

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 404

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 11504, 11523, 11523a, 11525, and 11525b (MCL  
324.11504, 324.11523, 324.11523a, 324.11525, and 324.11525b),  
sections 11504 and 11523 as amended and section 11523a as added by  
1996 PA 359, section 11525 as amended by 2003 PA 153, and section  
11525b as added by 1996 PA 358; and to repeal acts and parts of  
acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 11504. (1) "Health officer" means a full-time  
2       administrative officer of a certified city, county, or district  
3       department of health.

1           (2) "Inert material" means a substance that will not  
2 decompose, dissolve, or in any other way form a contaminated  
3 leachate upon contact with water, or other liquids determined by  
4 the department as likely to be found at the disposal area,  
5 percolating through the substance.

6           (3) "Insurance" means insurance that conforms to the  
7 requirements of 40 ~~C.F.R.~~ **CFR** 258.74(d) provided by an insurer who  
8 has a certificate of authority from the ~~Michigan commissioner~~  
9 **DIRECTOR of insurance AND FINANCIAL SERVICES** to sell this line of  
10 coverage. An applicant for an operating license shall submit  
11 evidence of the required coverage by submitting both of the  
12 following to the department:

13           (a) A certificate of insurance that uses wording approved by  
14 the department.

15           (b) A certified true and complete copy of the insurance  
16 policy.

17           (4) "Landfill" means a disposal area that is a sanitary  
18 landfill.

19           (5) "Letter of credit" means an irrevocable letter of credit  
20 that complies with 40 ~~C.F.R.~~ **CFR** 258.74(c).

21           (6) "Medical waste" means that term as it is defined in ~~part~~  
22 ~~138-SECTION 13805~~ of the public health code, ~~Act No. 378 of the~~  
23 ~~Public Acts of 1978, being sections 333.13801 to 333.13831 of the~~  
24 ~~Michigan Compiled Laws.1978~~ **PA 368, MCL 333.13805.**

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

1 (a) The incinerator receives solid waste from off site and  
2 burns only household waste from single and multiple dwellings,  
3 hotels, motels, and other residential sources, or this household  
4 waste together with solid waste from commercial, institutional,  
5 municipal, county, or industrial sources that, if disposed of,  
6 would not be required to be placed in a disposal facility licensed  
7 under part 111.

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

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

14 (d) The incinerator is not an industrial furnace as defined in  
15 ~~40 C.F.R.~~ **CFR** 260.10.

16 (e) The incinerator is not an incinerator that receives and  
17 burns only medical waste or only waste produced at 1 or more  
18 hospitals.

19 (8) "Municipal solid waste incinerator ash" means the  
20 substances remaining after combustion in a municipal solid waste  
21 incinerator.

22 (9) "Perpetual care fund" means a **TRUST OR ESCROW ACCOUNT OR**  
23 perpetual care fund **BOND** provided for in section 11525.

24 (10) **"PERPETUAL CARE FUND BOND" MEANS A SURETY BOND, AN**  
25 **IRREVOCABLE LETTER OF CREDIT, OR A COMBINATION OF THESE INSTRUMENTS**  
26 **IN FAVOR OF AND ON A FORM APPROVED BY THE DEPARTMENT BY WHICH A**  
27 **PERPETUAL CARE FUND IS ESTABLISHED.**

1           (11) ~~(10)~~—"Trust fund" means a trust fund held by a trustee  
2   which has the authority to act as a trustee and whose trust  
3   operations are regulated and examined by a federal or state agency.  
4   A trust fund shall comply with section 11523b.

5           Sec. 11523. (1) The department shall not issue a license to  
6   operate a disposal area unless the applicant has filed, as a part  
7   of the application for a license, evidence of the following  
8   financial assurance:

9           (a) Financial assurance established for a type III landfill or  
10   a preexisting unit at a type II landfill and until April 9, 1997,  
11   existing and new type II landfills shall be in the form of a bond  
12   in an amount equal to \$20,000.00 per acre of licensed landfill  
13   within the solid waste boundary. However, the amount of the bond  
14   shall not be less than \$20,000.00 or more than \$1,000,000.00. Each  
15   bond shall provide assurance for the maintenance of the finished  
16   landfill site for a period of 30 years after the landfill or any  
17   approved portion is completed. In addition to this bond, a  
18   perpetual care fund shall be maintained under section 11525.

19           (b) Financial assurance for a type II landfill ~~which~~ **THAT** is  
20   an existing unit or a new unit shall be in an amount equal to the  
21   cost, in current dollars, of hiring a third party, to conduct  
22   closure, postclosure maintenance and monitoring, and if necessary,  
23   corrective action. An application for a type II landfill ~~which~~ **THAT**  
24   is an existing unit or new unit shall demonstrate financial  
25   assurance in accordance with section 11523a.

26           (c) Financial assurance established for a solid waste transfer  
27   facility, incinerator, processing plant, other solid waste handling

1 or disposal facility, or a combination of these utilized in the  
2 disposal of solid waste shall be in the form of a bond in an amount  
3 equal to 1/4 of 1% of the construction cost of the facility, but  
4 shall not be less than \$4,000.00, and shall be continued in effect  
5 for a period of 2 years after the disposal area is closed.

6 (2) The owner or operator of a landfill may post a cash bond  
7 with the department instead of other bonding mechanisms to fulfill  
8 the remaining financial assurance requirements of this section. ~~A~~  
9 ~~minimum amount equal to the remaining financial assurance~~  
10 ~~requirement divided by the term of the operating license shall be~~  
11 ~~paid to the department prior to licensure. Subsequent payments to~~  
12 ~~the department shall be made annually in an amount equal to the~~  
13 ~~remaining financial assurance requirement divided by the number of~~  
14 ~~years remaining until the operating license expires, until the~~  
15 ~~required amount is attained.~~ An owner or operator of a disposal  
16 area who elects to post cash as ~~A~~ bond shall accrue interest on  
17 that bond at the annual rate of 6%, to be accrued quarterly, except  
18 that the interest rate payable to an owner or operator shall not  
19 exceed the rate of interest accrued on the state common cash fund  
20 for the quarter in which an accrual is determined. Interest shall  
21 be paid to the owner or operator upon release of the bond by the  
22 department. Any interest greater than 6% shall be deposited in the  
23 state treasury to the credit of the general fund and shall be  
24 appropriated to the department to be used by the department for  
25 administration of this part.

26 (3) An owner or operator of a disposal area that is not a  
27 landfill who has accomplished closure in a manner approved by the

department and in accordance with this part and the rules promulgated under this part, may request a 50% reduction in the bond during the 2-year period after closure. At the end of the 2-year period, the owner or operator may request that the department terminate the bond. The department shall approve termination of the bond within 60 days ~~of such~~ **AFTER THE** request ~~provided~~ **IS MADE IF** all waste and waste residues have been removed from the disposal area and ~~that~~ closure is certified.

(4) The department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the owner or operator fails to comply with the closure and postclosure monitoring and maintenance requirements of this part and the rules promulgated under this part to the extent necessary to correct such violations. ~~following issuance of~~ **AT LEAST 7 DAYS BEFORE UTILIZING THE BOND, THE DEPARTMENT SHALL ISSUE** a notice of violation or other order ~~by the department which~~ **THAT** alleges violation of this part ~~and~~ **OR** rules promulgated under this part and ~~provides 7 days' notice and~~ **PROVIDE AN** opportunity for **A** hearing. **THIS SUBSECTION DOES NOT APPLY TO A PERPETUAL CARE FUND BOND.**

(5) Under the terms of a surety bond, letter of credit, ~~or~~ insurance policy, **OR PERPETUAL CARE FUND BOND**, the issuing institution shall notify both the department and the owner or operator at least 120 days before the expiration date or any cancellation of the bond. If the owner or operator does not extend the effective date of the bond, or establish alternate financial assurance within 90 days after receipt of an expiration or

1 cancellation notice ~~by~~ **FROM** the issuing institution, ~~the~~ **ALL OF THE**  
2 **FOLLOWING APPLY:**

3 (A) **THE** department may draw on the bond.

4 (B) **IN THE CASE OF A PERPETUAL CARE FUND BOND, THE ISSUING**  
5 **INSTITUTION SHALL DEPOSIT THE PROCEEDS INTO THE STANDBY TRUST OR**  
6 **ESCROW ACCOUNT UNLESS THE DEPARTMENT AGREES TO THE EXPIRATION OR**  
7 **CANCELLATION OF THE PERPETUAL CARE FUND BOND.**

8 (6) The department shall not issue a construction permit or a  
9 new license to operate a disposal area to an applicant that is the  
10 subject of a bankruptcy action commenced under title 11 of the  
11 United States Code, 11 ~~U.S.C.~~ **USC** 101 to ~~1330,~~ **1532**, or any other  
12 predecessor or successor statute.

13 (7) A person required under this section to provide financial  
14 assurance in the form of a bond for a landfill may request a  
15 reduction in the bond based upon the ~~value~~ **AMOUNT** of the perpetual  
16 care fund established under section 11525. A person requesting a  
17 bond reduction shall do so on a form consistent with this part ~~as~~  
18 ~~prepared~~ **AND PROVIDED** by the department. The department shall grant  
19 this request unless there are sufficient grounds for denial and  
20 those reasons are provided in writing. The department shall grant  
21 or deny a request for a reduction of the bond within 60 days after  
22 the request is made. If the department grants a request for a  
23 reduced bond, the department shall require a bond in an amount such  
24 that for type III landfills, and type II landfills ~~which~~ **THAT** are  
25 preexisting units, the amount of ~~money in the~~ perpetual care fund  
26 plus the amount of the reduced bond equals the maximum amount  
27 required in a perpetual care fund in section 11525(2).

1           (8) The department shall release the bond required by this  
2 section if the amount ~~in~~**OF** the perpetual care fund exceeds the  
3 amount of the financial assurance required under subsection (1).

4           (9) Prior to closure of a landfill, if money is disbursed from  
5 the perpetual care fund, then the department may require a  
6 corresponding increase in the amount of bonding required to be  
7 provided if necessary to meet the ~~requirement~~**REQUIREMENTS** of this  
8 section.

9           (10) **IF AN OWNER OR OPERATOR OF A DISPOSAL AREA FULFILLS THE**  
10 **FINANCIAL ASSURANCE REQUIREMENTS OF THIS PART BY OBTAINING A BOND,**  
11 **INCLUDING, BUT NOT LIMITED TO, A PERPETUAL CARE FUND BOND, AND THE**  
12 **SURETY COMPANY, INSURER, TRUSTEE, BANK, OR FINANCIAL OR OTHER**  
13 **INSTITUTION THAT ISSUED OR HOLDS THE BOND BECOMES THE SUBJECT OF A**  
14 **BANKRUPTCY ACTION OR HAS ITS AUTHORITY TO ISSUE OR HOLD THE BOND OR**  
15 **TO ACT AS AN ESCROW AGENT OR TRUSTEE SUSPENDED OR REVOKED, THE**  
16 **OWNER OR OPERATOR SHALL, WITHIN 60 DAYS AFTER RECEIVING NOTICE OF**  
17 **THAT EVENT, ESTABLISH ALTERNATE FINANCIAL ASSURANCE UNDER THIS**  
18 **PART.**

19           Sec. 11523a. (1) Effective April 9, 1997, the department shall  
20 not issue a license to operate a type II landfill unless the  
21 applicant demonstrates that for any new unit or existing unit at  
22 the facility, the combination of the perpetual care fund  
23 established under section 11525, bonds, and the financial  
24 capability of the applicant as evidenced by a financial test,  
25 provides financial assurance in an amount not less than that  
26 required by this section. An applicant may utilize a financial test  
27 for an amount up to, but not exceeding 70% of the closure,



1 postclosure, and corrective action cost estimate.

2 (2) An applicant may demonstrate compliance with this section  
3 by submitting evidence, with a form consistent with this part ~~as~~  
4 ~~prepared~~ **AND PROVIDED** by the department, that the applicant has  
5 financial assurance for any existing unit or new unit in an amount  
6 equal to or greater than the sum of the following standardized  
7 costs:

8 (a) A standard closure cost estimate. The standard closure  
9 cost estimate shall be based upon the sum of the following costs in  
10 1996 dollars, adjusted for inflation and partial closures, if any,  
11 as specified in subsections (4) and (5):

12 (i) A base cost of \$20,000.00 per acre to construct a compacted  
13 soil final cover using on-site material.

14 (ii) A supplemental cost of \$20,000.00 per acre, to install a  
15 synthetic cover liner, if required by rules under this part.

16 (iii) A supplemental cost of \$5,000.00 per acre, if low  
17 permeability soil must be transported from off-site to construct  
18 the final cover or if a bentonite geocomposite liner is used ~~in~~  
19 ~~lieu~~ **INSTEAD** of low permeability soil in a composite cover.

20 (iv) A supplemental cost of \$5,000.00 per acre, to construct a  
21 passive gas collection system in the final cover, unless an active  
22 gas collection system has been installed at the facility.

23 (b) A standard postclosure cost estimate. The standard  
24 postclosure cost estimate shall be based upon the sum of the  
25 following costs, adjusted for inflation as specified in section  
26 11525(2):

27 (i) A final cover maintenance cost of \$200.00 per acre per

1 year.

2 (ii) A leachate disposal cost of \$100.00 per acre per year.

3 (iii) A leachate transportation cost of \$1,000.00 per acre per  
4 year, if leachate is required to be transported off-site for  
5 treatment.

6 (iv) A groundwater monitoring cost of \$1,000.00 per monitoring  
7 well per year.

8 (v) A gas monitoring cost of \$100.00 per monitoring point per  
9 year, for monitoring points used to detect landfill gas at or  
10 beyond the facility property boundary.

11 (c) The corrective action cost estimate, if any. The  
12 corrective action cost estimate shall be a detailed written  
13 estimate, in current dollars, of the cost of hiring a third party  
14 to perform corrective action in accordance with this part.

15 (3) ~~In lieu~~ **INSTEAD** of using some or all of the standardized  
16 costs specified in subsection (2), ~~of this section,~~ an applicant  
17 may estimate the site specific costs of closure or postclosure  
18 maintenance and monitoring. A site specific cost estimate shall be  
19 a written estimate, in current dollars, of the cost of hiring a  
20 third party to perform the activity. ~~A third party is a party who~~  
21 ~~is neither a~~ **FOR THE PURPOSES OF THIS SUBSECTION, A** parent  
22 corporation or a subsidiary of the owner or operator **IS NOT A THIRD**  
23 **PARTY**. Site specific cost estimates shall be based on the  
24 following:

25 (a) For closure, the cost to close the largest area of the  
26 landfill ever requiring a final cover at any time during the active  
27 life, when the extent and manner of its operation would make

1 closure the most expensive, in accordance with the approved closure  
2 plan. The closure cost estimate may not incorporate any salvage  
3 value that may be realized by the sale of structures, land,  
4 equipment, or other assets associated with the facility at the time  
5 of final closure.

6 (b) For postclosure, the cost to conduct postclosure  
7 maintenance and monitoring in accordance with the approved  
8 postclosure plan for the entire postclosure period.

9 (4) The owner or operator of a landfill subject to this  
10 section shall, during the active life of the landfill and during  
11 the postclosure care period, annually adjust the financial  
12 assurance cost estimates and corresponding amount of financial  
13 assurance for inflation. Cost estimates shall be adjusted for  
14 inflation by multiplying the cost estimate by an inflation factor  
15 derived from the most recent **UNITED STATES DEPARTMENT OF THE**  
16 **INTERIOR**, bureau of reclamation composite index published by the  
17 United States department of commerce or another index that is more  
18 representative of the costs of closure and postclosure monitoring  
19 and maintenance as determined appropriate by the department. The  
20 owner or operator shall document the adjustment on a form  
21 consistent with this part as prepared by the department and shall  
22 place ~~such~~**THE** documentation in the operating record of the  
23 facility.

24 (5) The owner or operator of a landfill subject to this  
25 section may request that the department authorize a reduction in  
26 the approved cost estimates and corresponding financial assurance  
27 for the landfill by submitting a form consistent with this part as

1 ~~prepared~~ **AND PROVIDED** by the department certifying completion of  
2 any of the following activities:

3 (a) Partial closure of the landfill. The current closure cost  
4 estimate for partially closed portions of a landfill unit may be  
5 reduced by 80%, if the maximum waste slope on the unclosed portions  
6 of the unit does not exceed 25%. The percentage of the cost  
7 estimate reduction approved by the department for the partially  
8 closed portion shall be reduced 1% for every 1% increase in the  
9 slope of waste over 25% in the active portion. An owner or operator  
10 requesting a reduction in financial assurance for partial closure  
11 shall enclose with the request a certification under the seal of a  
12 licensed professional engineer that certifies both of the  
13 following:

14 (i) ~~A-THAT A~~ portion of the licensed landfill unit has reached  
15 final grades and has had a final cover installed in compliance with  
16 the approved closure plan and rules promulgated under this part.

17 (ii) The maximum slope of waste in the active portion of the  
18 landfill unit at the time of partial closure.

19 (b) Final closure of the landfill. An owner or operator  
20 requesting a cost estimate reduction for final closure shall submit  
21 a certification under the seal of a licensed professional engineer  
22 that closure of that landfill unit has been fully completed in  
23 accordance with the approved closure plan for the landfill. Within  
24 60 days of receiving a certification under this subsection, the  
25 department shall perform a consistency review of the submitted  
26 certification ~~. If that review is approved, the department shall~~

27 **AND DO 1 OF THE FOLLOWING:**

1           (i) **APPROVE THE CERTIFICATION AND** notify the owner or operator  
2 that he or she may reduce the closure **COST** estimate ~~by 100%. The~~  
3 ~~department shall provide within 60 days~~ **TO ZERO.**

4           (ii) **DISAPPROVE THE CERTIFICATION AND PROVIDE** the owner or  
5 operator with a detailed written statement of the reasons why the  
6 department has determined that closure certification has not been  
7 conducted in accordance with this part, the rules promulgated under  
8 this part, or an approved closure plan.

9           (c) Postclosure maintenance and monitoring. The owner or  
10 operator of a landfill unit who has completed final closure of the  
11 unit may request a reduction in the postclosure cost estimate and  
12 corresponding financial assurance for 1 year or more of postclosure  
13 maintenance and monitoring if the landfill has been monitored and  
14 maintained in accordance with the approved postclosure plan. The  
15 department shall, within 60 days of receiving a cost estimate  
16 reduction request grant written approval or issue a written denial  
17 stating the reason for denial. The department shall grant the  
18 request and the owner or operator may reduce the postclosure cost  
19 estimate to reflect the number of years remaining in the  
20 postclosure period unless the department ~~provided in writing~~ **DENIES**  
21 **THE REQUEST AND THE WRITTEN DENIAL STATES** that the owner or  
22 operator has not performed the specific tasks consistent with this  
23 part, rules promulgated under this part, and an approved plan.

24           (6) The owner or operator of a landfill subject to this  
25 section may request a reduction in the amount of one or more of the  
26 financial assurance mechanisms in place. If the combined value of  
27 the remaining financial assurance mechanisms equals the **AMOUNT**

1 required ~~amount under section 11523a,~~ **UNDER THIS SECTION**, the  
2 department shall approve the request.

3 (7) An owner or operator requesting that the department  
4 approve a financial assurance reduction ~~for performance of the~~  
5 ~~activities specified in subsection (5) or due to excess financial~~  
6 ~~assurance specified in subsection~~ **UNDER SUBSECTION (5) OR** (6) shall  
7 do so on a form consistent with this part ~~as prepared~~ **AND PROVIDED**  
8 by the department. The department shall grant written approval or,  
9 within 60 days of receiving a financial assurance reduction  
10 request, issue a written denial stating the reason for the denial.

11 Sec. 11525. (1) The owner or operator of a landfill shall  
12 establish and maintain a perpetual care fund for a period of 30  
13 years after final closure of the landfill as specified in this  
14 section. A perpetual care fund may be established as a trust, ~~or an~~  
15 escrow account, **OR A PERPETUAL CARE FUND BOND** and may be used to  
16 demonstrate financial assurance for type II landfills under section  
17 11523 and section 11523a.

18 (2) Except as otherwise provided in this section, the owner or  
19 operator of a landfill shall ~~deposit into~~ **INCREASE THE AMOUNT OF**  
20 his or her perpetual care fund 75 cents for each ton or portion of  
21 a ton or 25 cents for each cubic yard or portion of a cubic yard of  
22 solid waste that is disposed of in the landfill after June 17, 1990  
23 ~~. The deposits shall be made not less than semiannually until the~~  
24 fund reaches the maximum required fund amount. As of July 1, 1996,  
25 the maximum required fund amount is \$1,156,000.00. This amount  
26 shall be annually adjusted for inflation and rounded to the nearest  
27 thousand. The department shall adjust the maximum required fund

1 amount for inflation annually by multiplying the amount by an  
2 inflation factor derived from the most recent bureau of reclamation  
3 composite index published by the United States department of  
4 commerce or another index more representative of the costs of  
5 closure and postclosure monitoring and maintenance as determined  
6 appropriate by the department. **INCREASES TO THE AMOUNT OF A**  
7 **PERPETUAL CARE FUND REQUIRED UNDER THIS SUBSECTION SHALL BE**  
8 **CALCULATED BASED ON SOLID WASTE DISPOSED OF IN THE LANDFILL AS OF**  
9 **THE END OF THE STATE FISCAL YEAR AND SHALL BE MADE WITHIN 30 DAYS**  
10 **AFTER THE END OF EACH STATE FISCAL YEAR.**

11 (3) The owner or operator of a landfill that is used for the  
12 disposal of the following materials shall ~~deposit into~~ **INCREASE THE**  
13 **AMOUNT OF** the perpetual care fund 7.5 cents for each ton or cubic  
14 yard or portion of a ton or cubic yard of the following materials  
15 that are disposed of in the landfill after June 17, 1990:

16 (a) Coal ash, wood ash, or cement kiln dust that is disposed  
17 of in a landfill that is used only for the disposal of coal ash,  
18 wood ash, or cement kiln dust, or a combination of these materials,  
19 or that is permanently segregated in a landfill.

20 (b) Wastewater treatment sludge or sediments from wood pulp or  
21 paper producing industries that is disposed of in a landfill that  
22 is used only for the disposal of wastewater treatment sludge and  
23 sediments from wood pulp or paper producing industries, or that is  
24 permanently segregated in a landfill.

25 (c) Foundry sand or other material that is approved by the  
26 department for use as daily cover at an operating landfill, that is  
27 disposed of in a landfill that is used only for the disposal of

1 foundry sand, or that is permanently segregated in a landfill.

2 (4) The owner or operator of a landfill that is used only for  
3 the disposal of a mixture of 2 or more of the materials described  
4 in subsection (3)(a) to (c) or in which a mixture of 2 or more of  
5 these materials are permanently segregated shall ~~deposit into~~  
6 **INCREASE THE AMOUNT OF** the perpetual care fund 7.5 cents for each  
7 ton or cubic yard or portion of a ton or cubic yard of these  
8 materials that are disposed of in the landfill after July 1, 1996.

9 (5) ~~Money is not required to be deposited into~~ **THE AMOUNT OF** a  
10 perpetual care fund **IS NOT REQUIRED TO BE INCREASED** for materials  
11 that are regulated under part 631.

12 (6) The owner or operator of a landfill may ~~contribute~~  
13 ~~additional amounts into~~ **INCREASE THE AMOUNT OF** the perpetual care  
14 fund **ABOVE THE AMOUNT OTHERWISE REQUIRED BY THIS SECTION** at his or  
15 her discretion.

16 (7) The custodian of a perpetual care fund **TRUST OR ESCROW**  
17 **ACCOUNT** shall be a bank or other financial institution that has the  
18 authority to act as a custodian and whose account operations are  
19 regulated and examined by a federal or state agency. Until the  
20 perpetual care fund **TRUST OR ESCROW ACCOUNT** reaches the maximum  
21 required fund amount, the custodian of a perpetual care fund **TRUST**  
22 **OR ESCROW ACCOUNT** shall credit **ANY** interest and earnings of the  
23 perpetual care fund **TRUST OR ESCROW ACCOUNT** to the perpetual care  
24 fund **TRUST OR ESCROW ACCOUNT**. ~~However, upon the direction of the~~  
25 ~~owner or operator, the custodian may utilize the interest and~~  
26 ~~earnings of the perpetual care fund to pay the solid waste~~  
27 ~~management program administration fee or the surcharge required by~~



1 ~~section 11525a for the landfill for which the perpetual care fund~~  
2 ~~was established. After the perpetual care fund~~ **TRUST OR ESCROW**  
3 **ACCOUNT** reaches the maximum required fund amount, **ANY** interest and  
4 earnings shall be distributed as directed by the owner or operator.  
5 The agreement governing the operation of the perpetual care fund  
6 **TRUST OR ESCROW ACCOUNT** shall be executed on a form consistent with  
7 this part ~~as prepared~~ **AND PROVIDED** by the department. The custodian  
8 may be compensated from the fund for reasonable fees and costs  
9 incurred for his or her responsibilities as custodian. The  
10 custodian of a perpetual care fund **TRUST OR ESCROW ACCOUNT** shall  
11 ~~annually~~ make an accounting to the department within 30 days  
12 following the close of ~~the~~ **EACH** state fiscal year.

13 (8) The custodian of a perpetual care fund shall not disburse  
14 any funds to the owner or operator of a landfill for the purposes  
15 of the perpetual care fund except upon the prior written approval  
16 of the department. However, the custodian shall ensure the filing  
17 of all required tax returns for which the perpetual care fund is  
18 liable and shall disburse funds to pay lawfully due taxes owed by  
19 the perpetual care fund without permission of the department. ~~and~~  
20 ~~may disburse interest and earnings of the perpetual care fund to~~  
21 ~~pay the solid waste management program administration fee or the~~  
22 ~~surcharge required by section 11525a as provided in subsection (7).~~  
23 The owner or operator of the landfill shall provide notice of  
24 requests for disbursement and denials and approvals to the  
25 custodian of the perpetual care fund. Requests for disbursement  
26 from a perpetual care fund shall be submitted not more frequently  
27 than semiannually. The owner or operator of a landfill may request

1 disbursement of funds from a perpetual care fund whenever the  
2 amount of money in the fund exceeds the maximum required fund  
3 amount. The department shall approve the disbursement ~~provided-IF~~  
4 the total amount of financial assurance maintained meets the  
5 requirements of sections 11523 and 11523a. As used in this  
6 subsection, "maximum required fund amount" means:

7 (a) For those landfills containing only those materials  
8 specified in subsection (3), an amount equal to 1/2 of the maximum  
9 required fund amount specified in subsection (2).

10 (b) For all other landfills, an amount equal to the maximum  
11 required fund amount specified in subsection (2).

12 (9) If the owner or operator of a landfill refuses or fails to  
13 conduct closure, postclosure monitoring and maintenance, or  
14 corrective action as necessary to protect the public health,  
15 safety, or welfare, or the environment or fails to request the  
16 disbursement of money from a perpetual care fund when necessary to  
17 protect the public health, safety, or welfare, or the environment,  
18 or fails to pay the solid waste management program administration  
19 fee or the surcharge required under section 11525a, then the  
20 department may ~~require the disbursement of money from~~ **DRAW ON** the  
21 perpetual care fund and may expend the money for closure,  
22 postclosure monitoring and maintenance, and corrective action, as  
23 necessary. The department may ~~assess~~ **DRAW ON** a perpetual care fund  
24 for administrative costs associated with actions taken under this  
25 subsection.

26 (10) Upon approval by the department of a request to terminate  
27 financial assurance for a landfill under section 11525b, any money

1 in the perpetual care fund for that landfill shall be disbursed by  
2 the custodian to the owner of the landfill unless a contract  
3 between the owner and the operator of the landfill provides  
4 otherwise.

5 (11) The owner of a landfill shall provide notice to the  
6 custodian of the perpetual care fund for that landfill if there is  
7 a change of ownership of the landfill. The custodian shall maintain  
8 records of ownership of a landfill during the ~~time in which a~~  
9 **PERIOD OF EXISTENCE OF THE** perpetual care fund. ~~is established.~~

10 (12) This section does not relieve an owner or operator of a  
11 landfill of any liability that he or she may have under this part  
12 or as otherwise provided by law.

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

19 (14) As used in this section, "custodian" means the trustee or  
20 escrow agent of ~~a~~ **ANY OF THE FOLLOWING:**

21 (A) A perpetual care fund **THAT IS ESTABLISHED AS A TRUST OR**  
22 **ESCROW ACCOUNT.**

23 (B) A **STANDBY TRUST OR ESCROW ACCOUNT FOR A PERPETUAL CARE**  
24 **FUND BOND.**

25 (15) **A PERPETUAL CARE FUND THAT IS ESTABLISHED AS A TRUST OR**  
26 **ESCROW ACCOUNT MAY BE REPLACED WITH A PERPETUAL CARE FUND THAT IS**  
27 **ESTABLISHED AS A PERPETUAL CARE FUND BOND THAT COMPLIES WITH THIS**

1 SECTION. UPON SUCH REPLACEMENT, THE DIRECTOR SHALL AUTHORIZE THE  
2 CUSTODIAN OF THE TRUST OR ESCROW ACCOUNT TO DISBURSE THE MONEY IN  
3 THE TRUST OR ESCROW ACCOUNT TO THE OWNER OF THE LANDFILL UNLESS A  
4 CONTRACT BETWEEN THE OWNER AND OPERATOR OF THE LANDFILL SPECIFIES  
5 OTHERWISE.

6 (16) AN OWNER OR OPERATOR OF A LANDFILL WHO USES A PERPETUAL  
7 CARE FUND BOND TO SATISFY THE REQUIREMENTS OF THIS SECTION SHALL  
8 ALSO ESTABLISH A STANDBY TRUST OR ESCROW ACCOUNT. ALL PAYMENTS MADE  
9 UNDER THE TERMS OF THE PERPETUAL CARE FUND BOND SHALL BE DEPOSITED  
10 BY THE CUSTODIAN DIRECTLY INTO THE STANDBY TRUST OR ESCROW ACCOUNT  
11 IN ACCORDANCE WITH INSTRUCTIONS FROM THE DIRECTOR. THE STANDBY  
12 TRUST OR ESCROW ACCOUNT MUST MEET THE REQUIREMENTS FOR A TRUST OR  
13 ESCROW ACCOUNT ESTABLISHED AS A PERPETUAL CARE FUND UNDER  
14 SUBSECTION (1), EXCEPT THAT UNTIL THE STANDBY TRUST OR ESCROW  
15 ACCOUNT IS FUNDED PURSUANT TO THE REQUIREMENTS OF THIS SUBSECTION,  
16 THE FOLLOWING ARE NOT REQUIRED:

17 (A) PAYMENTS INTO THE STANDBY TRUST OR ESCROW ACCOUNT AS  
18 SPECIFIED IN SUBSECTION (2).

19 (B) ANNUAL ACCOUNTING VALUATIONS AS REQUIRED IN SUBSECTION  
20 (7).

21 Sec. 11525b. (1) The owner or operator of a disposal area  
22 shall provide continuous financial assurance coverage until  
23 released from these requirements by the department under the  
24 provisions of this part.

25 (2) The owner or operator of a landfill who has completed  
26 postclosure maintenance and monitoring of the landfill in  
27 accordance with this part, rules promulgated under this part, and

1 approved postclosure plan may request that financial assurance  
2 required by sections 11523 and 11523a be terminated. A person  
3 requesting termination of bonding and financial assurance shall  
4 submit to the department a statement that the landfill has been  
5 monitored and maintained in accordance with this part, rules  
6 promulgated under this part, and **THE** approved postclosure plan for  
7 the postclosure period specified in section 11523 and shall certify  
8 that the landfill is not subject to corrective action under section  
9 11515. Within 60 days of receiving a statement under this  
10 subsection, the department shall perform a consistency review of  
11 the submitted statement ~~, and if approved, shall~~ **AND DO 1 OF THE**  
12 **FOLLOWING:**

13       **(A) APPROVE THE STATEMENT,** notify the owner or operator that  
14 he or she is no longer required to maintain financial assurance,  
15 ~~shall return or release all financial assurance mechanisms, and,~~  
16 ~~shall~~ **IF THE PERPETUAL CARE FUND IS ESTABLISHED AS A TRUST OR**  
17 **ESCROW ACCOUNT,** notify the custodian of the perpetual care fund  
18 that money from the fund shall be disbursed as provided in section  
19 11525(10). ~~The department shall provide within 60 days~~

20       **(B) DISAPPROVE THE STATEMENT AND PROVIDE** the owner or operator  
21 with a detailed written statement of the reasons why the department  
22 has determined that postclosure maintenance and monitoring and  
23 corrective action, if any, have not been conducted in accordance  
24 with this part, the rules promulgated under this part, or an  
25 approved postclosure plan.

26       Enacting section 1. Section 11524 of the natural resources and  
27 environmental protection act, 1994 PA 451, MCL 324.11524, is

1 repealed.