

SENATE BILL No. 78

February 1, 1989, Introduced by Senators EHLERS, GAST and
BINSFELD and referred to the Committee on Natural Resources
and Environmental Affairs.

A bill to amend the title and sections 3, 4, and 19 of Act
No. 641 of the Public Acts of 1978, entitled
"Solid waste management act,"
section 3 as amended by Act No. 88 of the Public Acts of 1981 and
sections 4 and 19 as amended by Act No. 209 of the Public Acts of
1987, being sections 299.403, 299.404, and 299.419 of the
Michigan Compiled Laws; and to add section 19a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 3, 4, and 19 of Act
2 No. 641 of the Public Acts of 1978, section 3 as amended by Act
3 No. 88 of the Public Acts of 1981 and sections 4 and 19 as
4 amended by Act No. 209 of the Public Acts of 1987, being sections
5 299.403, 299.404, and 299.419 of the Michigan Compiled Laws, are
6 amended and section 19a is added to read as follows:

1 TITLE

2 An act to protect the public health and the environment; to
3 provide for the regulation and management of solid wastes; to
4 prescribe the powers and duties of certain state and local agen-
5 cies and officials; TO IMPOSE CERTAIN CHARGES ON THE DISPOSAL OF
6 SOLID WASTE IN CERTAIN DISPOSAL AREAS; to prescribe penalties; to
7 make an appropriation; and to repeal certain acts and parts of
8 acts.

9 Sec. 3. (1) "Applicant" means an individual, sole proprie-
10 torship, partnership, corporation, association, municipality,
11 this state, a county, or any other governmental authority created
12 by statute.

13 (2) "Ashes" means the residue from the burning of wood,
14 coal, coke, refuse, wastewater sludge, or other combustible
15 materials.

16 (3) "Bond" means a surety bond from a surety company autho-
17 rized to transact business in this state, a certificate of depos-
18 it, a cash bond, or an irrevocable letter of credit, in favor of
19 the director.

20 (4) "BOTTOM ASH" MEANS THE INORGANIC RESIDUE REMAINING AFTER
21 THE IGNITION OF COAL AND MAY INCLUDE NONCOMBUSTIBLE MATERIALS.

22 (5) ~~-(4)-~~ "Certified health department" means a city,
23 county, or district department of health which is specifically
24 delegated authority by the director to perform designated activi-
25 ties as prescribed by this act.

26 (6) ~~-(5)-~~ "Collection center" means a tract of land,
27 building, unit, or appurtenance or combination thereof that is

1 used to collect junk motor vehicles and farm implements under
2 section 23.

3 (7) "COMMISSION" MEANS THE COMMISSION OF NATURAL RESOURCES.

4 Sec. 4. (1) "Department" means the department of natural
5 resources.

6 (2) "Director" means the director of the department of natu-
7 ral resources.

8 (3) "Disposal area" means a solid waste transfer facility,
9 incinerator, sanitary landfill, processing plant, or other solid
10 waste handling or disposal facility utilized in the disposal of
11 solid waste.

12 (4) "Enforceable mechanism" means a legal method whereby the
13 state, a county, a municipality, or a person is authorized to
14 take action to guarantee compliance with an approved county solid
15 waste management plan. Enforceable mechanisms include contracts,
16 intergovernmental agreements, laws, ordinances, rules, and
17 regulations.

18 (5) "FLY ASH" MEANS THE AIRBORNE RESIDUES FROM BURNING COAL
19 THAT ARE FINELY DIVIDED PARTICLES ENTRAINED IN FLUE GASES ARISING
20 FROM A COMBUSTION CHAMBER.

21 (6) ~~-(5)-~~ "Garbage" means rejected food wastes including
22 waste accumulation of animal, fruit, or vegetable matter used or
23 intended for food or that attends the preparation, use, cooking,
24 dealing in, or storing of meat, fish, fowl, fruit, or vegetable.

25 Sec. 19. (1) The director shall not issue a license to
26 operate a disposal area unless the applicant has filed, as a part
27 of the application for a license, a bond to cover the cost of

1 closure and of postclosure monitoring and maintenance of the
2 disposal area after capacity has been reached or operations have
3 otherwise terminated, in accordance with the following:

4 (a) A bond established for a sanitary landfill shall be in
5 an amount equal to \$20,000.00 per acre of licensed landfill.
6 However, the amount of the bond shall be not less than
7 \$20,000.00, nor more than \$1,000,000.00. Each bond shall provide
8 assurance for the maintenance of the finished landfill site for a
9 period of 30 years after the landfill or any approved portion
10 thereof is completed.

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

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

26 (2) An applicant who elects to use a certificate of deposit
27 as bond shall receive any accrued interest on that certificate of

1 deposit upon release of the bond by the director. An applicant
2 who elects to post cash as bond shall accrue interest on that
3 bond at the annual rate of 6%, to be accrued quarterly, except
4 that the interest rate payable to an applicant shall not exceed
5 the rate of interest accrued on the state common cash fund for
6 the quarter in which an accrual is determined. Interest shall be
7 paid to the applicant upon release of the bond by the director.
8 Any interest greater than 6% shall be DEPOSITED IN THE STATE
9 TREASURY TO THE CREDIT OF THE GENERAL FUND AND SHALL BE APPROPRI-
10 ATED TO THE DEPARTMENT TO BE used by the director for administra-
11 tion OF THIS ACT.

12 (3) ~~After closure, the applicant of a landfill who has~~
13 ~~accomplished closure and maintenance, approved by the director~~
14 ~~and in accordance with this act and the rules promulgated under~~
15 ~~this act, may annually request a 6.6% reduction in the bond.~~
16 ~~After closure, and annually thereafter, an~~ AN applicant of ~~any~~
17 ~~other~~ A disposal area THAT IS NOT A LANDFILL who has accom-
18 plished closure or postclosure monitoring and maintenance,
19 approved by the director and in accordance with this act and the
20 rules promulgated under this act, may request a 50% reduction in
21 the bond.

22 (4) A PERSON REQUIRED UNDER THIS SECTION TO OBTAIN A BOND
23 FOR A DISPOSAL AREA THAT IS A LANDFILL MAY ANNUALLY REQUEST A
24 REDUCTION IN THE BOND ON THE ANNIVERSARY DATE OF THE POSTING OF
25 THE ORIGINAL BOND. THE DIRECTOR SHALL GRANT OR DENY A REQUEST
26 FOR A REDUCTION OF THE BOND WITHIN 60 DAYS AFTER THE REQUEST IS
27 MADE. IF THE DIRECTOR GRANTS A REQUEST FOR A REDUCED BOND, THE

1 DIRECTOR SHALL REQUIRE A BOND IN AN AMOUNT SUCH THAT THE AMOUNT
2 OF MONEY IN THE PERPETUAL CARE TRUST FUND REQUIRED IN SECTION 19A
3 PLUS THE AMOUNT OF THE REDUCED BOND EQUALS THE AMOUNT OF THE BOND
4 REQUIRED IN SUBSECTION (1) PLUS AN ADDITIONAL 20% OF THAT
5 AMOUNT. THE DIRECTOR SHALL RELEASE THE BOND REQUIRED BY THIS
6 SECTION IF THE AMOUNT IN THE PERPETUAL CARE TRUST FUND EXCEEDS
7 THE AMOUNT OF THE BOND REQUIRED UNDER THIS SECTION. PRIOR TO
8 CLOSURE OF A LANDFILL, IF MONEY IS DISBURSED FROM THE PERPETUAL
9 CARE TRUST FUND REQUIRED IN SECTION 19A, THEN THE DIRECTOR MAY
10 REQUIRE A BOND OR A CORRESPONDING INCREASE IN THE BOND REQUIRED
11 TO COMPLY WITH THE AMOUNT OF THE BOND REQUIRED BY THIS
12 SUBSECTION.

13 (5) ~~-(4)-~~ The director may utilize a bond required under
14 this section for the closure and postclosure monitoring and main-
15 tenance of a disposal area if the applicant fails to comply with
16 the closure and postclosure monitoring and maintenance require-
17 ments of this act and the rules promulgated under this act.

18 (6) ~~-(5)-~~ The director shall not issue a construction permit
19 or a new license to operate a disposal area to an applicant who
20 or which is the subject of a bankruptcy action commenced under
21 ~~Public Law 95-598~~ TITLE 11 OF THE UNITED STATES CODE, 11
22 U.S.C. 101 to ~~+5+326-~~ 1330, or any other predecessor statute.

23 SEC. 19A. (1) THE OWNER OR OPERATOR OF A DISPOSAL AREA THAT
24 IS A LANDFILL SHALL ESTABLISH AND MAINTAIN A PERPETUAL CARE TRUST
25 FUND TO BE USED EXCLUSIVELY FOR CLOSURE, MONITORING, AND MAINTENANCE
26 OF THE DISPOSAL AREA, AND FOR RESPONSE ACTIVITY
27 NECESSITATED BY A DISCHARGE FROM THE DISPOSAL AREA OF A SUBSTANCE

1 WHICH IS OR MAY BECOME INJURIOUS TO THE PUBLIC HEALTH, SAFETY, OR
2 WELFARE, OR TO THE ENVIRONMENT.

3 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THE OWNER OR OPER-
4 ATOR OF A DISPOSAL AREA THAT IS A LANDFILL SHALL DEPOSIT IN THE
5 PERPETUAL CARE TRUST FUND ESTABLISHED UNDER SUBSECTION (1) 75
6 CENTS FOR EACH TON OR PORTION OF A TON OF SOLID WASTE THAT IS
7 DISPOSED OF IN THE DISPOSAL AREA AFTER THE EFFECTIVE DATE OF THIS
8 SECTION. IF THE DISPOSAL AREA IS NOT EQUIPPED WITH A SCALE, THE
9 OWNER OR OPERATOR SHALL DEPOSIT IN THE PERPETUAL CARE TRUST FUND
10 25 CENTS FOR EACH CUBIC YARD OR PORTION OF A CUBIC YARD OF SOLID
11 WASTE THAT IS DISPOSED OF IN THE DISPOSAL AREA AFTER THE EFFEC-
12 TIVE DATE OF THIS SECTION.

13 (3) THE OWNER OR OPERATOR OF A DISPOSAL AREA THAT IS A LAND-
14 FILL THAT IS USED FOR THE DISPOSAL OF THE FOLLOWING MATERIALS
15 SHALL DEPOSIT INTO THE PERPETUAL CARE TRUST FUND 7.5 CENTS FOR
16 EACH TON OR PORTION OF A TON OF THESE MATERIALS THAT ARE DISPOSED
17 OF IN THE LANDFILL AFTER THE EFFECTIVE DATE OF THIS SECTION:

18 (A) FLY ASH THAT IS DISPOSED OF IN A LANDFILL THAT IS USED
19 ONLY FOR THE DISPOSAL OF FLY ASH AND BOTTOM ASH OR THAT IS PER-
20 MANENTLY SEGREGATED IN THE LANDFILL.

21 (B) BOTTOM ASH THAT IS DISPOSED OF IN A LANDFILL THAT IS
22 USED ONLY FOR THE DISPOSAL OF FLY ASH AND BOTTOM ASH OR THAT IS
23 PERMANENTLY SEGREGATED IN THE LANDFILL.

24 (C) WASTEWATER TREATMENT SLUDGE FROM WOOD PULP OR PAPER
25 PRODUCING INDUSTRIES THAT IS DISPOSED OF IN A LANDFILL THAT IS
26 USED ONLY FOR THE DISPOSAL OF WASTEWATER TREATMENT SLUDGE FROM

1 WOOD PULP OR PAPER PRODUCING INDUSTRIES OR THAT IS PERMANENTLY
2 SEGREGATED IN THE LANDFILL.

3 (D) FOUNDRY SAND THAT IS DESIGNATED AS INERT BY THE DIRECTOR
4 AND IS USED FOR DAILY COVER AT AN OPERATING LANDFILL OR CAPPING
5 OF A CLOSED LANDFILL, OR FOUNDRY SAND THAT IS DISPOSED OF IN A
6 LANDFILL THAT IS USED ONLY FOR THE DISPOSAL OF FOUNDRY SAND OR
7 THAT IS PERMANENTLY SEGREGATED IN THE LANDFILL.

8 (E) FOR A PERIOD OF 3 YEARS AFTER THE EFFECTIVE DATE OF THIS
9 SECTION, ORGANIC FRUIT AND VEGETABLE PROCESSING WASTE.

10 (4) MATERIALS THAT ARE REGULATED UNDER ACT NO. 92 OF THE
11 PUBLIC ACTS OF 1970, BEING SECTIONS 425.181 TO 425.188 OF THE
12 MICHIGAN COMPILED LAWS, ARE EXEMPT FROM THE REQUIREMENTS OF THIS
13 SECTION.

14 (5) THE OWNER OR OPERATOR OF A DISPOSAL AREA THAT IS A LAND-
15 FILL MAY CONTRIBUTE ADDITIONAL AMOUNTS INTO THE PERPETUAL CARE
16 TRUST FUND AT HIS OR HER DISCRETION.

17 (6) THE TRUSTEE OF THE PERPETUAL CARE TRUST FUND REQUIRED BY
18 THIS SECTION SHALL BE A BANK OR OTHER FINANCIAL INSTITUTION THAT
19 HAS THE AUTHORITY TO ACT AS A TRUSTEE AND WHOSE TRUST OPERATIONS
20 ARE REGULATED AND EXAMINED BY A FEDERAL OR STATE AGENCY. THE
21 TRUSTEE SHALL INVEST MONEY IN THE PERPETUAL CARE TRUST FUND IN
22 TIME OR DEMAND DEPOSITS OF THE TRUSTEE OR ANY OTHER FINANCIAL
23 INSTITUTION TO THE EXTENT INSURED BY AN AGENCY OF THE FEDERAL
24 GOVERNMENT, IN DIRECT OBLIGATIONS OF THE FEDERAL GOVERNMENT, OR
25 THIS STATE, OR IN OBLIGATIONS WHERE THE PRINCIPAL AND INTEREST
26 ARE UNCONDITIONALLY GUARANTEED BY THE FEDERAL GOVERNMENT OR THIS
27 STATE. THE TRUST AGREEMENT SHALL BE EXECUTED ON A FORM APPROVED

1 BY THE DIRECTOR. THE TRUSTEE OF THE PERPETUAL CARE TRUST FUND
2 SHALL ANNUALLY MAKE AN ACCOUNTING TO THE DIRECTOR.

3 (7) THE TRUSTEE OF THE PERPETUAL CARE TRUST FUND SHALL NOT
4 DISBURSE ANY FUNDS TO THE OWNER OR OPERATOR OF A DISPOSAL AREA
5 THAT IS A LANDFILL FOR THE PURPOSES OF THE TRUST FUND EXCEPT UPON
6 THE WRITTEN APPROVAL OF THE DIRECTOR. UPON THE REQUEST OF THE
7 OWNER OR OPERATOR OF A DISPOSAL AREA THAT IS A LANDFILL FOR A
8 DISBURSEMENT OF FUNDS FROM THE PERPETUAL CARE TRUST FUND, THE
9 DIRECTOR SHALL, WITHIN 60 DAYS, GRANT WRITTEN APPROVAL OR ISSUE A
10 WRITTEN DENIAL. IF THE OWNER OR OPERATOR OF A DISPOSAL AREA THAT
11 IS A LANDFILL REFUSES OR FAILS TO CONDUCT CLOSURE, MONITORING,
12 MAINTENANCE, AND RESPONSE ACTIVITIES AS ARE NECESSARY TO PROTECT
13 THE PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT OR FAILS
14 TO REQUEST THE DISBURSEMENT OF MONEY FROM THE PERPETUAL CARE
15 TRUST FUND WHEN NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY,
16 WELFARE, OR THE ENVIRONMENT, THEN THE DIRECTOR MAY REQUIRE THE
17 DISBURSEMENT OF MONEY FROM THE PERPETUAL CARE TRUST FUND AND MAY
18 EXPEND THE MONEY FOR CLOSURE, MONITORING, MAINTENANCE, AND
19 RESPONSE ACTIVITIES.

20 (8) UPON THE EXPIRATION OF 30 YEARS AFTER THE CLOSURE OF A
21 DISPOSAL AREA THAT IS A LANDFILL, ANY MONEY IN THE PERPETUAL CARE
22 TRUST FUND FOR THAT DISPOSAL AREA SHALL BE DISTRIBUTED AS
23 FOLLOWS:

24 (A) FIFTY PERCENT SHALL BE DEPOSITED IN THE ENVIRONMENTAL
25 RESPONSE FUND CREATED IN THE ENVIRONMENTAL RESPONSE ACT, ACT
26 NO. 307 OF THE PUBLIC ACTS OF 1982, BEING SECTIONS 299.601 TO
27 299.611 OF THE MICHIGAN COMPILED LAWS.

1 (B) FIFTY PERCENT SHALL BE RETURNED TO THE OWNER OF THE
2 DISPOSAL AREA UNLESS A CONTRACT BETWEEN THE OWNER AND THE OPERA-
3 TOR PROVIDES OTHERWISE. IF THERE HAS BEEN MORE THAN 1 OWNER
4 DURING THE TIME THE PERPETUAL CARE TRUST FUND HAS EXISTED, THEN
5 MONEY DISBURSED UNDER THIS SUBDIVISION SHALL BE DISBURSED IN PRO-
6 PORTION TO EACH OWNER'S CONTRIBUTION TO THE PERPETUAL CARE TRUST
7 FUND.

8 (9) THIS SECTION DOES NOT RELIEVE AN OWNER OR OPERATOR OF A
9 DISPOSAL AREA THAT IS A LANDFILL OF ANY LIABILITY THAT HE OR SHE
10 MAY HAVE UNDER THIS ACT OR AS OTHERWISE PROVIDED BY LAW.

11 (10) AS USED IN THIS SECTION:

12 (A) "DISCHARGE" INCLUDES, BUT IS NOT LIMITED TO, ANY SPILL-
13 ING, LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING,
14 INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING OF A SUB-
15 STANCE INTO THE ENVIRONMENT WHICH IS OR MAY BECOME INJURIOUS TO
16 THE ENVIRONMENT, OR TO THE PUBLIC HEALTH, SAFETY, OR WELFARE.

17 (B) "RESPONSE ACTIVITY" MEANS AN ACTIVITY THAT IS NECESSARY
18 TO PROTECT THE PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRON-
19 MENT, AND INCLUDES, BUT IS NOT LIMITED TO, EVALUATION, CLEANUP,
20 REMOVAL, CONTAINMENT, ISOLATION, TREATMENT, MONITORING, MAINTENANCE,
21 REPLACEMENT OF WATER SUPPLIES, AND TEMPORARY RELOCATION OF
22 PEOPLE.

23 Section 2. This amendatory act shall take effect upon the
24 expiration of 120 days after the date of its enactment.