

1998 PUBLIC AND LOCAL ACTS

[No. 140]

(SB 730)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 12101, 12102, 12103, 12105, 12106, 12107, 12109, 12114, and 12116 (MCL 324.12101, 324.12102, 324.12103, 324.12105, 324.12106, 324.12107, 324.12109, 324.12114, and 324.12116), sections 12101 and 12102 as amended by 1995 PA 61; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

324.12101 Definitions; B to L. [M.S.A. 13A.12101]

Sec. 12101. As used in this part:

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

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

(c) "Designated facility" means a treatment, storage, disposal, or reclamation facility that receives liquid industrial waste from off site.

(d) "Discarded" means any of the following:

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

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

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

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

(C) By reclamation.

(e) "Discharge" means the accidental or intentional spilling, leaking, pumping, releasing, pouring, emitting, emptying, or dumping of liquid industrial waste into the land, air, or water.

(f) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of a liquid industrial waste into or on land or water in such a manner that the liquid industrial waste may enter the environment, or be emitted into the air, or discharged into surface water or groundwater.

(g) "Disposal facility" means a facility or a part of a facility at which liquid industrial waste is disposed.

(h) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land for treating, storing, disposing of, or reclamation of liquid industrial waste.

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(i) "Federal water pollution control act" means chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387.

(j) "Generator" means a person whose act or process produces liquid industrial waste.

(k) "Liquid industrial waste" means any brine, by-product, industrial wastewater, leachate, off-specification commercial chemical product, sludge, sanitary sewer clean-out residue, storm sewer clean-out residue, grease trap clean-out residue, spill residue, used oil, or other liquid waste that is produced by, is incident to, or results from industrial, commercial, or governmental activity or any other activity or enterprise determined to be liquid by method 9095 (paint filter liquids test) as described in "Test methods for evaluating solid wastes, physical/chemical methods," United States environmental protection agency publication no. SW-846, and which is discarded. Liquid industrial waste does not include any of the following:

(i) Hazardous waste regulated and required to be manifested pursuant to part 111.

(ii) Septage waste regulated pursuant to part 117.

(iii) Medical waste as defined in part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(iv) A discharge permitted or authorized under part 31.

(v) A material that is used or reused as an effective substitute for commercial products or returned to the original process, if the material does not require reclamation prior to use or reuse, is not directly burned to recover energy or used to produce a fuel, or is not applied to the land and not used in products applied to the land.

(vi) A household generated liquid waste.

(vii) A liquid industrial waste utilized for land application in accordance with a program for effective residuals management, approved by the director or the United States environmental protection agency, or both, pursuant to the federal water pollution control act.

(viii) Oil field brines used for public road dust control and ice removal as authorized under the terms of the rules, standards, and brine management plan approved by the department in existence on June 1, 1993, until rules are promulgated.

(ix) A used oil that is directly burned to recover energy or used to produce a fuel if all of the following are met:

(A) The material meets the used oil specifications of part 111.

(B) The material contains no greater than 2 ppm polychlorinated biphenyls.

(C) The material has a minimum energy content of 17,000 BTU/lb.

(D) The material is expressly authorized as a used oil fuel source, regulated under part 55, or, in another state, regulated under a similar air pollution control authority.

(x) A liquid fully contained inside a manufactured article, until the liquid is removed or the manufactured equipment is discarded at which point it becomes subject to this part.

(xi) A liquid waste sample transported for testing to determine its characteristics or composition. The sample becomes subject to this part when discarded.

324.12102 Definitions; M to V. [M.S.A. 13A.12102]

Sec. 12102. As used in this part:

(a) "Manifest" means either of the following:

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(i) A form and instructions approved by the department used for identifying the quantity, composition, origin, routing, or destination of liquid industrial waste during its transportation from the point of generation to the point of disposal, treatment, storage, or reclamation.

(ii) For shipments of liquid industrial waste that are not generated or transported to a disposal, treatment, storage, or reclamation facility in this state, a United States environmental protection agency form number 8700-22, or its successor.

(b) "On-site" means on the same geographically contiguous property which may be divided by a public or private right-of-way and access is by crossing rather than going along the right-of-way. On-site includes noncontiguous pieces of property owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access.

(c) "Peace officer" means any law enforcement officer who is trained and certified pursuant to the Michigan law enforcement officers training council act of 1965, 1965 PA 203, MCL 28.601 to 28.616, or an officer appointed by the director of the department of state police pursuant to section 6d of 1935 PA 59, MCL 28.6d.

(d) "Publicly owned treatment works" means any entity that treats municipal sewage or industrial waste of a liquid nature that is owned by the state or a municipality, as that term is defined in section 502(4) of title V of the federal water pollution control act, 33 U.S.C. 1362. Publicly owned treatment works include sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

(e) "Reclamation" means either processing to recover a usable product or regeneration.

(f) "Reclamation facility" means a facility or part of a facility where liquid industrial waste reclamation is conducted.

(g) "Storage" means the containment of liquid industrial waste, on a temporary basis, in a manner that does not constitute disposal of liquid industrial waste.

(h) "Storage facility" means a facility or part of a facility where liquid industrial waste is stored.

(i) "Surface impoundment" means a treatment, storage, or disposal facility or part of a treatment, storage, or disposal facility that is either a natural topographic depression, a human-made excavation, or a diked area formed primarily of earthen materials. A surface impoundment may be lined with human-made materials designed to hold an accumulation of liquid waste or waste containing free liquids and which is not an injection well. Surface impoundments include, but are not limited to, holding, storage, settling, aeration pits, ponds, and lagoons.

(j) "Tank" means a stationary device designed to contain an accumulation of liquid industrial waste that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic to provide structural support.

(k) "Transportation" means the movement of liquid industrial waste by air, rail, highway, or water.

(l) "Transporter" means a person engaged in the off-site transportation of liquid industrial waste by air, rail, highway, or water.

(m) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any liquid industrial waste, to neutralize the waste, or to render the waste safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume.

(n) "Treatment facility" means a facility or part of a facility at which liquid industrial waste is treated.

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(o) "Used oil" means any oil which has been refined from crude oil, or any synthetic oil, which has been used and which, as a result of the use, is contaminated by physical or chemical impurities.

(p) "Vehicle" means a transport vehicle as defined by 49 C.F.R. 171.8.

324.12103 Generator; duties. [M.S.A. 13A.12103]

Sec. 12103. (1) A generator shall do all of the following:

(a) Characterize the waste in accordance with the requirements of part 111, and rules promulgated under that part, and maintain records of the characterization.

(b) Obtain and utilize a generator identification number assigned by the United States environmental protection agency or the department.

(c) If transporting by highway, engage, employ, or contract for the transportation of liquid industrial waste only with a transporter registered and permitted under the hazardous materials transportation act.

(d) Except as otherwise provided in this part, utilize and retain a separate manifest for each shipment of liquid industrial waste transported to a designated facility. The department may authorize the use of a consolidated manifest, for waste loads that are multiple pickups of uniform types of wastes that constitute a single shipment of waste. In this case, a receipt shall be obtained from the transporter documenting the transporter's company name, driver's signature, date of pickup, type and quantity of waste accepted from the generator, the consolidated manifest number, and the designated facility. A generator of brine may complete a single manifest per transporter of brine, per disposal well, each month.

(e) Submit a copy of the manifest to the department by the tenth day after the end of the month in which a load of waste is transported.

(f) Certify that at the time the transporter picks up liquid industrial waste the information contained on the manifest is factual by signing the manifest. This certification is to be by the generator or his or her authorized representative.

(g) Provide to the transporter the signed copies of the manifest to accompany the liquid industrial waste to the designated facility.

(h) If a copy of the manifest, with a handwritten signature of the owner or operator of the designated facility, is not received within 35 days after the date the waste was accepted by the initial transporter, contact the transporter or owner or operator of the designated facility, or both, to determine the status of the waste.

(i) Submit an exception report to the department if a copy of the manifest is not received with the handwritten signature of the owner or operator or his or her authorized representative of the designated facility within 45 days after the date the waste was accepted by the initial transporter. The exception report shall include both of the following:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(ii) A cover letter signed by the generator explaining the efforts taken to locate the waste and the results of those efforts.

(2) A generator who also operates an on-site reclamation, treatment, or disposal facility shall keep records of all liquid waste produced and reclaimed, treated, or disposed of at his or her facility.

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(3) A generator shall retain all records required pursuant to this part for a period of at least 3 years, and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required by this subsection is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as otherwise required by the department.

(4) A generator transporting its own waste in quantities of 55 gallons or less is not subject to manifest requirements if all of the following conditions are met:

(a) The waste is accompanied by a record showing the source and quantity of the waste and the designated facility where the waste is being transported.

(b) The generator obtains a signature from the designated facility acknowledging receipt of the waste and provides a copy of the record of shipment to the designated facility.

(c) The generator retains a copy of the record of shipment as part of the generator records.

(d) The designated facility is managed in accordance with this part.

324.12105 Registered and permitted transporter; generator; exemptions. [M.S.A. 13A.12105]

Sec. 12105. (1) A transporter registered and permitted in accordance with the hazardous materials transportation act and under part 117 shall comply with all of the following:

(a) All registration and permitting requirements of the hazardous materials transportation act and licensing requirements of this part and part 117 shall be met.

(b) Septage waste or liquid industrial waste transported by the permit or license holder shall not be disposed of on land.

(c) All liquid waste, including septage waste, shall be manifested pursuant to the requirements of sections 12103, 12109, and 12112.

(d) In addition to the requirements of this part and part 117, the words "Land Application Prohibited" shall be affixed in a conspicuous location, visible on both sides of the vehicle and clearly legible during daylight hours from a distance of 50 feet.

(2) A generator, subject to the reporting requirements under part C of title XIV of the public health service act, 88 Stat. 1674, 42 U.S.C. 300h to 300h-8, and regulations promulgated under that act, who transports brine generated on property he or she owns or holds an interest in to the generator's own disposal well is exempt from the provisions of this part regarding manifests.

324.12106 Equipment, location, and methods of transporter; inspection by department. [M.S.A. 13A.12106]

Sec. 12106. The department may conduct an inspection to verify that the equipment, location, and methods of a transporter are adequate to effectuate service under this part.

324.12107 Vehicles; copy of registration and permit to be carried; closure or covering of vehicles; cleaning and decontamination; applicability of subsection (7) to vehicle transporting brine. [M.S.A. 13A.12107]

Sec. 12107. (1) A vehicle used to transport liquid industrial waste, if transporting by highway, shall carry a copy of the registration and permit issued in accordance with the hazardous materials transportation act and shall produce it upon request of the department or peace officer.

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(2) All vehicles and containers used to transport liquid industrial waste shall be closed or covered to prevent the escape of liquid industrial waste, and the outside of all vehicles, containers, and accessory equipment shall be kept free of liquid industrial waste and its residue.

(3) To avoid cross-contamination, all portions of a vehicle or equipment that have been in contact with liquid industrial waste shall be cleaned and decontaminated before the transport of any products, incompatible waste, or nonwaste material. Before the transport of liquid industrial waste, all portions of a vehicle or equipment shall be cleaned and decontaminated, as necessary, of any waste regulated pursuant to part 111. A transporter who owns or legally controls a vehicle or equipment shall maintain as part of the transporter's records documentation that before its use for the transportation of nonwaste or a product the vehicle or equipment has been decontaminated. This subsection does not apply to a vehicle if brine was transported in the vehicle and the next load transported in the vehicle is brine for disposal or well drilling or production purposes, or oil or other hydrocarbons produced from an oil or gas well, or water or other fluids to be used in activities regulated under part 615, or the rules, orders, or instructions under that part.

324.12109 Manifest; requirements. [M.S.A. 13A.12109]

Sec. 12109. (1) A liquid industrial waste transporter shall certify acceptance of waste for transportation by completing the transporter section of the manifest, and shall deliver the liquid industrial waste and accompanying manifest only to the designated facility specified by the generator on the manifest.

(2) The liquid industrial waste transporter shall retain all records required pursuant to this part for a period of at least 3 years, and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required in this subsection is automatically extended during the course of any unresolved enforcement action regarding an activity regulated under this part or as required by the department.

(3) The department may authorize, for certain waste streams, the use of a consolidated manifest as authorized under section 12103(1)(d). In this case, the transporter shall give to the generator a receipt documenting the transporter's company name, driver's signature, date of pickup, type and quantity of waste removed, the consolidated manifest number, and the designated facility.

(4) A transporter shall maintain a trip log for consolidated manifest shipments and for brine shipments. The transporter shall do all of the following:

(a) Identify on the trip log the consolidated manifest number, the generator, date of pickup, type and quantity of waste, and the designated facility location for each shipment of waste.

(b) Keep a copy of all trip logs available during transportation, at a minimum, for the current shipment in transportation and retain these records as specified in subsection (2).

(c) Obtain and utilize a transporter identification number assigned by the United States environmental protection agency or the department.

324.12114 Violations; probable cause; powers of department or peace officer; court costs and other expenses; obtaining samples for purposes of enforcing or administering part. [M.S.A. 13A.12114]

Sec. 12114. (1) If the department or a peace officer has probable cause to believe that a person is violating this part, the department or a peace officer may search without a warrant a vehicle or equipment that is possessed, used, or operated by that person. The department or a peace officer may seize a vehicle, equipment, or other property used or

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operated in a manner or for a purpose in violation of this part. A vehicle, equipment, or other property used in violation of this part is subject to seizure and forfeiture as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

(2) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action under this section.

(3) The department or peace officer may enter at reasonable times any generator, transporter, or designated facility or other place where liquid industrial wastes are or have been generated, stored, treated, or disposed of, or transported from and may inspect the facility or other place and obtain samples of the liquid industrial wastes and samples of the containers or labeling of the wastes for the purposes of enforcing or administering this part.

324.12116 Violations; penalties. [M.S.A. 13A.12116]

Sec. 12116. (1) A person who violates section 12103(1)(b) or (e), 12105(1)(d), 12107(2) or (3), 12109(4), or 12112(1)(b) or (c) is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days, or a fine of not less than \$200.00 and not more than \$500.00, or both. A peace officer may issue an appearance ticket to a person who is in violation of section 12103(1)(b) or (e), 12105(1)(d), 12107(2) or (3), 12109(4), or 12112(1)(b) or (c).

(2) A person who knowingly makes or causes to be made a false statement or entry in a license application or a manifest is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(3) A person who violates this part or a license issued under this part, except as provided in subsections (1) and (2), is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months or a fine of not less than \$1,000.00 or more than \$2,500.00, or both.

(4) Each day that a violation continues constitutes a separate violation.

Repeal of §§324.12104, 324.12108, 324.12110, and 324.12118.

Enacting section 1. Sections 12104, 12108, 12110, and 12118 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.12104, 324.12108, 324.12110, and 324.12118, are repealed.

Effective date.

Enacting section 2. This amendatory act takes effect September 1, 1998.

Conditional effective date.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

- (a) Senate Bill No. 554.
- (b) Senate Bill No. 731.

This act is ordered to take immediate effect.

Approved June 24, 1998.

Filed with Secretary of State June 25, 1998.

Compiler's note: Senate Bill No. 554, referred to in enacting section 3, was filed with the Secretary of State June 25, 1998, and became P.A. 1998, No. 138, Eff. Sept. 1, 1998.

Senate Bill No. 731, also referred to in enacting section 3, was filed with the Secretary of State June 25, 1998, and became P.A. 1998, No. 141, Eff. Sept. 1, 1998.