
19 methods, the lands on which material from that mining is deposited,
20 the lands on which beneficiating or treatment plants and auxiliary
21 facilities are located, the lands on which the water reservoirs
22 used in the mining process are located, and auxiliary lands which
23 are used.

24 (H) ~~(i)~~—"Operator" means a metallic mineral operator or other
25 persons engaged in or preparing to engage in mining operations for
26 the production of mineral products.

27 (I) ~~(j)~~—"Stockpile" means material, including, but not limited

1 to, surface overburden, rock, or lean ore, which in the process of
2 mineral mining and beneficiation or treatment has been removed from
3 the earth and stored on the surface, but excluding materials that
4 are being treated in the production of mineral products and the
5 mineral product that has been produced by that operation.

6 (J) ~~(k)~~—"Supervisor of reclamation" means the state geologist.

7 (K) ~~(l)~~—"Surface or open pit mining" means the mining of more
8 than 10,000 tons of a mineral or disturbing more than 1 acre of
9 land a year in the regular operation of a business by removing the
10 overburden lying above a natural deposit of a mineral and mining
11 directly from the natural deposit exposed or by mining directly
12 from a deposit lying exposed in the mineral's natural state.

13 Surface or open pit mining includes all mineral mining below the
14 water table or which will upon cessation of mining result in
15 creating a body of water of any size. Surface or open pit mining
16 does not include excavation or grading preliminary to a
17 construction project.

18 (L) ~~(m)~~—"Tailings basin" means land on which is deposited, by
19 hydraulic or other means, the material that is separated from the
20 mineral product in the beneficiation or treatment of minerals
21 including any surrounding dikes constructed to contain the
22 material.

23 Sec. 63201. As used in this part:

24 (a) "Administratively complete" means an application for a
25 mining permit under this part that is determined by the department
26 to contain all of the documents and information required under this
27 part and any rules promulgated under this part.

1 (b) "Affected area" means an area outside of the mining area
2 where the land surface, surface water, groundwater, or air
3 resources are determined through an environmental impact assessment
4 to be potentially affected by mining operations within the proposed
5 mining area.

6 ~~—— (c) "Department" means the department of environmental~~
7 ~~quality.~~

8 (C) ~~(d)~~ "Emergency management coordinator" means that term as
9 defined in section 2 of the emergency management act, 1976 PA 390,
10 MCL 30.402.

11 (D) ~~(e)~~ "Fund" means the nonferrous metallic mineral
12 surveillance fund created in section 63217.

13 (E) ~~(f)~~ "Metallic product" means a commercially salable
14 mineral produced primarily for its nonferrous metallic mineral
15 content in its final marketable form or state.

16 (F) ~~(g)~~ "Mining" means the excavation or removal of more than
17 10,000 tons of earth material a year or disturbing more than 1 acre
18 of land a year in the regular operation of a business for the
19 purpose of extracting a nonferrous metallic mineral or minerals by
20 1 or both of the following:

21 (i) Removing the overburden lying above natural deposits of a
22 mineral and excavating directly from the natural deposits thus
23 exposed or by excavating directly from deposits lying exposed in
24 their natural state.

25 (ii) Excavating from below the surface of the ground by means
26 of shafts, tunnels, or other subsurface openings.

27 (G) ~~(h)~~ "Mining area" means an area of land from which earth

1 material is removed in connection with nonferrous metallic mineral
2 mining, the lands on which material from that mining is stored or
3 deposited, the lands on which beneficiating or treatment plants and
4 auxiliary facilities are located, the lands on which the water
5 reservoirs used in the nonferrous metallic mineral mining process
6 are located, and auxiliary lands that are used in connection with
7 the mining.

8 (H) ~~(i)~~—"Mining permit" means a permit issued under this part
9 for conducting nonferrous metallic mineral mining and reclamation
10 operations.

11 (I) ~~(j)~~—"Nonferrous metallic mineral" means any ore or
12 material to be excavated from the natural deposits on or in the
13 earth for its metallic content, but not primarily for its iron or
14 iron mineral content, to be used for commercial or industrial
15 purposes.

16 (J) ~~(k)~~—"Nonferrous metallic mineral operator" or "operator"
17 means a permittee or other person who is engaged in, or who is
18 preparing to engage in, mining operations for nonferrous metallic
19 minerals, whether individually or jointly, or through agents,
20 employees, or contractors.

21 (K) ~~(l)~~—"Permittee" means a person who holds a mining permit.

22 (L) ~~(m)~~—"Postclosure monitoring period" means a period
23 following closure of a nonferrous metallic mineral mine during
24 which the permittee is required to conduct monitoring of
25 groundwater and surface water.

26 (M) ~~(n)~~—"Stockpile" means material, including, but not limited
27 to, surface overburden, rock, or lean ore, that in the process of

1 mining and beneficiation or treatment has been removed from the
2 earth and stored on the surface. Stockpile does not include
3 materials that are being treated in the production of metallic
4 products and the metallic product that has been produced by that
5 operation.

6 (N) ~~(e)~~—"Tailings basin" means land on which is deposited, by
7 hydraulic or other means, the material that is separated from the
8 metallic product in the beneficiation or treatment of minerals
9 including any surrounding dikes constructed to contain the
10 material.

11 Sec. 63502. (1) "Agricultural land" includes any of the
12 following as determined by the department ~~of natural resources~~
13 under part 609:

14 (a) Prime farmland is land that has the best combination of
15 physical and chemical characteristics for producing food, feed,
16 forage, and fiber crops and is also available for these uses,
17 including cropland, pastureland, rangeland, forestland, or other
18 land, but not urban built-up land or water. Prime farmland has the
19 soil quality, growing season, and moisture supply needed to
20 economically produce sustained high yields of crops when treated
21 and managed, including water management, according to acceptable
22 farming methods. In general, prime farmland has an adequate and
23 dependable water supply from precipitation or irrigation, a
24 favorable temperature and growing season, acceptable acidity or
25 alkalinity, acceptable salt and sodium content, and few or no
26 rocks. Prime farmland is permeable to water and air. Prime farmland
27 is not excessively erodible or saturated with water for a long

1 period of time, and it either does not flood frequently or is
2 protected from flooding.

3 (b) Unique farmland is land other than prime farmland that is
4 used for the production of specific high-value food and fiber
5 crops. Unique farmland has the special combination of soil quality,
6 location, growing season, and moisture supply needed to
7 economically produce sustained high quality or high yields or both
8 high quality and high yields of a specific crop when treated and
9 managed according to acceptable farming methods. Areas that can be
10 classified as unique farmland include organic soils producing
11 vegetables and specialty crops; high-lying and relatively frost-
12 free fruit sites; and areas of high water table acid soils
13 especially suited to highbush blueberry culture as well as the
14 small areas in the Upper Peninsula copper country that are
15 producing strawberries.

16 (c) Other farmland is land in addition to prime farmland and
17 unique farmland that has a combination of soils, location, and
18 management characteristics which is producing or can produce in or
19 for a region food, feed, forage, and fiber crops and is land on
20 which agriculture represents the greatest current economic return
21 from the land. Other farmland includes beef cow-calf operations
22 that occur on generally fine-textured, somewhat poorly drained
23 soils well-suited to forage production and grazing. Cropland areas
24 that by their location are especially suited for the production of
25 disease-free seed crops or that offer special opportunities for
26 integrated best management programs could also be considered other
27 farmland. The determination of whether agricultural land is prime

1 farmland, unique farmland, or other farmland shall be made by the
2 department of natural resources under part 609 or this part, with
3 the concurrence of the department of agriculture and the United
4 States department of agriculture.

5 (2) "Applicant" means a person applying for a permit from the
6 department to conduct surface coal mining activities or underground
7 coal mining activities pursuant to this part.

8 (3) "Approximate original contour" means that surface
9 configuration achieved by the backfilling and grading of the mined
10 area so that the reclaimed area, including any terracing or access
11 roads, closely resembles the general surface configuration of the
12 land prior to mining and blends into and complements the drainage
13 pattern of the surrounding terrain, with all highwalls and spoil
14 piles eliminated.

15 (4) "Coal" means all forms of coal including lignite. Coal
16 does not include clay, stone, sand, gravel, metalliferous and
17 nonmetalliferous ores, and any other solid material or substance of
18 commercial value excavated in solid form from natural deposits on
19 or in the earth, exclusive of coal, and those minerals that occur
20 naturally in liquid or gaseous form.

21 (5) "Coal exploration operation" means the substantial
22 disturbance of the surface or subsurface for the purpose of or
23 related to determining the location, quantity, or quality of a coal
24 deposit.

25 ~~— (6) "Department" means the department of environmental~~
26 ~~quality.~~

27 (6) ~~(7)~~—"Eligible land and water" means all land that was

1 mined for coal or was affected by that mining, wastebanks, coal
2 processing, or other coal mining processing, and abandoned or left
3 in an inadequate reclamation status under the standards provided in
4 subparts 3 and 4 prior to August 3, 1977, and for which there is
5 not a continuing reclamation responsibility under state or federal
6 law.

7 (7) ~~(8)~~—"Historic resource" means a district, site, building,
8 structure, or object of historical, architectural, archeological,
9 or cultural significance that meets any of the following
10 requirements:

11 (a) Is designated as a national historic landmark pursuant to
12 the historic sites, buildings, and antiquities act, chapter 593, 49
13 Stat. 666, 16 ~~U.S.C.~~ **USC** 461 to 467.

14 (b) Is listed on the national register of historic places
15 pursuant to the national historic preservation act, Public Law 89-
16 665, 16 ~~U.S.C.~~ **USC** 470 to 470a, 470b, and 470c to 470x-6; or the
17 ~~state register of historic sites~~ **MICHIGAN HISTORICAL MARKER'S ACT**
18 pursuant to 1955 PA 10, MCL 399.151 to ~~399.152~~ **399.160**.

19 (c) Is recognized under a locally established historic
20 district created pursuant to the local historic districts act, 1970
21 PA 169, MCL 399.201 to 399.215.

22 (d) Is eligible for listing, designation, or recognition under
23 subdivisions (a) to (c).

24 (8) ~~(9)~~—"Imminent danger to the health and safety of the
25 public" means the existence of any condition or practice, or any
26 violation of a permit or other requirement of this part in a
27 surface coal mining and reclamation operation, which condition,

1 practice, or violation could reasonably be expected to cause
2 substantial physical harm to persons outside the permit area before
3 the condition, practice, or violation can be abated. A reasonable
4 expectation of death or serious injury before abatement exists if a
5 reasonable person, subjected to the same conditions or practices
6 giving rise to the peril, would not expose himself or herself to
7 the danger during the time necessary for abatement.

8 (9) ~~(10)~~ "Local unit of government" means a county, city,
9 township, or village; a board, commission, or authority of a
10 county, city, township, or village; or a soil conservation
11 district.

12 (10) ~~(11)~~ "Operator" means a person engaged in coal mining who
13 removes or intends to remove more than 250 tons of coal from the
14 earth by coal mining within 12 consecutive calendar months in any 1
15 location.

16 Sec. 76111. (1) Subject to subsection (7), the department ~~of~~
17 ~~environmental quality~~ shall establish Great Lakes bottomlands
18 preserves by rule. A Great Lakes bottomlands preserve shall be
19 established by emergency rule if it is determined by the department
20 that this action is necessary to immediately protect an object or
21 area of historical or recreational value.

22 (2) A Great Lakes bottomlands preserve may be established
23 whenever a bottomlands area includes a single watercraft of
24 significant historical value, includes 2 or more abandoned
25 watercraft, or contains other features of archaeological,
26 historical, recreational, geological, or environmental
27 significance. Bottomlands areas containing few or no watercraft or

1 other features directly related to the character of a preserve may
2 be excluded from preserves.

3 (3) In establishing a Great Lakes bottomlands preserve, the
4 department of ~~environmental quality~~ shall consider all of the
5 following factors:

6 (a) Whether creating the preserve is necessary to protect
7 either abandoned property possessing historical or recreational
8 value, or significant underwater geological or environmental
9 features.

10 (b) The extent of local public and private support for
11 creation of the preserve.

12 (c) Whether a preserve development plan has been prepared by a
13 state or local agency.

14 (d) The extent to which preserve support facilities such as
15 roads, marinas, charter services, hotels, medical hyperbaric
16 facilities, and rescue agencies have been developed in or are
17 planned for the area.

18 (4) The department of ~~environmental quality and the department~~
19 ~~of history, arts, and libraries~~ **OR ANY OTHER STATE AGENCY** shall not
20 grant a permit to recover abandoned artifacts within a Great Lakes
21 bottomlands preserve except for historical or scientific purposes
22 or when the recovery will not adversely affect the historical,
23 cultural, or recreational integrity of the preserve area as a
24 whole.

25 (5) An individual Great Lakes bottomlands preserve shall not
26 exceed 400 square miles in area. Great Lakes bottomlands preserves
27 shall be limited in total area to not more than 10% of the Great

1 Lakes bottomlands within this state. However, the limitations
2 provided in this subsection do not apply to the Thunder Bay Great
3 Lakes bottomland preserve established in subsection (7).

4 (6) Upon the approval of the committee, not more than 1 vessel
5 associated with Great Lakes maritime history may be sunk
6 intentionally within a Great Lakes bottomlands preserve. However,
7 state money shall not be expended to purchase, transport, or sink
8 the vessel.

9 (7) The Thunder Bay Great Lakes state bottomland preserve
10 established under R 299.6001 of the Michigan administrative code
11 shall have boundaries identical with those described in 15 ~~C.F.R.~~
12 **CFR** 922.190 for the Thunder Bay national marine sanctuary and
13 underwater preserve. As long as the Thunder Bay national marine
14 sanctuary and underwater preserve remains a designated national
15 marine sanctuary, the right and privilege to explore, survey,
16 excavate, and regulate abandoned property of historical or
17 recreational value found upon or within the lands owned by or under
18 control of the state within those boundaries shall be jointly
19 managed and regulated by the department ~~of environmental quality~~
20 and the national oceanic and atmospheric administration. However,
21 this subsection shall not be construed to convey any ownership
22 right or interest from the state to the federal government of
23 abandoned property of historical or recreational value found upon
24 or within the lands owned by or under control of the state.

25 Sec. 79501. As used in this part:

26 ~~— (a) "Commission" means the Michigan jobs commission.~~

27 ~~— (b) "Department" means the department of environmental~~

1 ~~quality.~~

2 (A) ~~(e)~~ "Gaming facility" means a gaming facility regulated
3 under the Michigan gaming control and revenue act, ~~the initiated~~
4 ~~law of 1996 IL 1~~, MCL 432.201 to 432.226.

5 (B) ~~(d)~~ "Grant" means a waterfront redevelopment grant under
6 this part.

7 (C) ~~(e)~~ "Response activity" means that term as it is defined
8 in part 201.

9 (D) ~~(f)~~ "Waterfront" means land that is contiguous to the
10 Great Lakes or their connecting waterways, a river, or a lake or
11 impoundment that has a surface area of not less than 50 acres.

12 (E) ~~(g)~~ "Waterfront planning area" means the geographic area
13 included within a waterfront redevelopment plan.

14 (F) ~~(h)~~ "Waterfront redevelopment plan" means a waterfront
15 redevelopment plan prepared by a local unit of government under
16 section 79503 or a state approved recreation plan that includes
17 waterfront improvements.

18 Sec. 79504. A local unit of government that wishes to be
19 considered for a grant shall submit a written grant application to
20 the department in a manner prescribed by the department and
21 containing the information required by the department. The grant
22 application shall also include all of the following:

23 (a) A detailed description of the project and how the grant
24 would be used, including any private sector participation.

25 (b) A copy of the waterfront redevelopment plan for the area
26 in which the project is to be located.

27 (c) An explanation of how the project will contribute

1 significantly to the local unit of government's economic and
2 community redevelopment or the revitalization of adjacent
3 neighborhoods.

4 (d) An explanation of how the project will provide for public
5 access to the waterfront or will provide recreational opportunities
6 for the public.

7 (e) If the project includes the purchase of property, an
8 identification of the intended use of the property, and a timeline
9 for redevelopment of the property.

10 (f) The total cost of the project and the source of the local
11 unit of government's contribution to the project.

12 (g) A detailed description of the practices the local unit of
13 government will implement and maintain to control nonpoint source
14 pollution from the project site both during construction activities
15 and throughout the period of time in which the state is paying off
16 the bonds that were issued pursuant to the clean Michigan
17 initiative act, 1998 PA 284, MCL 324.95101 TO 324.95108.

18 (h) Other information that the department and the ~~commission~~
19 **MICHIGAN ECONOMIC DEVELOPMENT CORPORATION** consider relevant.

20 Sec. 79505. Upon receipt of a grant application under section
21 79504, the department shall forward a copy of the application to
22 the ~~commission~~ **MICHIGAN ECONOMIC DEVELOPMENT CORPORATION**. The
23 department and the ~~commission~~ **MICHIGAN ECONOMIC DEVELOPMENT**
24 **CORPORATION** shall jointly review the grant applications. In
25 reviewing grant applications, the department and the ~~commission~~
26 **MICHIGAN ECONOMIC DEVELOPMENT CORPORATION** shall consider all of the
27 following:

1 (a) Whether the project proposed to be funded is authorized by
2 this part.

3 (b) Whether the grant application submitted complies with this
4 part.

5 (c) Whether the project is consistent with the waterfront
6 redevelopment plan for the area in which the project is located.

7 (d) Whether the project provides significant public access to
8 the waterfront or provides recreational opportunities for the
9 public.

10 (e) Whether the project will significantly contribute to the
11 local unit of government's economic and community redevelopment or
12 the revitalization of adjacent neighborhoods.

13 (f) Whether there is evidence of adverse economic and
14 socioeconomic conditions within the waterfront planning area.

15 (g) The viability of the waterfront redevelopment plan.

16 (h) Whether the project is innovative in comparison to other
17 grant applications.

18 (i) The level of public and private commitment and other
19 resources available for the project.

20 (j) The level of public and private commitment to other
21 aspects of the waterfront redevelopment plan.

22 (k) How the project relates to a broader economic and
23 community development plan for the local unit of government as a
24 whole.

25 (l) The level of demonstrated commitment from other
26 governmental agencies.

27 (m) The level of public and private commitment to improving

1 abandoned real property within the waterfront planning area in
2 which the project is located.

3 (n) Other criteria that the department and the ~~commission~~
4 **MICHIGAN ECONOMIC DEVELOPMENT CORPORATION** consider relevant.

5 Sec. 79506. The department, with the approval of the
6 ~~commission~~**MICHIGAN ECONOMIC DEVELOPMENT CORPORATION**, shall issue
7 grants under this part for projects that the department determines
8 meet the requirements of this part and will contribute to the
9 revitalization of waterfronts throughout the state that are not
10 being used in a manner that maximizes economic and public value.

11 Enacting section 1. The following acts and parts of acts are
12 repealed:

13 (a) Part 23 of the natural resources and environmental
14 protection act, 1994 PA 451, MCL 324.2301 to 324.2305.

15 (b) Sections 20517 and 20519 of the natural resources and
16 environmental protection act, 1994 PA 451, MCL 324.20517 and
17 324.20519.

18 (c) Section 21562 of the natural resources and environmental
19 protection act, 1994 PA 451, MCL 324.21562.