

Act No. 52
Public Acts of 1989
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**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Reps. Griffin, Hoffman, Mathieu, Sikkema, Martin, Gire, Kosteva, Gilmer, Ostling, Bartnik, Niederstadt, Porreca, Brown, DeLange, Krause, Bandstra and Maynard

ENROLLED HOUSE BILL No. 4311

AN ACT to amend the title and sections 5, 11, 13, 13a, 19, 22a, 30, and 30a of Act No. 641 of the Public Acts of 1978, entitled "An act to protect the public health and the environment; to provide for the regulation and management of solid wastes; to prescribe the powers and duties of certain state and local agencies and officials; to prescribe penalties; to make an appropriation; and to repeal certain acts and parts of acts," sections 5, 11, 13, and 19 as amended and section 22a as added by Act No. 209 of the Public Acts of 1987, section 13a as added and section 30 as amended by Act No. 475 of the Public Acts of 1988, and section 30a as amended by Act No. 428 of the Public Acts of 1988, being sections 299.405, 299.411, 299.413, 299.413a, 299.419, 299.422a, 299.430, and 299.430a of the Michigan Compiled Laws; and to add sections 15a, 32a, 32b, and 32c.

The People of the State of Michigan enact:

Section 1. The title and sections 5, 11, 13, 13a, 19, 22a, 30, and 30a of Act No. 641 of the Public Acts of 1978, sections 5, 11, 13, and 19 as amended and section 22a as added by Act No. 209 of the Public Acts of 1987, section 13a as added and section 30 as amended by Act No. 475 of the Public Acts of 1988, and section 30a as amended by Act No. 428 of the Public Acts of 1988, being sections 299.405, 299.411, 299.413, 299.413a, 299.419, 299.422a, 299.430, and 299.430a of the Michigan Compiled Laws, are amended and sections 15a, 32a, 32b, and 32c are added to read as follows:

TITLE

An act to protect the public health and the environment; to provide for the regulation and management of solid wastes including ash resulting from the combustion of certain solid wastes; to prescribe the powers and duties of certain state and local agencies and officials; to prescribe penalties; to make an appropriation; and to repeal certain acts and parts of acts.

Sec. 5. (1) "Health officer" means a full-time administrative officer of a certified city, county, or district department of health.

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

(3) "Landfill" means a disposal area that is a sanitary landfill.

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

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be

required to be placed in a disposal facility licensed under the hazardous waste management act, Act No. 64 of the Public Acts of 1979, being sections 299.501 to 299.551 of the Michigan Compiled Laws.

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

(c) The incinerator meets the requirements of this act and the rules promulgated under this act.

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

(5) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.

(6) "Municipality" means a city, township, or village.

(7) "Perpetual care trust fund" means a perpetual care trust fund provided for in section 19b.

(8) "Person" means an individual; sole proprietorship; partnership; association; corporation, public or private, organized or existing under the laws of this state or any other state, including a federal corporation; this state or an agency or department of this state; a municipality in this state; or a county in this state.

Sec. 11. (1) Before the submission of a construction permit application for a new disposal area, the applicant shall request a health officer or the director to provide an advisory analysis of the proposed disposal area. However, the applicant, not less than 15 days after the request, and notwithstanding an analysis result, may file an application for a construction permit.

(2) Upon receipt of a construction permit application, the director or an authorized representative of the director shall:

(a) Immediately notify the clerk of the municipality in which the disposal area is located or proposed to be located, the local soil erosion and sedimentation control agency, each division within the department that has responsibilities in land, air, or water management, and the designated regional solid waste management planning agency.

(b) Publish a notice in a newspaper having major circulation in the vicinity of the proposed disposal area. The required published notice shall contain a map indicating the location of the proposed disposal area and shall contain a description of the proposed disposal area and the location where the complete application package may be reviewed and where copies may be obtained.

(c) Indicate in the public, departmental, and municipality notice that the department shall hold a public hearing in the area of the proposed disposal area if a written request is submitted by the applicant or a municipality within 30 days after the date of publication of the notice, or by a petition submitted to the department containing a number of signatures which is equal to not less than 10% of the number of registered voters of the municipality where the proposed disposal area is to be located who voted in the last gubernatorial election. The petition shall be validated by the clerk of the municipality. The public hearing shall be held after the director makes a preliminary review of the application and all pertinent data and before a construction permit is issued or denied.

(d) Review the plans of the proposed disposal area to determine if it complies with this act and the rules promulgated under this act. The review shall be made by persons qualified in hydrogeology and sanitary landfill engineering. A written approval by the persons qualified in hydrogeology and sanitary landfill engineering shall be received before a construction permit is issued. If the site review, plan review, and the application meet the requirements of this act and the rules promulgated under this act, the director shall issue a construction permit which may contain a stipulation specifically applicable to the site and operation. Except as otherwise provided in section 32a, an expansion of the area of a disposal area, an enlargement in capacity of a disposal area, or an alteration of a disposal area to a different type of disposal area than had been specified in the previous construction permit application shall constitute a new proposal for which a new construction permit is required. The upgrading of a disposal area type required by the director to comply with this act or the rules promulgated under this act or to comply with a consent order shall not require a new construction permit.

(e) Notify the Michigan aeronautics commission if the disposal area is a sanitary landfill proposed to be located within 10,000 feet of a runway or a proposed runway extension contained in a plan approved by the Michigan aeronautics commission of an airport licensed and regulated by the Michigan aeronautics commission. The director shall make a copy of the application available to the Michigan aeronautics commission. If, after a period of time for review and comment not to exceed 60 days, the Michigan aeronautics commission informs the director that it finds that operation of the proposed disposal area would present a potential hazard to air navigation and presents the basis for its findings, the director may either recommend appropriate changes in the location, construction, or operation of the proposed disposal area or deny the application for a construction permit. The director shall give an applicant an opportunity to rebut a finding of the Michigan aeronautics commission that the operation of a proposed disposal area would present a potential hazard to air navigation.

Sec. 13. (1) A person shall dispose of solid waste at a disposal area licensed under this act unless a person is permitted by state law or rules promulgated by the department to dispose of the solid waste at the site of generation.

(2) Except as otherwise provided in this section or in section 22a, a person otherwise allowed under this act to own or operate a solid waste disposal area shall not conduct, manage, maintain, or operate a disposal area within this state without a license from the director, contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued under this act. A person who intends to conduct, manage, maintain, or operate a disposal area shall make a prior license application to the director through a certified health department on a form provided by the director. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the director.

(3) The application for a license shall contain the name and residence of the applicant, the location of the proposed or existing disposal area, and other information the director considers necessary. The application shall be accompanied by a fee of \$100.00.

(4) At the time of application for a license for a disposal area, the applicant shall submit to a health officer or the director a certification under the seal of a licensed professional engineer verifying that the construction of the disposal area has proceeded according to the approved plans. The director shall require additional certification during intermediate progression of the operation, or to verify proper closure of the site.

(5) An applicant for an operating license, within 3 months after a license denial, may resubmit the application, together with additional information or corrections as are necessary to address the reason for denial, without being required to pay an additional application fee.

(6) In order to conduct tests and assess operational capabilities, the owner or operator of a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit may operate the incinerator without an operating license, upon notice to the director, for a period not to exceed 60 days.

Sec. 13a. A person shall not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the county is explicitly authorized in the approved county solid waste management plan. The department shall take action to enforce this section within 30 days of obtaining knowledge of a violation of this section.

Sec. 15a. (1) Within 9 months after the effective date of this section, or within 9 months after the completion of construction of a municipal solid waste incinerator, whichever is later, the owner or operator of a municipal solid waste incinerator shall submit a plan to the director for a program that, to the extent practicable, reduces the incineration of noncombustible materials and dangerous combustible materials and their hazardous by-products at the incinerator. The director shall approve or disapprove the plan submitted under this subsection within 30 days of receiving it. In reviewing the plan, the director shall consider the current county solid waste management plan, available markets for separated materials, disposal alternatives for the separated materials, and collection practices for handling such separated materials. If the director disapproves a plan, he or she shall notify the owner or operator submitting the plan of this fact, and shall provide modifications that, if included, would result in the plan's approval. If the director disapproves a plan, the owner or operator of a municipal solid waste incinerator shall within 30 days after receipt of the director's disapproval submit a revised plan that addresses all of the modifications provided by the director. The director shall approve or disapprove the revised plan within 30 days of receiving it, and approval of the revised plan shall not be unreasonably withheld.

(2) Not later than 6 months after the approval of the plan by the director under subsection (1), the owner or operator shall implement the plan in accordance with the implementation schedule set forth in the plan. The operation of a municipal solid waste incinerator without an approved plan under this section shall subject the owner or operator, or both, to all of the sanctions provided by this act.

Sec. 19. (1) The director shall not issue a license to operate a disposal area unless the applicant has filed, as a part of the application for a license, a bond to cover the cost of closure and of postclosure monitoring and maintenance of the disposal area after capacity has been reached or operations have otherwise terminated, in accordance with the following:

(a) Except as provided in subdivision (b), a bond established for a landfill shall be in an amount equal to \$20,000.00 per acre of licensed landfill. However, the amount of the bond shall be not less than \$20,000.00, nor more than \$1,000,000.00. Each bond shall provide assurance for the maintenance of the finished landfill site for a period of 30 years after the landfill or any approved portion is completed.

(b) A bond established for a landfill or portion of a landfill that receives municipal solid waste incinerator ash under section 32a shall be in an amount equal to \$50,000.00 per acre of licensed landfill or portion of the landfill. Each bond shall provide assurance for the maintenance of the finished landfill site or portion of landfill site for a period of 30 years after the landfill or any approved portion is completed.

(c) A bond established for a solid waste transfer facility, incinerator, processing plant, or other solid waste handling or disposal facility utilized in the disposal of solid waste shall be in an amount equal to 1/4 of 1% of the construction cost of the facility, but shall not be less than \$4,000.00, and shall be continued in effect for a period of 2 years after the disposal area is closed.

(d) An applicant for a landfill may post a cash bond with the department as provided for in subsection (2) instead of a surety bond or certificate of deposit. A minimum of \$20,000.00 shall be paid to the director prior to licensure. Subsequent payments to the director shall be made every 6 months in an amount per acre of licensed landfill or any approved portion of landfill as determined by the director, until the required amount per acre is attained.

(2) An applicant who elects to use a certificate of deposit as bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the director. An applicant who elects to post cash as bond shall accrue interest on that bond at the annual rate of 6%, to be accrued quarterly, except that the interest rate payable to an applicant shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the applicant upon release of the bond by the director. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund and shall be appropriated to the department to be used by the director for administration of this act.

(3) An applicant of a disposal area that is not a landfill who has accomplished closure or postclosure monitoring and maintenance, approved by the director and in accordance with this act and the rules promulgated under this act, may request a 50% reduction in the bond.

(4) The director may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the applicant fails to comply with the closure and postclosure monitoring and maintenance requirements of this act and the rules promulgated under this act.

(5) In addition to the bond required in subsection (1), a landfill that receives municipal solid waste incinerator ash under section 32a shall provide a bond or a letter of credit in an amount equal to \$2,000,000.00. The bond or letter of credit described in this subsection shall provide assurance for remedial action at the landfill for a period of time extending 30 years after the landfill or any portion of the landfill is closed.

(6) The director shall not issue a construction permit or a new license to operate a disposal area to an applicant who or which is the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 U.S.C. 101 to 1330, or any other predecessor statute.

Sec. 22a. (1) A disposal area that is a solid waste transfer facility is not subject to the construction permit and operating license requirements of this act if either of the following circumstances exists:

(a) The solid waste transfer facility is not designed to accept wastes from vehicles with mechanical compaction devices.

(b) The solid waste transfer facility accepts less than 200 uncompacted cubic yards per day.

(2) The solid waste transfer facilities exempted from the construction permit and operating license requirements of this act by subsection (1) shall comply with the operating requirements of this act and the rules promulgated under this act.

(3) Except as provided in subsection (5), a disposal area that is an incinerator may, but is not required to, comply with the construction permit and operating license requirements of this act if both of the following conditions are met:

(a) The operation of the incinerator does not result in the exposure of any solid waste to the atmosphere and the elements.

(b) The incinerator has a permit issued under the air pollution act, Act No. 348 of the Public Acts of 1965, being sections 336.11 to 336.36 of the Michigan Compiled Laws.

(4) A disposal area that is an incinerator that does not comply with the construction permit and operating license requirements of this act as permitted in subsection (3) remains subject to the planning provisions of this act and must be included in the county solid waste management plan for the county in which the incinerator is located.

(5) A disposal area that is a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit is not subject to the construction permit requirements of this act.

Sec. 30. (1) Not later than September 11, 1979, the director shall promulgate rules for the development, form, and submission of initial solid waste management plans. The rules shall require all of the following:

(a) The establishment of goals and objectives for prevention of adverse effects on the public health and on the environment resulting from improper solid waste collection, processing, or disposal including protection of surface and groundwater quality, air quality, and the land.

(b) An evaluation of waste problems by type and volume, including residential and commercial solid waste, hazardous waste, industrial sludges, pretreatment residues, municipal sewage sludge, air pollution control residue, and other wastes from industrial or municipal sources.

(c) An evaluation and selection of technically and economically feasible solid waste management options, which may include sanitary landfill, resource recovery systems, resource conservation, or a combination of options.

(d) An inventory and description of all existing facilities where solid waste is being treated, processed, or disposed of, including a summary of the deficiencies, if any, of the facilities in meeting current solid waste management needs.

(e) The encouragement and documentation as part of the plan, of all opportunities for participation and involvement of the public, all affected agencies and parties, and the private sector.

(f) That the plan contain enforceable mechanisms for implementing the plan, including identification of the municipalities within the county responsible for the enforcement. This subdivision does not preclude the private sector's participation in providing solid waste management services consistent with the county plan.

(g) Current and projected population densities of each county and identification of population centers and centers of solid waste generation, including industrial wastes.

(h) That the plan area has, and will have during the plan period, access to a sufficient amount of available and suitable land, accessible to transportation media, to accommodate the development and operation of solid waste disposal areas, or resource recovery facilities provided for in the plan.

(i) That the solid waste disposal areas or resource recovery facilities provided for in the plan are capable of being developed and operated in compliance with state law and rules of the department pertaining to protection of the public health and the environment, considering the available land in the plan area, and the technical feasibility of, and economic costs associated with, the facilities.

(j) A timetable or schedule for implementing the county solid waste management plan.

(2) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county. With regard to intercounty service within Michigan, the service must also be explicitly authorized in the exporting county's solid waste management plan.

(3) A person shall not dispose of, store, or transport solid waste in this state unless the person complies with the requirements of this act.

(4) Following approval by the director of a county solid waste management plan and after July 1, 1981, an ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute, which prohibits or regulates the location or development of a solid waste disposal area, and which is not part of or not consistent with the approved solid waste management plan for the county, shall be considered in conflict with this act and shall not be enforceable.

Sec. 30a. (1) The director shall not approve a plan update unless:

(a) The plan contains an analysis or evaluation of the best available information applicable to the plan area in regard to recyclable materials and all of the following:

(i) The kind and volume of material in the plan area's waste stream that may be recycled or composted.

(ii) How various factors do or may affect a recycling and composting program in the plan area. Factors shall include an evaluation of the existing solid waste collection system; materials market; transportation networks; local composting and recycling support groups, or both; institutional arrangements; the population in the plan area; and other pertinent factors.

(iii) An identification of impediments to implementing a recycling and composting program and recommended strategies for removing or minimizing impediments.

(iv) How recycling and composting and other processing or disposal methods could complement each other and an examination of the feasibility of excluding site separated material and source separated material from other processing or disposal methods.

(v) Identification and quantification of environmental, economic, and other benefits that could result from the implementation of a recycling and composting program.

(vi) The feasibility of source separation of materials that contain potentially hazardous components at disposal areas. This subparagraph applies only to plan updates that are due after January 31, 1989.

(b) The plan either provides for recycling and composting recyclable materials from the plan area's waste stream or establishes that recycling and composting is not necessary or feasible or is only necessary or feasible to a limited extent.

(c) A plan that proposes a recycling or composting program, or both, details the major features of that program, including all of the following:

- (i) The kinds and volumes of recyclable materials that will be recycled or composted.
 - (ii) Collection methods.
 - (iii) Measures that will ensure collection such as ordinances or cooperative arrangements, or both.
 - (iv) Ordinances or regulations affecting the program.
 - (v) The role of counties and municipalities in implementing the plan.
 - (vi) The involvement of existing recycling interests, solid waste haulers, and the community.
 - (vii) Anticipated costs.
 - (viii) On-going program financing.
 - (ix) Equipment selection.
 - (x) Public and private sector involvement.
 - (xi) Site availability and selection.
 - (xii) Operating parameters such as PH and heat range.
- (2) The director may promulgate rules as may be necessary to implement this section.

Sec. 32a. (1) Following the effective date of this section, the generation, transportation, treatment, storage, and disposal of municipal solid waste incinerator ash shall be regulated under this act as solid waste and shall not be regulated under the hazardous waste management act, Act No. 64 of the Public Acts of 1979, being sections 299.501 to 299.551 of the Michigan Compiled Laws.

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

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

- (i) The landfill is in compliance with this act and the rules promulgated under this act.
- (ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.
- (iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

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

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

(D) A leak detection and leachate collection system.

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

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

- (i) The landfill is in compliance with this act and the rules promulgated under this act.
- (ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.
- (iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

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

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

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

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

(F) A leak detection and leachate collection system.

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

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

(v) If contaminants that may threaten the public health, safety, welfare, or the environment are found in the leachate collection system described in subparagraph (iii)(F), the owner or operator of the landfill shall determine the source and nature of the contaminants and shall make repairs, to the extent practicable, that will prevent the contaminants from entering the leachate collection system. If the director determines that the

source of the contaminants is caused by a design failure of the landfill, the director, notwithstanding an approved construction permit or operating license, may require landfill cells at that landfill that will be used for the disposal of municipal solid waste incinerator ash, which are under construction or will be constructed in the future at the landfill, to be constructed in conformance with improved design standards approved by the director. However, this subdivision shall not be construed to require the removal of liners or leak detection and leachate collection systems that are already in place in a landfill cell under construction.

(vi) On the effective date of this section, the owner or operator of the landfill has a letter of agreement with an existing municipal solid waste incinerator to receive municipal solid waste incinerator ash, and the owner or operator has within 90 days after the effective date of this section submitted this letter to the director.

(c) A landfill that meets all of the following requirements:

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

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

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

(A) A leachate collection system.

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

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

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

(iv) If construction of the landfill begins prior to June 1, 1990, the liner specified in subdivision (c)(iii)(B) may be 60 mils thick.

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

(e) A type II landfill, as defined in R 299.4105, if all of the following occur:

(i) The ash was generated by a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit.

(ii) The ash is tested by a laboratory listed on the list compiled by the department under section 32c and the ash, upon testing, meets the requirements of 40 C.F.R. 261.20 to 261.24. A person seeking to dispose of ash under this subdivision may select an approved laboratory from the list compiled in section 32c to conduct the test.

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

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

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

(b) Two feet of subsurface drainage media or cobbles or a combination thereof to protect against animal burrowing, temperature, erosion, and rooted vegetation.

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

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

(e) A synthetic liner at least 30 mils thick with a geomembrane infiltration system above the liner may be used in place of the compacted clay specified in subdivision (3)(d) if on the effective date of this section, the owner or operator of the landfill has a letter of agreement with an existing municipal solid waste incinerator to receive municipal solid waste incinerator ash, and the owner or operator has within 90 days after the effective date of this subsection submitted this letter to the director.

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

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

(b) Two feet of compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second of compacted clay.

(c) An infiltration collection system.

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

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

(5) A landfill that receives municipal solid waste incinerator ash under this section may be capped with a design approved by the director that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subsections (3) and (4).

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

(7) Prior to and after the effective date of this section, notwithstanding any other provision in this section, municipal solid waste incinerator ash may be stored or may continue to be stored on a temporary basis if all of the following occur:

(a) The ash is stored in a landfill licensed under this act.

(b) The owner or operator of the landfill, within 90 days of the effective date of this section, does either of the following:

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

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

(c) The ash is stored for not longer than 9 months after an operating license or an operating license amendment is approved or denied by the director, or 24 months after the effective date of this section, whichever occurs first, unless the director has unreasonably delayed approving or denying an operating license or operating license amendment.

(d) On the effective date of this section, the owner or operator of the landfill has a letter of agreement with an existing municipal solid waste incinerator or with a municipal solid waste incinerator under construction to receive municipal solid waste incinerator ash, and the owner or operator has within 90 days after the effective date of this section submitted this letter to the director.

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

(f) Within 90 days after the effective date of this section or prior to beginning temporary storage, the owner or operator of the landfill receiving the municipal solid waste incinerator ash submits an ash management plan to the director that includes leachate and runoff control measures and dust control measures. The director shall approve or disapprove the plan submitted under this subsection within 30 days of receiving it. If the director disapproves the plan, he or she shall notify the owner or operator submitting the plan of this fact, and shall provide modifications that, if included, would result in the plan's approval. If the director disapproves a plan, the owner or operator of the landfill shall within 30 days after receipt of the director's disapproval submit a revised plan that addresses all of the modifications provided by the director. The director shall approve or disapprove the revised plan within 30 days of receiving it, and approval of the revised plan shall not be unreasonably withheld. Upon approval by the director, the plan shall become part of the operating license of the landfill. The operation of a landfill without an approved plan under this subdivision shall subject the owner or operator, or both, to all of the sanctions provided by this act.

(g) Within 30 days after the effective date of this section or prior to receiving the ash for temporary storage, the owner or operator of the landfill notifies the governing body of the municipality and the county board of commissioners of the county in which the landfill is located of its intent to temporarily store the ash.

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

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

(a) Manage the ash to control dust.

(b) Manage the landfill to control track out.

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

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

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

(10) As an alternative to disposal described in subsection (2), the owner or operator of a municipal solid waste incinerator may process municipal solid waste incinerator ash through mechanical or chemical methods, or both, to substantially diminish the toxicity of the ash or its constituents or limit the leachability of the ash or

its constituents to minimize threats to human health and the environment, if processing is performed on the site of the municipal solid waste incinerator or at the site of a landfill described in subsection (2); the process has been approved by the director as provided by rule; and the ash is tested after processing in accordance with a protocol approved by the director as provided by rule. The director shall approve the process and testing protocol under this subsection only if the process and testing protocol will protect human health and the environment. In making this determination, the director shall consider all potential pathways of human and environmental exposure, including both short-term and long-term, to constituents of the ash that may be released during the reuse or recycling of the ash. The director shall consider requiring methods to determine the leaching, total chemical analysis, respirability, and toxicity of reused or recycled ash. A leaching procedure shall include testing under both acidic and native conditions. If municipal solid waste incinerator ash is processed in accordance with the requirements of this subsection and the processed ash satisfies the testing protocol approved by the director as provided by rule, the ash may be disposed of in a type II landfill, as defined by R 299.4105 of the Michigan administrative code, licensed under this act or may be used in any manner approved by the director. If municipal solid waste incinerator ash is processed as provided in this subsection, but does not satisfy the testing protocol approved by the director as provided by rule, the ash shall be disposed of in accordance with subsection (2).

(11) The disposal of municipal solid waste incinerator ash within a landfill that is in compliance with subsection (2) shall not constitute a new proposal for which a new construction permit is required under section 11, if a construction permit has previously been issued under section 10 for the landfill and the owner or operator of the landfill submits 6 copies of an operating license amendment application to the director for approval. The operating license amendment application shall include revised plans and specifications for all facility modifications including a leachate disposal plan, an erosion control plan, and a dust control plan which shall be part of the operating license amendment. The dust control plan shall contain sufficient detail to ensure that dust emissions are controlled by available control technologies that reduce dust emissions by a reasonably achievable amount to the extent necessary to protect human health and the environment. The dust control plan shall provide for the ash to be wet during all times that the ash is exposed to the atmosphere at the landfill or otherwise to be covered by daily cover material; for dust emissions to be controlled during dumping, grading, loading, and bulk transporting of the ash at the landfill; and for dust emissions from access roads within the landfill to be controlled. With the exception of a landfill that is in existence on the effective date of this section that the director determines is otherwise in compliance with this section, the owner or operator of the landfill shall obtain the operating license amendment prior to initiating construction. Prior to operation, the owner or operator of a landfill shall submit to the director or the director's designee certification from a licensed professional engineer that the landfill has been constructed in accordance with the approved plan and specifications. At the time the copies are submitted to the director, the owner or operator of the landfill shall send a copy of the operating license amendment application to the municipality where the landfill is located. At least 30 days prior to making a final decision on the operating license amendment, the director shall hold at least 1 public meeting in the vicinity of the landfill to receive public comments. Prior to a public meeting, the director shall publish notice of the meeting in a newspaper serving the local area. The director shall issue a final decision on an operating license amendment application within 120 days after the director receives an administratively complete application.

(12) Once every other month, the owner or operator of a municipal solid waste incinerator shall collect a 24-hour composite sample of the municipal solid waste incinerator ash generated by the incinerator. Within 30 days after the effective date of this section, the owner or operator of a municipal solid waste incinerator shall submit a protocol for sample collection to the director for approval. Each sample shall be collected according to the approved protocol. The owner or operator shall perform an analysis of the collected sample for trace metals as totals by acid digestion using analytical methods described in SW-846 "test methods for evaluating solid waste, third edition". The purpose of these tests is to determine the changes in characteristics of municipal solid waste incinerator ash from source separation initiatives over the life of the facility. If fly ash generated by the municipal solid waste incinerator is processed separately from the bottom ash, the owner or operator shall perform separate tests on the fly ash and the bottom ash. The owner or operator of the municipal solid waste incinerator shall submit these test results to the director within 60 days after the sample was collected.

(13) The owner or operator of a municipal solid waste incinerator or a disposal area that receives municipal solid waste incinerator ash shall allow the director or an agent or employee of the director access to the facility for the purpose of supervising the collection of samples or obtaining samples of ash to test or to monitor air quality at the facility.

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

Sec. 32b. (1) If municipal solid waste incinerator ash is transported, it shall be transported in compliance with section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws.

(2) If municipal solid waste incinerator ash is transported by rail, it shall be transported in covered, leak proof railroad cars.

(3) The outside of all vehicles and accessory equipment used to transport municipal solid waste incinerator ash shall be kept free of the ash.

Sec. 32c. (1) The department shall compile a list of approved laboratories that are capable of performing the test provided for in section 32a(2)(e).

(2) The department shall publish the list compiled under subsection (1) on or before July 1, 1989, and shall thereafter make the list available to any person upon request.

(3) Except as provided in subsection (4), a test conducted by an approved laboratory from the list compiled under subsection (1) is definitive for purposes of this act.

(4) If the department has reason to believe that test results provided by an approved laboratory are fraudulent or that a test was carelessly performed, the department may conduct its own test, or may have an additional test performed at the department's expense.

Section 2. This amendatory act shall not take effect unless House Bill No. 4304 of the 85th Legislature is enacted into law.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

.....
Secretary of the Senate.

Approved.....

.....
Governor.