

# HOUSE BILL No. 5790

May 21, 1990, Introduced by Reps. Willis Bullard and Trim  
and referred to the Committee on Conservation, Recreation and  
Environment.

A bill to amend sections 3, 5, 18, 19, 26, and 48 of Act  
No. 64 of the Public Acts of 1979, entitled as amended  
"Hazardous waste management act,"

section 3 as amended by Act No. 246 of the Public Acts of 1987,  
section 5 as amended by Act No. 53 of the Public Acts of 1989,  
sections 18 and 19 as amended by Act No. 228 of the Public Acts  
of 1987, and sections 26 and 48 as amended by Act No. 486 of the  
Public Acts of 1982, being sections 299.503, 299.505, 299.518,  
299.519, 299.526, and 299.548 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 3, 5, 18, 19, 26, and 48 of Act No. 64  
2 of the Public Acts of 1979, section 3 as amended by Act No. 246  
3 of the Public Acts of 1987, section 5 as amended by Act No. 53 of  
4 the Public Acts of 1989, sections 18 and 19 as amended by Act  
5 No. 228 of the Public Acts of 1987, and sections 26 and 48 as

1 amended by Act No. 486 of the Public Acts of 1982, being sections  
2 299.503, 299.505, 299.518, 299.519, 299.526, and 299.548 of the  
3 Michigan Compiled Laws, are amended to read as follows:

4       Sec. 3. (1) "AQUIFER" MEANS A GEOLOGIC FORMATION, GROUP OF  
5 GEOLOGIC FORMATIONS, OR PART OF A GEOLOGIC FORMATION CAPABLE OF  
6 YIELDING A SIGNIFICANT AMOUNT OF GROUNDWATER TO WELLS OR SPRINGS.

7       (2) ~~-(1)-~~ "Board" means a site review board created as pro-  
8 vided in section 17.

9       (3) ~~-(2)-~~ "Committee" means the hazardous waste policy com-  
10 mittee created in section 8a.

11       (4) ~~-(3)-~~ "Department" means the department of natural  
12 resources.

13       (5) ~~-(4)-~~ "Designated facility" means a hazardous waste  
14 treatment, storage, or disposal facility which has received a  
15 permit or has interim status under title II of the solid waste  
16 disposal act or has a permit from a state authorized under sec-  
17 tion 3006 of title II of the solid waste disposal act, 42  
18 U.S.C. 6926, and which, if located in Michigan, has an operating  
19 license issued under this act, has a legally binding agreement  
20 with the director which authorizes operation, or is subject to  
21 the requirements of section 22(4), (5), and (6).

22       (6) ~~-(5)-~~ "Director" means the director of the department.

23       (7) ~~-(6)-~~ "Disposal" means the discharge, deposit, injec-  
24 tion, dumping, spilling, leaking, or placing of a hazardous waste  
25 into or on land or water in a manner that the hazardous waste or  
26 a constituent of the hazardous waste may enter the environment,

1 or be emitted into the air, or discharged into water, including  
2 groundwater.

3       (8) ~~-(7)-~~ "Disposal facility" means a facility or a part of  
4 a facility where managed hazardous waste, as defined by rule, is  
5 intentionally placed into or on any land or water and at which  
6 hazardous waste will remain after closure.

7       (9) ~~-(8)-~~ "Failure mode assessment" means an analysis of the  
8 potential major methods by which safe handling of hazardous  
9 wastes may fail at a treatment, storage, or disposal facility.

10       Sec. 5. (1) "Operator" means the person responsible for the  
11 overall operation of a disposal, treatment, or storage facility  
12 with approval of the director either by contract or license.

13       (2) "Person" means an individual; partnership; the state;  
14 trust; firm; joint stock company; federal agency; corporation,  
15 including a government corporation; association; municipality;  
16 commission; political subdivision of a state; any interstate  
17 body; and any other public body created by or pursuant to state  
18 law.

19       (3) "Rule" means a rule promulgated pursuant to the adminis-  
20 trative procedures act of 1969, Act No. 306 of the Public Acts of  
21 1969, as amended, being sections 24.201 to 24.328 of the Michigan  
22 Compiled Laws.

23       (4) "Solid waste" means that term as it is defined in the  
24 solid waste management act, Act No. 641 of the Public Acts of  
25 1978, being sections 299.401 to 299.437 of the Michigan Compiled  
26 Laws.

1 (5) "Storage" means the holding of hazardous waste for a  
 2 temporary period, at the end of which the hazardous waste is  
 3 treated, disposed of, or stored elsewhere.

4 (6) "Storage facility" means a facility or part of a facil-  
 5 ity where managed hazardous waste, as defined by rule, is  
 6 ~~subject to storage~~ STORED. A generator who accumulates managed  
 7 hazardous waste, as defined by rule, on site in containers or  
 8 tanks for less than 91 days or a period of time prescribed by  
 9 rule is not a storage facility.

10 (7) "Surface impoundment" or "impoundment" means a treat-  
 11 ment, storage, or disposal facility or part of a treatment, stor-  
 12 age, or disposal facility which is a natural topographic depres-  
 13 sion, man-made excavation, or diked area formed primarily of  
 14 earthen materials, although it may be lined with man-made materi-  
 15 als, which is designed to hold an accumulation of liquid wastes  
 16 or wastes containing free liquids, and which is not an injection  
 17 well. Examples of surface impoundments are holding, storage,  
 18 settling, and aeration pits, ponds, and lagoons.

19 (8) "Title II of the solid waste disposal act" means title  
 20 II of Public Law 89-272, 42 U.S.C. 6901, 6902 to ~~6911, 6912 to~~  
 21 ~~6931, 6933 to 6941, 6942 to 6979a, 6981 to 6987, and 6991 to~~  
 22 ~~6991i~~ 6907, 6911, 6912 TO 6914a, 6915 TO 6917, 6921 TO 6931,  
 23 6933 TO 6939b, 6941, 6942 TO 6949a, 6951 TO 6956, 6961 TO 6964,  
 24 6971 TO 6979a, 6981 TO 6987, 6991 TO 6991i, AND 6992 TO 6992k.

25 (9) "Transporter" means a person engaged in the off site  
 26 transportation of hazardous waste by air, rail, highway, or  
 27 water.

1       (10) "Treatment" means any method, technique, or process,  
2 including neutralization, designed to change the physical, chemi-  
3 cal, or biological character or composition of any hazardous  
4 waste, so as to neutralize the waste, so as to recover energy or  
5 material resources from the waste, or so as to render the waste  
6 nonhazardous or less hazardous, safer to transport, store, or  
7 dispose of, amenable to recovery, amenable to storage, or reduced  
8 in volume. Treatment includes any activity or processing  
9 designed to change the physical form or chemical composition of  
10 hazardous waste so as to render it nonhazardous.

11       (11) "Treatment facility" means a facility or part of a  
12 facility where managed hazardous waste, as defined by rule, is  
13 subject to treatment.

14       (12) "Updated plan" means the updated state hazardous waste  
15 management plan prepared under section 9.

16       (13) "USABLE AQUIFER" MEANS AN AQUIFER THAT IS CAPABLE OF  
17 PROVIDING WATER IN SUFFICIENT QUANTITIES AND OF A QUALITY SUIT-  
18 ABLE FOR UTILIZATION AS AN INDIVIDUAL, PUBLIC, INDUSTRIAL, OR  
19 AGRICULTURAL WATER SOURCE. USABLE AQUIFER DOES NOT INCLUDE A  
20 MINERAL WELL REGULATED PURSUANT TO THE MINERAL WELL ACT, ACT  
21 NO. 315 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 319.211 TO  
22 319.236 OF THE MICHIGAN COMPILED LAWS, OR AN OIL OR GAS POOL OR  
23 FIELD REGULATED PURSUANT TO ACT NO. 61 OF THE PUBLIC ACTS OF  
24 1939, BEING SECTIONS 319.1 TO 319.27 OF THE MICHIGAN COMPILED  
25 LAWS.

1       (14) ~~(13)~~ "Vehicle" means a device used to transport  
2 hazardous waste. Each cargo carrying body is a separate  
3 transport vehicle.

4       Sec. 18. (1) Except as otherwise provided in section 21a, a  
5 person shall not establish a treatment, storage, or disposal  
6 facility without a construction permit from the director. A  
7 person proposing the establishment of a treatment, storage, or  
8 disposal facility subject to the construction permit requirement  
9 of this act, but not including a limited storage facility, shall  
10 make application for a construction permit to the director on a  
11 form provided by the director or an authorized representative of  
12 the director.

13       (2) If an amendment to this act or to the rules promulgated  
14 under this act subjects activities lawfully being conducted at a  
15 treatment, storage, or disposal facility at the time the amend-  
16 ment takes effect to the operating license requirements of this  
17 act solely because of the amendment, the activities carried out  
18 at the facility prior to the effective date of the amendment  
19 ~~shall~~ ARE not ~~be~~ subject to the construction permit require-  
20 ments of this act, except for an expansion of the facility with  
21 respect to such activities beyond its original authorized design  
22 capacity or beyond the area specified in an original permit,  
23 license, or other authorization or an alteration of the method of  
24 hazardous waste treatment or disposal.

25       (3) The application for a construction permit shall contain  
26 the name and residence of the applicant, the location of the  
27 proposed treatment, storage, or disposal facility, and other

1 information specified in this section, by rule, or by federal  
2 regulation issued under title II of the solid waste disposal  
3 act. The application shall be accompanied by a construction  
4 permit application fee. The director shall establish by rule ~~7~~  
5 the scale for determining the initial construction permit appli-  
6 cation fee. The fee shall be based upon the cost to the depart-  
7 ment of reviewing the construction permit application. The scale  
8 shall be based on characteristics including site size, projected  
9 waste volume, nature of the waste, hydrogeological characteris-  
10 tics, and the type of facility. The permit fees shall be depos-  
11 ited in the general fund of the state. The application shall  
12 include a copy of the actual published notice as described in  
13 subsection (9) and a determination of existing hydrogeological  
14 characteristics specified in a hydrogeological report and moni-  
15 toring program consistent with rules promulgated pursuant to this  
16 act, an environmental assessment, an engineering plan, and the  
17 procedures for closure and postclosure monitoring. The environ-  
18 mental assessment shall include, at a minimum, an evaluation of  
19 the proposed facility's impact on the air, water, and other natu-  
20 ral resources of the state; and also shall contain an environmen-  
21 tal failure mode assessment, WHICH SHALL INCLUDE AN ANALYSIS OF  
22 HOW PREEXISTING GEOLOGIC FORMATIONS AT A PROPOSED SITE FOR A DIS-  
23 POSAL FACILITY WOULD PROVIDE ADDITIONAL PROTECTION AGAINST THE  
24 CONTAMINATION OF ANY USABLE AQUIFER.

25 (4) Except as otherwise provided in this subsection, the  
26 construction permit application shall include a disclosure  
27 statement ~~which~~ THAT includes ALL OF THE FOLLOWING:

1 (a) The full name and business address of all of the  
2 following:

3 (i) The applicant.

4 (ii) The 5 persons holding the largest shares of the equity  
5 in or debt liability of the proposed facility. The director may  
6 waive all or any portion of this requirement for an applicant  
7 that is a corporation with publicly traded stock.

8 (iii) The operator, if known.

9 (iv) If known, the 3 employees of the operator who will have  
10 the most responsibility for the day-to-day operation of the  
11 facility.

12 (v) Any other business entity listed in the definition of  
13 person in section 5(2) in which any person required to be listed  
14 in ~~subdivisions~~ SUBPARAGRAPHS (i) to (iv) has at any time had  
15 25% or more of the equity in or debt liability of that business  
16 entity. The director may waive all or any portion of this  
17 requirement for an applicant that is a corporation with publicly  
18 traded stock.

19 (b) All convictions for criminal violations of any environ-  
20 mental statute ~~promulgated~~ ENACTED by a federal, state,  
21 Canadian, or provincial agency for each person required to be  
22 listed under this subsection. If debt liability is held by a  
23 chartered lending institution, information OTHERWISE required in  
24 this ~~subsection~~ SUBDIVISION and ~~subsection (4)(c)~~  
25 SUBDIVISIONS (C) and (d) ~~shall~~ IS not ~~be~~ required from that  
26 institution.



1 (c) A listing of all environmental permits or licenses  
2 issued by a federal, state, Canadian, or provincial agency held  
3 by each person required to be listed under this subsection which  
4 were permanently revoked because of noncompliance.

5 (d) A listing of all ~~activities~~ INCIDENTS at property  
6 owned or operated by each person required to be listed under this  
7 subsection, if the incident resulted in a threat or potential  
8 threat to the environment, and public funds were used to finance  
9 an activity to mitigate the threat or potential threat to the  
10 environment, except if the public funds expended to facilitate  
11 the mitigation of environmental contamination were voluntarily  
12 and expeditiously recovered from the applicant or other listed  
13 person without litigation.

14 (5) If any information required to be included in the dis-  
15 closure statement UNDER SUBSECTION (4) changes, or is supple-  
16 mented after the filing of the DISCLOSURE statement, the appli-  
17 cant, permittee, or licensee shall provide that information to  
18 the department in writing, within 30 days of the change or  
19 addition.

20 (6) Notwithstanding any other provision of law, the director  
21 may deny an application for a construction permit if there are  
22 any listings pursuant to subsection (4)(b), (c), or (d) as origi-  
23 nally disclosed or as supplemented.

24 (7) A person may indicate an interest in being placed on a  
25 department organized mailing list to be kept informed of any  
26 rules, plans, construction permit applications, contested case  
27 hearings, public hearings, or other information or procedures

1 relating to the administration of this act. A charge may be  
2 required by the director to cover the cost of the materials.

3 (8) There is created within the state treasury a revolving  
4 fund. When a site construction permit application is referred to  
5 a site review board by the director, the applicant shall pay a  
6 \$25,000.00 fee to be placed in this fund. The \$25,000.00 fee  
7 shall be in addition to the application fee in subsection (3).  
8 This fund shall cover the expenses of the site review board mem-  
9 bers, the chairperson, a mediator, and any other expenses neces-  
10 sary to the deliberations of the board. The director or an  
11 authorized representative of the director shall administer the  
12 fund and authorize expenditures. The director or an authorized  
13 representative of the director shall maintain records to support  
14 any expenses charged to the fund. If expenses payable from the  
15 fund exceed the \$25,000.00 fee paid by the applicant, the addi-  
16 tional expenses shall be paid from money appropriated by the leg-  
17 islature to the revolving fund created in this subsection. Any  
18 unexpended portion of an applicant's \$25,000.00 fee that is not  
19 expended to pay the expenses listed in this subsection shall be  
20 reimbursed to the applicant after the site review board process  
21 is concluded.

22 (9) An application for a site construction permit ~~shall~~ IS  
23 not ~~be~~ complete unless it includes a copy of a newspaper notice  
24 which the applicant published at least 30 days prior to submittal  
25 of the application in a newspaper having major circulation in the  
26 municipality and the immediate vicinity of the proposed  
27 treatment, storage, or disposal facility. The required published

1 notice shall contain a map indicating the location of the  
2 proposed treatment, storage, or disposal facility and information  
3 on the nature and size of the proposed facility. In addition,  
4 the notice shall contain all of the following information pro-  
5 vided by the director or an authorized representative of the  
6 director:

7 (a) A description of the application review process.

8 (b) The location where the complete application package may  
9 be reviewed.

10 (c) How copies of the complete application package may be  
11 obtained.

12 Sec. 19. (1) Upon receipt of a construction permit applica-  
13 tion ~~—~~ which complies with the requirements of section 18, the  
14 director or an authorized representative of the director shall DO  
15 ALL OF THE FOLLOWING:

16 (a) Immediately notify the permanent SITE REVIEW board  
17 members; ~~—~~ the municipality ~~—~~ and county in which the treat-  
18 ment, storage, or disposal facility is located or proposed to be  
19 located; a local soil erosion and sedimentation control agency  
20 appointed pursuant to the soil erosion and sedimentation control  
21 act of 1972, Act No. 347 of the Public Acts of 1972, as amended,  
22 being sections 282.101 to ~~282.117~~ 282.125 of the Michigan  
23 Compiled Laws; ~~—~~ each division within the department that has  
24 responsibility in land, air, or water management; a regional  
25 planning agency established by executive directive of the gover-  
26 nor; and other appropriate agencies. The notice shall describe  
27 the procedure by which the permit may be approved or denied.

1 (b) Review the plans of the proposed treatment, storage, or  
2 disposal facility to determine if the proposed operation complies  
3 with this act and the rules promulgated under this act. The  
4 review shall be made within the department. The review shall  
5 include, but not be limited to, a review of air quality, water  
6 quality, waste management, hydrogeology, and the applicant's dis-  
7 closure statement. A written and signed review by each person  
8 within the department reviewing the permit and plans shall be  
9 received and recorded before a construction permit is referred to  
10 the site review board or is denied by the director. THE DIRECTOR  
11 SHALL NOT RECOMMEND APPROVAL OF A CONSTRUCTION PERMIT FOR A DIS-  
12 POSAL FACILITY UNLESS THE DIRECTOR DETERMINES THAT PREEXISTING  
13 GEOLOGIC FORMATIONS AT THE SITE OF THE PROPOSED DISPOSAL FACILITY  
14 WOULD PROVIDE ADDITIONAL PROTECTION AGAINST THE CONTAMINATION OF  
15 A USABLE AQUIFER. If the site review, plan review, and the  
16 application meet the requirements of this act and the rules  
17 promulgated under this act, the director shall refer the applica-  
18 tion to the site review board for review. An expansion of a  
19 treatment, storage, or disposal facility beyond the original  
20 authorized design capacity or beyond the area specified in the  
21 original permit, license, or other authorization or an alteration  
22 of the method of hazardous waste treatment or disposal consti-  
23 tutes a new proposal for which a new construction permit is  
24 required.

25 (c) Coordinate and review all permits which the applicant is  
26 required to obtain from the department in order to construct the  
27 proposed treatment, storage, or disposal facility.

1 (d) Hold a public hearing within 60 days after receipt of a  
2 complete construction permit application.

3 (2) The director shall refer an application to the site  
4 review board or shall notify the applicant of the intent to deny  
5 the construction permit application within 120 days after the  
6 director receives an application meeting the requirements of sec-  
7 tion 18.

8 (3) If the director refers an application to the site review  
9 board, prior to the first board meeting the director shall pro-  
10 vide each board member with a copy of the application, a staff  
11 report including a summary of public comments, a responsiveness  
12 summary, and a draft construction permit.

13 (4) If the director does not refer an application to the  
14 site review board or does not notify the applicant of the intent  
15 to deny the construction permit application within 120 days, the  
16 construction permit application shall be submitted to the board  
17 for action.

18 (5) If the director intends to deny the application, the  
19 director shall commence a public participation process which is  
20 equivalent to that required by the applicable provisions of title  
21 II of the solid waste disposal act, or regulations promulgated  
22 under that title. Upon completion of the public participation  
23 process, the director shall review all the comments made during  
24 that process and shall refer the application to the site review  
25 board or deny the application. If the director refers the con-  
26 struction permit application to the board, the director shall  
27 proceed as described in section 20.

1       Sec. 26. (1) ~~Not later than January 25, 1980, the~~ THE  
2 director shall submit to the legislature, after consultation and  
3 participation with the department of public health, rules neces-  
4 sary to implement and administer this act. ~~(2) Not more than 6~~  
5 ~~months after the enactment into law of the 1982 amendatory act~~  
6 ~~which added this subsection, the director shall submit to the~~  
7 ~~legislature, after consultation with the department of public~~  
8 ~~health, rules necessary to implement and administer this act as~~  
9 ~~amended by the 1982 amendatory act which added this subsection.~~  
10 The rules required to be submitted by this subsection shall  
11 include, but not be limited to, requirements for generators,  
12 transporters, and treatment, storage, and disposal facilities.  
13       (2) ~~(3)~~ The director may promulgate rules which exempt  
14 certain hazardous wastes and certain treatment, storage, or dis-  
15 posal facilities from all or portions of the requirements of this  
16 act, as necessary to obtain or maintain authorization from the  
17 United States environmental protection agency under title II of  
18 the solid waste disposal act, or upon a determination by the  
19 director that a hazardous waste, or a treatment, storage, or dis-  
20 posal facility, is adequately regulated under other state or fed-  
21 eral law, and that scientific data supports a conclusion that an  
22 exemption will not result in an impairment of the department's  
23 ability to protect the public health and the environment.  
24 However, an exemption granted pursuant to this subsection shall  
25 not result in a level of regulation less stringent than that  
26 required under title II of the solid waste disposal act.

1       (3) ~~-(4)-~~ If an amendment to this act or the rules  
2 promulgated under this act subjects a person to a new or  
3 different licensing requirement of this act, the director shall  
4 promulgate rules to facilitate orderly and reasonable compliance  
5 by that person.

6       (4) ~~-(5)-~~ Changes in the definition of hazardous waste con-  
7 tained in section 4 and the definition of treatment contained in  
8 section 5 effected by ~~the 1982 amendatory act which added this~~  
9 ~~subsection~~ ACT NO. 486 OF THE PUBLIC ACTS OF 1982 shall not  
10 eliminate any exemption provided to any hazardous waste or to any  
11 treatment, storage, or disposal facility under administrative  
12 rules promulgated pursuant to this act before ~~the effective date~~  
13 ~~of the 1982 amendatory act which added this subsection~~ MARCH 30,  
14 1983. However, these exemptions may be modified or eliminated by  
15 administrative rules promulgated subsequent to ~~the effective~~  
16 ~~date of the 1982 amendatory act which added this subsection~~  
17 MARCH 30, 1983 in order that the state may obtain authorization  
18 from the United States environmental protection agency under  
19 title II of the solid waste disposal act, or to provide adequate  
20 protection to the public health or the environment.

21       (5) RULES PROMULGATED UNDER THIS SECTION THAT PERTAIN TO  
22 STANDARDS FOR DISPOSAL FACILITIES AND LAND TREATMENT FACILITIES  
23 SHALL BE REVIEWED BY THE DIRECTOR WITHIN 5 YEARS AFTER THE EFFEC-  
24 TIVE DATE OF THE 1990 AMENDATORY ACT THAT ADDED THIS SENTENCE AND  
25 THEREAFTER AT LEAST EVERY 5 YEARS AND SHALL BE REVISED AS NECES-  
26 SARY TO ENSURE MAXIMUM PROTECTION FOR THE PUBLIC HEALTH AND THE  
27 ENVIRONMENT.

1       Sec. 48. (1) If the director finds that a person is in  
2 violation of a permit, license, rule promulgated under this act,  
3 or requirement of this act, the director may issue an order  
4 requiring the person to comply with the permit, license, rule, or  
5 requirement of this act; TO RESTORE TO ITS CONDITION PRIOR TO THE  
6 VIOLATION ANY SURFACE WATER, GROUNDWATER, AIR QUALITY, OR LAND  
7 THAT IS DAMAGED AS A RESULT OF THE VIOLATION; AND TO PROVIDE A  
8 TEMPORARY AND, IF NECESSARY, A PERMANENT WATER SUPPLY TO A PERSON  
9 WHOSE WATER SUPPLY, AS A RESULT OF THE VIOLATION, IS UNFIT OR MAY  
10 BECOME UNFIT FOR ITS USE PRIOR TO IMPAIRMENT AS AN INDIVIDUAL,  
11 PUBLIC, INDUSTRIAL, OR AGRICULTURAL WATER SUPPLY AS DETERMINED BY  
12 THE DEPARTMENT OF PUBLIC HEALTH OR A LOCAL HEALTH OFFICER. The  
13 attorney general or a person may commence a civil action against  
14 a person, the department, or a LOCAL health department certified  
15 under section 45 for appropriate relief, including injunctive  
16 relief for a violation of this act or a rule promulgated under  
17 this act. An action under this subsection may be brought in the  
18 circuit court for the county of Ingham or for the county in which  
19 the defendant is located, resides, or is doing business. The  
20 court has jurisdiction to restrain the violation; ~~and~~ to  
21 require compliance, TO COMPEL A PERSON TO RESTORE TO ITS CONDI-  
22 TION PRIOR TO THE VIOLATION ANY SURFACE WATER, GROUNDWATER, AIR  
23 QUALITY, OR LAND DAMAGED AS A RESULT OF THE VIOLATION, AND TO  
24 PROVIDE A TEMPORARY AND, IF NECESSARY, A PERMANENT WATER SUPPLY  
25 TO A PERSON WHOSE WATER SUPPLY, AS A RESULT OF THE VIOLATION,  
26 BECOMES OR MAY BECOME UNFIT FOR ITS USE PRIOR TO IMPAIRMENT AS AN  
27 INDIVIDUAL, PUBLIC, INDUSTRIAL, OR AGRICULTURAL WATER SUPPLY AS



1 DETERMINED BY THE DEPARTMENT OF PUBLIC HEALTH OR A LOCAL HEALTH  
2 OFFICER. In addition to any other relief granted under this sub-  
3 section, the court may impose a civil fine of not more than  
4 \$25,000.00 for each instance of violation and, if the violation  
5 is continuous, for each day of continued noncompliance. A fine  
6 collected under this subsection shall be deposited in the general  
7 fund of the state. AS USED IN THIS SUBSECTION, "LOCAL HEALTH  
8 OFFICER" MEANS THAT TERM AS DEFINED IN SECTION 1105 OF THE PUBLIC  
9 HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SEC-  
10 TION 333.1105 OF THE MICHIGAN COMPILED LAWS.

11 (2) A person who transports, treats, stores, disposes, or  
12 generates hazardous waste in violation of this act, or contrary  
13 to a permit, order, or rule issued or promulgated under this act,  
14 or who makes a false statement, representation, or certification  
15 in an application for ~~—~~ or form pertaining to a permit, or in a  
16 notice or report required by the terms and conditions of an  
17 issued permit, or a person who violates section 44(5), is guilty  
18 of a misdemeanor, punishable by a fine of not more than  
19 \$25,000.00 for each instance of violation and, if the violation  
20 is continuous, for each day of violation, or imprisonment for not  
21 more than 1 year, or both. If the conviction is for a violation  
22 committed after a first conviction of the person under this sub-  
23 section, the person is guilty of a misdemeanor, punishable by a  
24 fine of not more than \$50,000.00 for each instance of violation  
25 and, if the violation is continuous, for each day of violation,  
26 or by imprisonment for not more than 2 years, or both.

1       (3) ~~Any~~ A person who knowingly stores, treats, transports,  
2 or disposes of any hazardous waste in violation of subsection (2)  
3 and who knows at that time that he or she thereby places another  
4 person in imminent danger of death or serious bodily injury, and  
5 if his or her conduct in the circumstances manifests an unjusti-  
6 fied and inexcusable disregard for human life, or if his or her  
7 conduct in the circumstances manifests an extreme indifference  
8 for human life, shall be subject, upon conviction, to a fine of  
9 not more than \$250,000.00 or imprisonment for not more than 2  
10 years, or both, except that any person whose actions constitute  
11 an extreme indifference for human life shall, upon conviction, be  
12 subject to a fine of not more than \$250,000.00 or imprisonment  
13 for not more than 5 years, or both. A defendant that is not an  
14 individual and not a governmental entity shall be subject, upon  
15 conviction, to a fine of not more than \$1,000,000.00.

16       (4) For the purposes of subsection (3), a person's state of  
17 mind is knowing with respect to:

18       (a) His or her conduct, if he or she is aware of the nature  
19 of his or her conduct.

20       (b) An existing circumstance, if he or she is aware or  
21 believes that the circumstance exists.

22       (c) A result of his or her conduct, if he or she is aware or  
23 believes that his or her conduct is substantially certain to  
24 cause danger of death or serious bodily injury.

25       (5) For purposes of subsection (3), in determining whether a  
26 defendant who is an individual knew that his or her conduct

1 placed another person in imminent danger of death or serious  
2 bodily injury, both of the following apply:

3 (a) The person is responsible only for actual awareness or  
4 actual belief that he or she possessed.

5 (b) Knowledge possessed by a person other than the defendant  
6 but not by the defendant himself or herself may not be attributed  
7 to the defendant. However, in proving the defendant's possession  
8 of actual knowledge, circumstantial evidence may be used, includ-  
9 ing evidence that the defendant took affirmative steps to shield  
10 himself or herself from relevant information.

11 (6) It is an affirmative defense to a prosecution under this  
12 act that the conduct charged was consented to by the person  
13 endangered and that the danger and conduct charged were reason-  
14 ably foreseeable hazards of either of the following:

15 (a) An occupation, a business, or a profession.

16 (b) Medical treatment or professionally approved methods and  
17 such other person had been made aware of the risks involved prior  
18 to giving consent.

19 (7) The defendant may establish an affirmative defense under  
20 subsection (6) by a preponderance of the evidence.

21 (8) For purposes of subsection (3), "serious bodily injury"  
22 means ~~each~~ ANY of the following:

23 (a) Bodily injury which involves a substantial risk of  
24 death.

25 (b) Unconsciousness.

26 (c) Extreme physical pain.

1 (d) Protracted and obvious disfigurement.

2 (e) Protracted loss or impairment of the function of a  
3 bodily member, organ, or mental faculty.

4 (9) In addition to a fine, the attorney general may bring an  
5 action in a court of competent jurisdiction to recover the full  
6 value of the damage done to the natural resources of this state  
7 and the costs of surveillance and enforcement by the state  
8 resulting from the violation. The damages and cost collected  
9 under this subsection shall be deposited in the general fund when  
10 the damages or costs result from impairment or destruction of the  
11 fish, wildlife, or other natural resources of the state and shall  
12 be used to restore, rehabilitate, or mitigate the damage to,  
13 those resources in the affected area, and for the specific  
14 resource to which the damages occurred.

15 (10) The court, in issuing a final order in an action  
16 brought under this act, may award costs of litigation, including  
17 reasonable attorney and expert witness fees to a party, if the  
18 court determines that the award is appropriate.

19 (11) A person who has an interest which is or may be  
20 affected by a civil or administrative action commenced under this  
21 act shall have a right to intervene in that action.