

3

**Solid Waste**

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I. Overview §3.1.....	1
II. Federal Solid Waste Disposal Act (SWDA).....	1
A. State or Regional Solid Waste Plans §3.2.....	1
1. Guidelines for State Plans §3.3.....	2
2. Requirements for Approval of Plans.....	2
a. Minimum Requirements §3.4.....	2
b. Discretionary Provisions Relating to Recycled Oil §3.5.....	2
3. Criteria for Sanitary Landfills §3.6.....	2
4. Upgrading or Closing Existing Open Dumps §3.7.....	3
5. Procedure for Development and Implementation of State Plans §3.8.....	4
6. Approval of State Plan §3.9.....	4
7. Federal Assistance §3.10.....	4
B. Enforcement and Citizen Suits §3.11.....	4
III. Part 115: Solid Waste Management.....	5
A. In General §3.12.....	5
1. Categories of Waste §3.13.....	5
2. Categories of Disposal Areas §3.14.....	5
B. Reporting §3.15.....	6
C. Certification §3.16.....	6
D. Construction Permit for a Disposal Area or Landfill.....	6
1. In General §3.17.....	6
2. Obtaining a Permit §3.18.....	7
3. Expiration, Renewal and Modification of a Permit §3.19.....	9
4. Multiple Permits §3.20.....	9
5. Permit Approval §3.21.....	9
6. Denial of a Permit §3.22.....	9
E. License to Operate a Sanitary Landfill.....	10
1. In General §3.23.....	10
2. Obtaining a License to Operate §3.24.....	10
3. Denial of a License to Operate §3.25.....	11
4. Inspections §3.26.....	11
5. Operating License Approval §3.27.....	12

6. Restrictive Covenant §3.28.....	12
F. Exemptions to Permit and License Requirements §3.29 .....	13
G. Operation of a Sanitary Landfill .....	13
1. In General §3.30.....	13
2. Accepting Out of State or Out of Country Solid Waste §3.31.....	15
3. Violations §3.32.....	16
H. Closure of a Sanitary Landfill §3.33.....	16
I. Financial Assurance for Sanitary Landfills.....	18
1. In General §3.34.....	18
2. Perpetual Care Fund §3.35.....	18
3. Cash Bond §3.36.....	18
4. Trust Fund or Escrow Account §3.37.....	19
5. Reduction or Increase in Financial Assurance §3.38.....	19
J. Solid Waste Incinerators §3.39.....	20
1. Municipal Solid Waste Incinerator Ash §3.40.....	20
2. Incineration of Used Oil §3.41.....	21
K. Recycling and Reuse.....	21
1. In General §3.42.....	21
2. Electronics §3.43.....	21
3. Yard Waste §3.44.....	22
4. Inert Material §3.45 .....	22
5. Petitions to Classify Wastes §3.46.....	24
L. Open Burning §3.47.....	24
M. Solid Waste Transporters.....	25
1. Inspections §3.48 .....	25
2. Delivery to a Licensed Disposal Area §3.49 .....	25
3. Materials Prohibited from Disposal §3.50.....	25
N. County Solid Waste Management Plans.....	25
1. In General §3.51.....	25
2. Requirements and Contents §3.52 .....	26
3. Siting Mechanisms §3.53.....	27
4. Submission and Approval §3.54.....	27
5. Updating the Plan §3.55.....	27
O. Solid Waste Management Fund §3.56.....	27
P. PBB Landfill Maintenance Trust Fund §3.57.....	28
IV. Other Michigan Solid Waste Statutes.....	28
A. Medical Waste §3.58 .....	28
B. Beverage Containers §3.59 .....	28
Table of Authorities .....	29
Endnotes.....	34

## I. Overview §3.1

Solid waste in Michigan is regulated primarily by Part 115 of the Natural Resources and Environmental Protection Act (NREPA), [MCL 324.11501 et seq.](#), the federal Solid Waste Disposal Act, [42 USC 6901 et seq.](#), and the rules promulgated under each act. The U.S. Environmental Protection Agency (EPA) oversees the implementation and enforcement of these acts, but the Michigan Department of Natural Resources and Environment (DNRE) has the primary authority and responsibility to administer Michigan's federally-approved solid waste program.

This chapter starts with a general discussion regarding the federal Solid Waste Disposal Act. The second part of this chapter provides a detailed summary of Part 115 and administrative rules, such as the regulations and rules covering the types of solid waste, types of solid waste disposal areas, and the construction, operation, maintenance and closure of solid waste disposal areas. The chapter also discusses solid waste management plans and touches on Michigan's solid waste management policy. This chapter provides only an overview of the regulations and rules governing solid waste in Michigan; it is therefore important that the user refer to the statutes and rules hyperlinked throughout this chapter.

## II. Federal Solid Waste Disposal Act (SWDA)

### A. State or Regional Solid Waste Plans §3.2

Although the Resource Conservation and Recovery Act (RCRA) is primarily associated with the regulation of hazardous waste (see Chapter 4), non-hazardous solid waste is addressed in Subtitle D of RCRA, also known as the Solid Waste Disposal Act, [42 USC 6901 et seq.](#) Subtitle D applies to non-hazardous waste from households and industry. In addition, Subtitle D covers household hazardous waste and hazardous waste from small quantity generators.

Subtitle D does not anticipate a broad federal regulatory scheme like that governing hazardous waste. Instead, it provides for state and local regulation through the development of solid waste management plans approved by the EPA. A primary goal of Subtitle D is to protect the environment and human health by prohibiting open dumping and directing that solid waste either be disposed of in sanitary landfills or handled through a resource conservation and recovery program. Indeed, Subtitle D's stated purpose is to "assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources including energy and materials which are recoverable from solid waste and to encourage resource conservation." [42 USC 6941.](#)

The centerpiece of Subtitle D is the development by states of solid waste management plans. Section 4002 of RCRA requires the establishment of federal guidelines for these plans. Section 4003 sets forth the criteria that the EPA must consider in reviewing and approving such plans. Section 4004 directs the establishment of criteria for classifying facilities as either "sanitary landfills" or "open dumps." Section 4005 prohibits open dumping and calls for all open dumps to be either brought into compliance with sanitary landfill criteria or closed. Section 4006 sets forth the procedure for states to develop solid waste management plans, and Section 4007

outlines the criteria for the plans to meet federal approval. Sections 4008 and 4009 provide for federal financial and technical assistance to states. Finally, a citizen suit provision, Section 7002, authorizes enforcement actions to enforce the Subtitle D criteria and to address imminent dangers to health and the environment. These provisions are discussed in the following sections.

### **1. Guidelines for State Plans §3.3**

Section 4002 of RCRA, [42 USC 6942](#), directs the EPA to promulgate regulations containing guidelines for states to follow in preparing their solid waste management plans. EPA promulgated these regulations in 1979; they appear at [42 CFR Part 256](#). The regulations outline the types of solid wastes, [40 CFR 256.02\(a\)\(1\)](#), as well as the aspects of solid waste management, [40 CFR 256.02\(a\)\(2\)](#), that a state plan must consider. The regulations also outline in more detail the requirements for the plans and recommend provisions that would allow the plans to satisfy each requirement.

### **2. Requirements for Approval of Plans**

#### **a. Minimum Requirements §3.4**

Section 4003, [42 USC 6943](#), sets forth what must be included in a state plan. Certain minimum requirements must be met for the plan to gain EPA approval. [42 USC 6943\(a\)](#). As might be expected, these minimum requirements include compliance with the other provisions of Subtitle D, such as prohibiting new open dumps, requiring the closing of existing open dumps, and requiring that solid waste be disposed of in sanitary landfills. [42 USC 6943\(a\)\(2\)](#); [42 USC 6944\(b\)](#). In addition, the plans must outline how planning and implementation will be handled among state, regional and local authorities; provide the state with regulatory power to implement the plan; and enable municipalities to enter long-term contracts needed to finance modern resource recovery facilities.

#### **b. Discretionary Provisions Relating to Recycled Oil §3.5**

A state's plan may, but need not, address the use of recycled oil. [42 USC 6943\(b\)](#). If a state chooses to include provisions related to recycled oil in its plan, those provisions may encourage the use of recycled oil where appropriate by state and local governments and persons contracting with the state, inform the public of uses of recycled oil, and establish and implement a program for recycling and reusing oil in a safe and environmentally sound manner.<sup>1</sup>

### **3. Criteria for Sanitary Landfills §3.6**

A key aspect of Subtitle D is its prohibition on "open dumps". Pursuant to the directive of Section 4004 of RCRA, [42 USC 6944](#), the EPA promulgated regulations outlining the criteria for determining whether a facility should be classified as a prohibited open dump or a regulated sanitary landfill. [40 CFR Part 257](#). These regulations, commonly referred to as the Part 257 criteria, took effect October 15, 1979 and were updated in 1993. Any facility that fails to meet the criteria is deemed to "pose a reasonable probability of adverse effects on health or the environment." [40 CFR 257.3](#).

The specific regulatory criteria for prohibited open dumps relate to:

- Facilities in floodplains, [40 CFR 257.3-1](#).
- A facility's impact on endangered or threatened species of plants, fish or wildlife or their habitats, [40 CFR 257.3-2](#).
- Discharges into surface waters in violation of the Clean Water Act, [40 CFR 257.3-3](#).
- Contamination of an underground drinking water source, [40 CFR 257.3-4](#).
- The application of solid waste containing cadmium or polychlorinated biphenyls (PCBs) near land used for production of food-chain crops, [40 CFR 257.3-5](#).
- Methods to minimize the on-site population of disease vectors, including separate criteria for facilities where sewage sludge or septic tank pumpings are disposed of, [40 CFR 257.3-6](#).
- Open burning of solid waste, [40 CFR 257.3-7](#).
- Safety issues, including explosive gases, fires, bird hazards to aircraft, and uncontrolled public access, [40 CFR 257.3-8](#).

The EPA promulgated regulations establishing a framework for planning and implementing municipal solid waste landfill programs. [40 CFR Part 258](#). These criteria were adopted in 1991 pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA). The Part 258 criteria, as they are known, set minimum standards for protecting human health and the environment, while allowing states to develop more flexible solid waste landfill criteria. Part 258 outlines restrictions on where landfills may be located, operating criteria, design criteria, and groundwater monitoring and corrective action requirements. The regulations explain the requirements for closure and post-closure care, as well as the criteria for financial assurance.

#### **4. Upgrading or Closing Existing Open Dumps §3.7**

Once the EPA promulgated criteria for classifying facilities either as open dumps or sanitary landfills, all open dumping became prohibited under Section 4005 of RCRA, [42 USC 6945](#). Those facilities that were classified as open dumps had to be either closed or upgraded to comply with the requirements for sanitary landfills. Each state plan was required to include a timetable or schedule for open dumps to come into compliance, and such compliance had to be attained no later than five years after the criteria were published. [42 USC 6945\(a\)](#). Section 4005 required the EPA to publish an inventory of open dumps to assist the states in this task. [42 USC 6945\(b\)](#). Separate timelines were established for facilities that may receive hazardous household waste and hazardous waste from small quantity generators. [42 USC 6945\(c\)](#).

## 5. Procedure for Development and Implementation of State Plans §3.8

Section 4006 of RCRA, [42 USC 6946](#), directs states to develop and implement solid waste management plans. Rather than specify what must be in the plan, this provision mandates a timeline for states to make certain decisions related to the development and implementation of the plans, such as determining which state, regional and local agencies will be responsible for various tasks.

Michigan's solid waste management plan consists of the state's solid waste plan and all county and regional plans. [MCL 324.11541](#). Michigan's Solid Waste Policy was initially adopted on May 26, 1988 and updated in 2007. The 2007 update is available online at. The [2007 Solid Waste Policy](#) is based on the following overarching goal: "Michigan recognizes solid waste as a resource that should be managed to promote economic vitality, ecological integrity, and improved quality of life in a way that fosters sustainability." Rather than setting specific requirements, the Policy outlines goals to which counties should strive when developing their own solid waste management plans.

## 6. Approval of State Plan §3.9

To be eligible for federal assistance under Sections 4008 and 4009, states were required to obtain EPA approval for their solid waste management plans. (The point is now moot because federal assistance is no longer funded.) Section 4007 of RCRA, [42 USC 6947](#), outlined the criteria that the EPA was required to consider in reviewing a state's plan. Those criteria included compliance with the requirements of Subtitle D and a provision for revising the plan when deemed necessary by the EPA. [42 USC 6944\(a\)](#). The EPA was required to either approve or disapprove a plan within six months of submission. *Id.* The EPA also was required to review approved plans "from time to time" to determine whether revisions or corrections are needed. *Id.* In addition, Section 4007 includes provisions related to EPA approval of state applications for federal financial assistance. [42 USC 6947\(b\)](#).

## 7. Federal Assistance §3.10

Subtitle D of RCRA allows for federal financial and technical assistance to states, as well as regional and local authorities, in developing and implementing their solid waste management plans. [42 USC 6948](#). This assistance, however, has not been available for more than two decades. The technical assistance included helping states remove legal, institutional and economic impediments to the development of systems and facilities for resource conservation or recovery. Grants also were authorized specifically targeting rural communities. [42 USC 6949](#). The statutory authorization for federal assistance expired in 1988, and federal funding of waste management had effectively ended several years before that.

## B. Enforcement and Citizen Suits §3.11

Congress intended that the states would take the lead in implementing and enforcing Subtitle D through state permit programs. [42 USC 6945\(c\)](#). As a result, state and local governments and citizens usually have greater authority than the federal government to enforce Subtitle D. Indeed, the federal government's enforcement authority is generally limited to situations where a

state fails to obtain approval of a permit program. [42 USC 6945\(c\)\(2\)\(a\)](#). See also U.S. Environmental Protection Agency, [RCRA Statute, Regulations & Enforcement](#), (“Note that EPA does not have federal enforcement authority for the solid waste program....”).

Citizens are authorized under section 7002 of RCRA, [42 USC 6972](#), to bring civil lawsuits to enforce the Subtitle D criteria and to address “an imminent and substantial endangerment to health or the environment.” [42 USC 6972\(a\)\(1\)\(B\)](#). Section 7002 authorizes citizen suits against the EPA for any alleged failure to perform a non-discretionary act or duty under Subtitle D. [42 USC 6972\(a\)\(2\)](#). Like other federal citizen suit provisions, a waiting period and a pre-filing notification requirement apply. [42 USC 6972\(b\)](#) and (c). At least one federal court has held that Section 4007 of RCRA does not impose a mandatory duty on the EPA to review a state’s solid waste management plan and, therefore, the court had no jurisdiction to entertain a citizen suit seeking to compel such a review. *Stephens v City of Anadarko*, 2008 WL 896172 (WD Okla 2008).

### III. Part 115: Solid Waste Management

#### A. In General §3.12

Part 115 of NREPA regulates the disposal of solid waste in Michigan. The objective of Part 115 is to regulate the collection, transport, processing, recycling or disposal of waste materials. Part 115 facilitates the separation of wastes (i.e., hazardous versus non-hazardous, household waste, recyclable material, liquid waste, etc.) and the separation of disposal areas, along with providing a regulatory framework for permitting, licensing, and certifying the construction, operation, and closure of landfills in the state. Part 115 provides for required landfill surcharge fees and regulatory fees, discusses financial assurance requirements to assure proper landfill closure, and lists the requirements for county solid waste management plans. Part 115 also discusses miscellaneous matters such as the composting, recycling, and burning of solid waste.

#### 1. Categories of Waste §3.13

Solid waste regulated by Part 115 includes household waste, municipal solid waste, incinerator ash, construction and demolition waste, sewage sludge, commercial waste, non-hazardous sludge, hazardous waste from a conditionally exempt small quantity generator, industrial waste, coal or wood ash, wastewater and sewage sludge or paper sediments, foundry sand and other approved materials (e.g., contaminated soils). [R 299.4101-.299.4106a](#).

#### 2. Categories of Disposal Areas §3.14

A Part 115 disposal area includes two types of sanitary landfills: (i) Type II, including municipal solid waste landfills and municipal solid waste incinerator ash landfills; (ii) Type III, including any landfill that is not a municipal solid waste landfill or hazardous waste landfill and may include a construction waste landfill, industrial waste landfill and others. A disposal area also includes a waste transfer facility, processing plant or other solid waste handling or disposal facility utilized in the disposal of solid waste. [R 299.4102\(l\)](#).

## **B. Reporting §3.15**

An owner or operator of a landfill is responsible for submitting annual reports to the applicable municipality, county and state. The report should contain information about the amount of waste received by the landfill, listing the amount received from each county, state or country. The report should also include information regarding the remaining capacity of the landfill. All information should be reported on a form provided by the DNRE and must be submitted within 45 days of the end of the state fiscal year. [MCL 324.11507a](#).

## **C. Certification §3.16**

A district, county, city or local health department may be certified by the DNRE to administer and conduct activities associated with a solid waste management program. [MCL 324.11508](#) and [R 299.4201](#)-.4206.

## **D. Construction Permit for a Disposal Area or Landfill**

### **1. In General §3.17**

The terms “disposal area” and “landfill” are used interchangeably throughout this chapter. The administrative rules define “disposal area type” as “1 of the following types of disposal areas defined by the act and these rules: (i) Municipal solid waste landfill. (ii) Industrial waste landfill. (iii) Construction and demolition waste landfill. (iv) Municipal incinerator ash landfill. (v) Incinerator. (vi) Processing plant. (vii) Transfer facility. (viii) Waste pile.” [R 299.4102\(l\)](#). The administrative rules define “landfill unit” as:

“ . . . a discrete area of land which is permitted to receive waste for permanent disposal and which is not a waste pile. For purposes of these rules, the discrete area shall consist of all areas where waste is or will be contiguous, excluding any portion that has been closed under part 111 of the act. Contiguous portions may be separated by berms and may contain different liner or leachate collection designs and separate leachate collection systems, if waste in one portion is or will be in contact with waste in another portion. The boundaries of a landfill unit may be increased by lateral extensions consistent with the construction permit or plans approved by the department. A landfill unit may be any of the following:

- (i) A new unit.
- (ii) An existing unit.
- (iii) A preexisting unit.
- (iv) A closed unit.”

[R 299.4103\(p\)](#).

Before construction of a disposal area, including a sanitary landfill, an owner or operator must obtain a permit from the DNRE. In addition, construction must be in accordance with an approved solid waste management plan. [MCL 324.11509](#) and [R 299.4107](#).

Part 115 and the rules require a construction permit from the DNRE before a landfill may be built and provide that once constructed, a landfill must be licensed by the DNRE to operate. Issuance of a construction permit by the DNRE does not guarantee approval of an operating permit, if the landfill is not in compliance with an approved solid waste management plan. *Lyon Development Co v Dep't of Natural Resources*, [157 Mich App 190](#); 403 NW2d 78 (1986). In addition, the fact that a disposal area or landfill has been approved in a county solid waste management plan does not preclude the DNRE from denying a construction or operating permit. An applicant must meet all of the requirements to obtain an operating permit, including all of the requirements of Part 115. *Southeastern Oakland Cty Incinerator Auth v Dep't of Natural Resources*, [176 Mich App 434](#), 437-441; 440 NW2d 649 (1989).

Practitioners should advise clients that they should not expend money or commence construction or operating activities until each step of the permitting process is confirmed in writing by the DNRE (e.g., confirm that a landfill is included in the county solid waste management plan prior to conducting investigations and studies related to the construction permit application). Further, a pre-application meeting with state, county and local government agencies or departments with a potential interest in the landfill may be useful to prevent unnecessary expenditures.

## 2. Obtaining a Permit §3.18

Before an applicant submits a construction permit application for a disposal area, the local health officer or the DNRE must complete an advisory analysis. The advisory analysis will review the proposed design of the landfill and inform the applicant of other permits that may be required for the facility (i.e., air emissions, water discharge, or soil erosion and sedimentation control permits). The advisory analysis will also provide information about known conditions at the proposed site of the disposal area and will afford the applicant the opportunity to discuss the application and submission requirements with the DNRE or the local health officer. [R 299.4503](#). If an applicant does not receive the advisory analysis within 15 days of submitting the request, then it may proceed with submitting the application for a construction permit. [MCL 324.11510](#). An [application for construction of a disposal area](#) should be submitted, on a form provided by the DNRE, to the local health department, or if there is no local health department, to the DNRE. .

The construction permit application must include the following information pursuant to [MCL 324.11509\(2\)](#) and [R 299.4902](#):

- Name and residence of the applicant.
- Name and proposed location of the facility.
- Name and contact information of the operator.
- Name and address of the property owner or mineral rights holders.
- Type of disposal area.
- Type of waste proposed for disposal.
- Design capacity.

- Engineering plans in compliance with [R 299.4910](#).
- Operation plans as specified in [R 299.4911](#).
- Construction quality assurance plans in compliance with [R 299.4916](#).
- An environmental assessment that contains the information specified in [R 299.4903](#).
- Hydrogeological report in compliance with [R 299.4904](#).
- Hydrogeological monitoring plan in compliance with [R 299.4905](#).
- Topographic maps in accordance with [R 299.4909](#).
- An application fee pursuant to [MCL 324.11512](#).

The amount of the application fee depends upon the type of disposal area. [MCL 324.11509](#)(2)-(3). The applicant should also consider and review the landfill siting restrictions discussed in [R 299.4411](#)-4419, for Type II landfills and in [R 299.4302](#)-4306 and [R 299.4310](#)-4311 for Type III landfills. An applicant for a solid waste processing plant or a solid waste transfer facility should consult the requirements included at [R 299.4504](#)-4505.

The rules pertaining to landfill siting restrictions describe considerations and limitations for the location of a Type II or Type III landfill such as, noise, odors, isolation distances from groundwater sources, wetlands, sensitive areas, residential areas, and airports. The DNRE may impose greater isolation distances than those specified in the rules for several reasons, including if other federal and state regulations pertaining to the construction of the landfill apply. [R 299.4305](#).

Michigan courts have consistently found that the DNRE may require more stringent conditions than those specified in the rules if other federal or state regulations apply. In *Southeastern Oakland Cty Incinerator Auth v Dep't of Natural Resources*, [176 Mich App 434](#), 437-441; 440 NW2d 649 (1989), the plaintiff appealed a decision of the circuit court affirming denial of a construction permit by the Department of Natural Resources (DNR). The DNR denied the permit because the plaintiff's proposed landfill construction did not achieve adequate odor control and therefore violated the Michigan Air Pollution Act. The Court of Appeals ruled that the denial was appropriate based upon [Rule 299.4305](#)(2)(b)(iv).

Before contemplating construction, the applicant should consider the rules covering the Type II landfill design standards discussed at [R 299.4420](#)-4425 and the Type III landfill design standards discussed at [R 299.4302](#)-4309.

The statutory review period specified in [MCL 324.11511](#), and applicable to the construction permit application, will not begin until the DNRE or the certified health department determines that the application is administratively complete. See the Instructions for a Permit to Construct a Solid Waste Disposal Area on the Waste Management Division website. The DNRE or certified health department must determine and acknowledge to the applicant that the application is administratively complete within 15 working days of receipt of the application. An administratively incomplete application will be returned to the applicant without prejudice within 15 working days of receipt.

A person can apply to construct more than one type of disposal area at the same facility under a single construction permit. [MCL 324.11509](#)(2). The fee for construction of more than one type

of disposal area is equal to the sum of the various application fees listed for each type of disposal area. [MCL 324.11509\(6\)](#).

### **3. Expiration, Renewal and Modification of a Permit §3.19**

A construction permit approved by the DNRE will expire one year after the date it is issued unless the development proposed by the permit has been initiated. An expired construction permit can be renewed by paying a permit renewal fee of \$250.00 and submitting additional information as requested by the DNRE. [MCL 324.11509\(5\)](#) and [MCL 324.11511\(2\)](#).

Modification of a construction permit must be submitted on a [DNRE form](#). The application for modification of the permit must be accompanied by revised engineering plans for the affected changes and the fee listed in [MCL 324.11509](#). The DNRE reviews and approves or denies the application for modification of the permit in accordance with [MCL 324.11510](#) and [MCL 324.11511](#). See [§ 3.21](#).

The director of DNRE may approve changes to a construction permit that do not form a new disposal area or constitute a modification without following the procedures included in [MCL 324.11510](#) and [MCL 324.11511](#).

### **4. Multiple Permits §3.20**

A person may apply for a permit for more than one type of disposal area at the same facility. An engineering plan and the required permit fee for each type of disposal area are due upon submitting the application. [MCL 324.11509\(2\)](#) and (6).

### **5. Permit Approval §3.21**

The DNRE must notify the clerk of the municipality where the disposal area will be located and the applicant regarding the approval or denial of the construction permit within ten days after the final decision is made. [MCL 324.11511\(1\)](#).

The DNRE will not approve a construction permit for a proposed disposal area unless a solid waste management plan has been approved and the proposed disposal area will comply with the approved solid waste management plan. [MCL 324.11511\(3\)](#). The requirement that there must be an approved solid waste management plan may be waived by the DNRE for a disposal area specifically designed to accept ashes from the combustion of fossil fuels for electrical power generation. The DNRE will waive the requirement if there is a letter of approval from the county, municipality, or regional planning agency where such disposal area is located, stating that it has prepared or is preparing a solid waste management plan pursuant to Part 115. [MCL 324.11511](#).

### **6. Denial of a Permit §3.22**

If DNRE denies an application for a construction permit, it must provide the applicant with the reasons for the denial in writing, citing particular sections of the statute or rules. [MCL 324.11519](#). An applicant may resubmit the construction permit application and the additional

information needed to address the reasons for denial within 12 months of denial. The applicant will not be required to pay an additional application fee if a permit application is resubmitted after initially being denied. [MCL 324.11509\(4\)](#).

## **E. License to Operate a Sanitary Landfill**

### **1. In General §3.23**

An owner or operator of a landfill must have an operating license issued by the DNRE to lawfully conduct, manage, maintain or operate the landfill. The owner or operator must submit a license application to the DNRE. See [§ 3.24](#). [MCL 324.11512\(1\)-\(2\)](#). In addition to the operating license requirement for landfill owners and operators, Part 115 requires that a generator dispose of solid waste at a licensed disposal area, unless the person is otherwise permitted by state law or rules to dispose of the solid waste at the point of generation. [MCL 324.11512\(1\)](#).

### **2. Obtaining a License to Operate §3.24**

An application for an operating license for a sanitary landfill must be submitted on a form provided by the DNRE to the local health department, or if there is no local health department, to the DNRE. The application forms and instructions for completing the application for a license to operate a solid waste landfill can be found at the [Solid Waste section](#) of the DNRE's website.

All applications for a license to operate a landfill must be accompanied by a certification under the seal of a licensed professional engineer, who verifies that the construction of the landfill has proceeded according to the approved plans in the permit to construct. [MCL 324.11512\(4\)](#) and [R 299.4504](#), [R 299.4437](#), [R 299.4448](#) (Type II landfill) and [R 299.4313](#) (Type III landfill).

There are different operating requirements for Type II and Type III landfills and for solid waste processing plants or solid waste transfer facilities; different information must therefore accompany the application for the license to operate for each of these facilities.

A Type II landfill is also known as a municipal solid waste landfill and is defined as a landfill that receives household waste, municipal solid waste, incinerator ash, construction waste, sewage sludge, commercial waste, non-hazardous sludge, hazardous waste from a conditionally exempt small quantity generator (CESQG), or industrial waste. [R 299.4104\(d\)](#). A Type II landfill can be publicly or privately owned. [R 299.4104\(d\)](#).

The following additional information must be submitted with an application for a license to operate a Type II landfill:

- Evidence of financial assurance (see [§ 3.34](#) and following).
- Maximum waste slope in the active portion.
- Estimate of the remaining permitted capacity.

- Documentation of the amount of waste received at the disposal area during the previous license period or the amount expected to be received (whichever is greater).
- Application fee based on the average amount of waste projected to be received daily during the license period as listed in [MCL 324.11512](#)(7).

#### [MCL 324.11512](#).

A Type III landfill is a landfill that is not a municipal solid waste landfill or a hazardous waste landfill and may accept: (1) construction and demolition waste; (2) industrial waste; (3) landfills that accept waste other than household waste, municipal solid waste incinerator ash, or hazardous waste from conditionally exempt small quantity generators. [R 299.4105](#)(a)(ii). An application for a license to operate Type III landfill must be accompanied by a fee of \$2,500.00. [MCL 324.11512](#)(9).

A solid waste processing plant is a building or tract of land, or a combination of buildings or land that are used or intended for use for the processing of solid waste or the separation of material for salvage or disposal. A solid waste processing plant, however, does not include a plant that processes and ships ferrous or nonferrous metal scrap or slag or slag products. [MCL 324.11506](#)(3).

A solid waste transfer facility is a building, container or tract of land or a combination of buildings, land or containers that are used or intended for use in re-handling or storage of solid waste that is secondary to the transportation of the solid waste. A solid waste transfer facility, however, cannot be located at the point of generation or at the point of disposal. [MCL 324.11506](#)(5). An application for a license to operate a solid waste processing plant or a solid waste transfer facility, with the exception of solid waste transfer facilities that are exempt from obtaining a construction permit and operating license, must be accompanied by a fee of \$500.00. [MCL 324.11512](#)(10). See [§ 3.29](#). The rules covering the licensure and operating requirements for a solid waste transfer facility are found at [R 299.4506](#)-.4507.

### **3. Denial of a License to Operate §3.25**

An applicant who is denied a license to operate a landfill may resubmit the application together with corrections and additional information that will sufficiently address the reasons for denial. The applicant may resubmit the application within six months of the denial of the original application without having to pay an additional application fee. [MCL 324.11512](#)(5).

### **4. Inspections §3.26**

Following receipt of an application for a license to operate a landfill, the local health officer or the DNRE will inspect the site to determine if the proposed operation complies with state laws and rules. The issuance of an operating license gives the DNRE or a health officer (or an authorized representative of a health officer) the right to enter the public or private property subject to the operating license, at any reasonable time, for the purpose of inspecting or investigating conditions relating to the storage, processing or disposal of any material. [MCL 324.11515](#) and [MCL 324.11516](#)(3).

## 5. Operating License Approval §3.27

An operating license issued by the DNRE allows the licensee to accept solid waste for disposal in certified portions of a disposal area. The DNRE will review the license application before making a final decision and will then notify the municipality where the disposal area will be located and the applicant of their decision within ten days following the final decision. [MCL 324.11516](#)(1). An applicant for an operating license may resubmit the application, together with additional information or corrections that are necessary to correct the denial, within six months of the denial by the DNRE. The applicant will not be required to pay an additional application fee. [MCL 324.11512](#)(5).

An operating license expires five years after it is issued, but can be renewed before expiration with the payment of the appropriate application fee listed in [MCL 324.11512](#)(7)-(8). [MCL 324.11516](#)(2).

A construction permit is necessary before an applicant can apply for an operating license. Inclusion of a disposal area in an approved solid waste management plan is necessary prior to both a construction permit and operating license. In addition, the disposal area must be in compliance with the solid waste management plan. [MCL 324.11516](#)(4).

Construction of the landfill or disposal area does not need to be complete before the issuance of an operating license. If portions of the disposal area are not completed, however, solid waste cannot be placed into those portions until a professional engineer certifies the construction of that portion of the landfill. The certification must be completed and submitted to the DNRE 60 days before any waste disposal in that portion of the landfill. If the DNRE does not deny the certification within 60 days of receipt, then the owner or operator may accept waste for disposal within the certified portion of the landfill. The DNRE's denial of the certification must be in writing and must state the reasons why the construction of the landfill or the certification is not acceptable. [MCL 324.11516](#)(5).

## 6. Restrictive Covenant §3.28

When an operating license is issued for a disposal area, all of the owners of the land upon which the disposal area is located and the DNRE execute a restrictive covenant associated with the land. The restrictive covenant will state that the land described in the instrument has been or will be used as a landfill. The owner(s) and all heirs, successors, assigns, lessees, agents, and employees will be restricted from filling, grading, excavating, drilling or mining the land for 50 years following the closure of the landfill. A closed landfill or disposal area is a landfill unit at which final closure has been completed and certified in accordance with [R 299.4317](#) or [R 299.4449](#); [R 299.4102](#)(b). The restrictive covenant must be filed for record by the DNRE or the local health officer with the register of deeds for the county where the landfill is located. [MCL 324.11518](#)(1). See [§ 3.33](#).

The landowners may deviate from the requirement for a restrictive covenant only upon authorization from the DNRE. When considering whether to give authorization to deviate, the DNRE will consider the original landfill design, the type of operation, the type of material deposited and the state of decomposition of the fill. [MCL 324.11518](#). MCL 324.11518 does not

prevent the DNRE from conveying, leasing or permitting the use of state-owned land for a solid waste disposal area or resource recovery facility. MCL 324.11518(2). If the disposal area is located on state-owned land, the state administrative board must execute a restrictive covenant on behalf of the state. [MCL 324.11518](#)(1).

## **F. Exemptions to Permit and License Requirements §3.29**

A solid waste transfer facility is not subject to the construction permit or operating license requirements if (1) it is not designed to accept waste from vehicles with mechanical compaction devices, or (2) it accepts less than 200 uncompacted cubic yards of waste per day. Although not required to have a permit, the solid waste transfer facility must comply with the operating requirements of the act and applicable administrative rules. [MCL 324.11529](#)(1)-(2). The administrative rules regulating solid waste transfer facilities contain additional details about the permit exemption including classifications for such facilities. [R 299.4501](#).

A solid waste transfer facility that is exempt from the permitting requirements of Part 115 is not regulated as a “disposal area” under Part 115. *People v Shumacher*, [276 Mich App 165](#), 175-176; 740 NW2d 534 (2007).

A disposal area that is an incinerator may, but is not required to, comply with construction permit and operating license requirements as long as (1) operation of the incinerator does not result in the exposure of solid waste to the atmosphere and elements; and (2) the incinerator has a permit under Part 55 (air resources protection, see Chapter 1). If the incinerator does not comply with the construction permit and operating license procedures, it must be included in the solid waste management plan for the county in which it is located. [MCL 324.11529](#)(3)-(4). Municipal solid waste incinerators that are designed to burn at a temperature in excess of 2500° F are not subject to the construction permit requirements. [MCL 324.11529](#)(5).

## **G. Operation of a Sanitary Landfill**

### **1. In General §3.30**

Since April 9, 1997, the DNRE will not issue a license to operate a Type II (i.e., municipal solid waste) landfill unless the applicant also demonstrates financial assurance for any existing unit or new unit of the landfill that is equal to or greater than the sum of standardized costs discussed in [MCL 324.11523a](#)(2)(a)-(c). An applicant can demonstrate financial assurance by a combination of (a) contribution to the perpetual care fund in accordance with [MCL 324.11525](#), (b) posting a bond, or (c) utilizing a financial test for up to, but not exceeding, 70% of the closure, post-closure and corrective action cost estimates based on the standardized costs or a site specific cost estimate. [MCL 324.11523a](#).

The standardized cost estimate for closure related costs should consider items such as installation of a cover, installation of a passive gas venting system, groundwater monitoring, gas monitoring and corrective action. [MCL 324.11523a](#)(2)(a)-(c). Alternatively, the applicant may submit a written estimate, in current dollars, to have a third party perform the closure activities. A third party is neither the parent company nor a subsidiary of the owner or operator. Site-specific cost estimates should be based on the criteria and assumptions listed in [MCL 324.11523a](#)(3).

During the active period of landfill operation and during the post-closure activities, the owner or operator must annually reassess and adjust the financial assurance cost estimates and the financial assurance for inflation. [MCL 324.11523a](#)(4). Ultimately the owner or operator of a landfill must provide continuous financial assurance until they are released from the requirement by the DNRE. [MCL 324.11525b](#).

The rules discussing the operation of a Type II landfill are found at [R 299.4426](#)-.4438. The rules include regulation of landfill operation requirements such as maintenance of equipment, supervision and access requirements, sloping and grading of working areas and active cells, cell volume, noise and odor control, leachate collection, daily cover, prohibited waste, run-off control, surface and groundwater performance requirements, air pollution control requirements, and record-keeping requirements.

The owner or operator of a Type II landfill must pay a surcharge, which is determined by each cubic yard or portion of a cubic yard of solid waste or municipal solid waste incinerator ash that is disposed of in the landfill. This assessment is made based upon the previous quarter of Michigan's fiscal year.<sup>2</sup> Until October 1, 2011, the surcharge amount is seven cents per cubic yard or portion of a cubic yard. The owner or operator must pay the fee within 30 days after the end of each quarter of the state fiscal year. [MCL 324.11525a](#).

The rules discussing the operation of a type III landfill (i.e., a landfill that is not a municipal solid waste landfill or a hazardous waste landfill) are found at [R 299.4315](#)-.4316. The rules include information about the operation of equipment, supervision and access, sloping and grading of working areas and active cells, cell volume, prohibited waste, noise and odor control, leachate collection, daily cover, prohibited waste, run-off control, surface and groundwater performance requirements, air pollution control requirements, and record-keeping requirements.

The owner or operator of a type III landfill must pay a surcharge. The state will assess a surcharge upon a type III landfill designated as a "captive facility." A captive facility is (1) one that accepts only nonhazardous industrial waste generated solely by the owner of the landfill or (2) a nonhazardous industrial landfill that accepts coal ash, wood ash, cement kiln dust, wastewater treatment sludge or sediments for pulp or paper production, foundry sand, or other material that is approved by the DNRE for daily cover. The surcharge amount for a type III landfill is a flat fee based upon the cubic yards of waste disposed at the facility. The cubic yard amounts and corresponding flat fee are described at [MCL 324.11525a](#)(1)(b). The owner or operator must pay the surcharge fee by January 31 of each year.

The owner or operator of a type II or type III landfill may pass through the cost of the surcharge to anyone who generated the solid waste and arranged for its delivery to the solid waste hauler or transfer facility. [MCL 324.11523a](#)(3).

A local unit of government may promulgate an ordinance to collect a surcharge or regulatory fee. *Saginaw Cty v John Sexton Corp of Michigan*, [232 Mich App 202](#); 591 NW2d 52 (1999). A local ordinance, however, that prohibits or regulates the location or development of a solid waste disposal area, and is not part of the approved solid waste management plan, is in conflict with the Part 115 and therefore is not enforceable. [MCL 324.11538](#)(8). In *John Sexton*, the county sought to impose a 50-cent surcharge on every cubic yard of solid waste disposed of in-county

landfills. The defendant argued that the surcharge was an improper delegation of legislative authority, that the surcharge was a tax, and that Part 115 preempted the local ordinance. *Id.* at 206, 209, 214. The Court of Appeals found that the surcharge required by the ordinance is similar to [MCL 324.11532\(4\)](#) and that collection of the disposal surcharge by a landfill operator for transfer to the county treasurer is merely a ministerial function and not the collection of a tax. The surcharge authorized by the ordinance was thus not an improper delegation of legislative authority. *Id.* at 208. The Court also found the surcharge required by the ordinance was not a tax, but instead a valid regulatory fee to operate the county health department and the landfill. *Id.* at 213-214. Finally, the Court determined that the local ordinance did not conflict with Part 115 and therefore was not preempted. *Id.* at 220.

## 2. Accepting Out of State or Out of Country Solid Waste §3.31

Beginning on October 1, 2004, an owner or operator of a disposal area in Michigan must not accept for disposal, solid waste or municipal solid waste incinerator ash that was generated outside of Michigan, unless one or more of these conditions are met:

- The solid waste is composed of a uniform type of item or material that otherwise is allowed to be disposed in a landfill.
- The solid waste was received from a material recovery facility, a waste transfer station or other facility that has certified it has removed wastes that are prohibited from disposal in a landfill.
- The country, state, province or local jurisdiction where the solid waste was generated is approved by the DNRE and included on its [list of approved generation points](#). [MCL 324.11526a](#) and [MCL 324.11526b](#).

The director of the DNRE may issue an order restricting or prohibiting the transportation or disposal in Michigan of solid waste originating within Michigan or outside of Michigan if there is an imminent threat to public health, safety or the environment or if the director believes that issuing the order will minimize such threats. [MCL 324.11526c](#).

Michigan has attempted to enact legislation to impose restrictions on the importation of out-of-state waste. The United States Supreme Court, however, found that the legislation violated the Commerce Clause of the U.S. Constitution. *Fort Gratiot Sanitary Landfill, Inc v Michigan Dep't of Natural Resources*, [504 US 353](#) (1992).

[MCL 324.11526e](#) currently reads, “[u]pon the passage of federal legislation, a person must not deliver for disposal in a disposal area or solid waste incinerator, waste that was generated outside of the United States. [MCL 324.11526e](#). Several bills have been introduced in the U.S. House of Representatives and the Senate to allow states to enact laws or issue regulations or orders restricting or limiting the receipt and disposal of foreign municipal solid waste (i.e., municipal solid waste generated outside the United States) until the EPA Administrator issues regulations implementing and enforcing the Agreement Concerning Transboundary Movement of Hazardous Waste between the United States and Canada.<sup>3</sup> All of the proposed bills are currently pending in

committee. Ultimately, a federal resolution of this issue is necessary before MCL 324.11526e can be enforceable.

If and when MCL 324.11526e becomes effective, Part 115 provides that a court may order a landfill owner or operator, or a solid waste transporter, to return or to pay to the state an amount equal to the cost of returning the solid waste that is the subject of the violation to the country where the waste was generated. [MCL 324.11546\(4\)](#).

### 3. Violations §3.32

A violation of Part 115 is a misdemeanor punishable by a fine of not more than \$1,000 for each violation and the costs of prosecution. If payment of the fine and costs is in default, punishment will be not more than six months' imprisonment. [MCL 324.11549](#).

The DNRE, a health officer, a municipality, or a county may bring an action for appropriate relief, including injunctive relief, for a violation of Part 115 or the applicable administrative rules. In addition, a court may impose a civil fine for violations of the Act as follows: (i) not more than \$10,000 per day for each day of a violation; and (ii) not more than \$25,000 per day for each day of a second subsequent violation. A court may also order a person who violates Part 115 to pay the state an amount equal to the cost of restoring the natural resources of the state affected by the violation to their original condition and to pay the state the cost of surveillance and enforcement. A citizen of the state is not precluded from bringing a civil action based on violations of Part 115. [MCL 324.11546](#).

Common Part 115 violations for landfills include:

- Not maintaining or installing proper barriers to restrict public access or unauthorized entry.
- Not installing, maintaining or operating on-site roads to accommodate waste hauler traffic flow and prevent the tracking of soil onto public roads.
- Allowing site conditions that create dust, blowing litter, or an odor nuisance.
- Accepting for disposal solid waste from counties that are not authorized under the applicable county solid waste management plan.
- Not maintaining the required minimum six inches of daily cover.

A complete list of common Part 115 violations can be found on the DNRE web-page at [DEQ - Common Solid Waste Violations](#).

### H. Closure of a Sanitary Landfill §3.33

Since October 9, 1993, an owner or operator of a Type II landfill is required to prepare a detailed engineering plan and report that includes a description of the methods and steps to be utilized to close the Type II landfill at any point during its active life. The active life of a landfill is the

period of operation beginning with the initial receipt of solid waste and ending with the completion of closure activities. [R 299.4101\(e\)](#). The closure plan should include the following information:

- Description of the methods, procedures and processes that will be used to close each unit of the landfill.
- Estimate of the maximum inventory of waste ever on-site.
- Estimate of the maximum extent of the operation that will be open at any time during the active life of the landfill.
- Description of the final cover with engineering plans and specifications.
- A schedule for completing all of the activities necessary to install the final cover and meet the requirements of the rule.

If the closure plan is modified, director of the DNE must approve the modification. [R 299.4446](#). The facility must keep a copy of the most recently approved closure plan on-site or at another location designated by the owner or operator. [R 299.4446\(3\)](#).

An owner or operator a Type II landfill must close each landfill unit in a manner that minimizes infiltration, erosion, formation and release of leachate, and formation and release of explosive gases. [R 299.4448\(2\)](#). An owner or operator of a Type II landfill must begin final closure activities within 30 days of the known final receipt of waste for a landfill unit. [R 299.4448\(4\)](#). The owner or operator must notify the DNRE of the intent to proceed with the closure. The closure of the landfill unit must be completed in accordance with the closure plan within 180 days after beginning final closure activities. [R 299.4448\(5\)](#).

Closure of a Type III landfill is described in [Rule 299.4317](#). Not more than six months following the placement of solid waste within a portion of a type III landfill that has been filled, the owner or operator must place landfill cover materials over the surface of that entire portion. [R 299.4317](#). Final cover depths must be maintained for 30 years after a professional engineer certifies the final cover. [R 299.4317](#).

Not more than 60 days after completion of the final closure of the landfill, the final closure must be certified by a professional engineer who must confirm compliance with the provisions of [R 299.4921](#) (the rule specifies the liner requirements for new units or expansions of existing units). [R 299.4446\(3\)](#). Certification of the final closure shall be placed in the operating record and maintained by the owner or operator. [R 299.4448](#).

## I. Financial Assurance for Sanitary Landfills

### 1. In General §3.34

As discussed in [§ 3.30](#), an applicant can demonstrate financial assurance by utilizing a combination of the following methods: (a) contribution to the perpetual care fund in accordance with [MCL 324.11525](#); (b) posting a bond; or (c) satisfying a financial test for up to, but not exceeding, 70% of the closure, post-closure and corrective action cost estimates based on the standardized costs or a site specific cost estimate. [MCL 324.11523a](#). Each financial assurance mechanism is discussed in greater detail below.

### 2. Perpetual Care Fund §3.35

The owner or operator of a landfill must establish and maintain a perpetual care fund for 30 years after final closure of the landfill. [MCL 324.11525](#)(1). The perpetual care fund for a Type II landfill to demonstrate financial assurance can be established as a trust or escrow account. [MCL 324.11525](#)(1).

The amounts to be deposited into the perpetual care fund are 0.75 cents for each ton or portion of a ton, or 0.25 cents for each cubic yard or portion of a cubic yard of solid waste deposited into a landfill. Also, 7.5 cents must be deposited for each ton or cubic yard or portion of a ton or cubic yard of certain solid waste materials such as coal ash, wood ash, cement kiln dust, waste water treatment sludge or sediments from wood pulp or paper producing industries or foundry sand. In addition, the owner or operator of any landfill that is used only for the disposal of a mixture of two or more of these types of wastes or a landfill where two or more of these materials are permanently segregated must also pay 7.5 cents per ton or cubic yard or portion of a ton or cubic yard. [MCL 324.11525](#)(2)-(4).

Deposits into the perpetual care fund shall be made semi-annually until the fund reaches the maximum required fund amount of \$1,156,000.00. [MCL 324.11525](#)(2).

The perpetual care fund must have a custodian who is a bank or other financial institution with the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. A description of the proper operation of a perpetual care fund is included at [MCL 324.11525](#)(7)-(9).

The owner or operator of a landfill may request a disbursement from the perpetual care fund if the amount in the fund exceeds the maximum required fund amount and the total amount of financial assurance meets the requirements of [MCL 324.11523](#) and [324.11523a](#). [MCL 324.11525](#)(8)(a). See [§ 3.34](#) and [§ 3.36](#) and [§ 3.38](#).

### 3. Cash Bond §3.36

A bond in the amount of \$20,000 per acre of licensed landfill is required for a Type III landfill or a pre-existing unit of a Type II landfill. The bond must not be less than \$20,000 or more than \$1,000,000. The bond must provide assurance for the finished landfill site for 30 years after

completion.<sup>4</sup> An owner or operator of a landfill that falls under this description is also required to make a contribution to the perpetual care fund. [MCL 324.11523](#).

An existing or new Type II landfill is required to obtain a bond equal to the cost of hiring a third party to conduct closure, post-closure, maintenance and monitoring, and if necessary, corrective action. An owner or operator of a landfill that falls under this description must also demonstrate financial assurance in accordance with [MCL 324.11523a](#), [MCL 324.11523](#)(1)(b).

A solid waste transfer facility, incinerator, processing plant or other handling or disposal facility must obtain a bond that is equal to ¼ of 1% of the cost of construction, but not less than \$4,000. The bond must cover the costs associated with closure of the facility for two years after closure is complete. [MCL 324.11523](#)(1)(c). An owner or operator of such a facility can request a 50% reduction within the two years following closure and may request termination of the bond at the end of two years. The DNRE must approve the termination of the bond within 60 days of the request. [MCL 324.11523](#)(3).

The owner or operator of a disposal area or landfill may post a cash bond in accordance with the requirements noted in [MCL 324.11523](#)(2).

The DNRE will not issue a construction permit or operating license to a disposal area that is subject to bankruptcy under [11 USC 101](#) *et seq.*

#### **4. Trust Fund or Escrow Account §3.37**

Establishment of a trust fund or escrow account forms can be found on the DNRE website at [Solid Waste Disposal Area License Application Forms and Instructions](#).

Payments are required annually over the term of the first operating license issued for the landfill. The first payment, however, should be made before licensure and must be equal to at least the portion of the financial assurance requirement to be covered by the trust fund divided by the term of the operating license. All subsequent payments must be equal to the remaining financial assurance requirement divided by the number of years remaining until the license expires. [MCL 324.11523b](#).

#### **5. Reduction or Increase in Financial Assurance §3.38**

The owner or operator of a landfill may request that the DNRE approve a reduction of the financial assurance for the landfill that is required by [MCL 324.11523](#) by certifying to the DNRE (on a form prepared and approved by the DNRE) that there has been a partial closure or final closure of the landfill or that the landfill post-closure activities have occurred in accordance with the post-closure plan. [MCL 324.11523a](#)(5)(a)-(b). The DNRE must issue a written approval granting a reduction or issue a written denial within 60 days of receiving the request. [MCL 324.11523a](#)(7).

In addition, an owner or operator of a landfill who is required to demonstrate financial assurance in the form of a bond or letter of credit pursuant to [MCL 324.11523](#), may request a reduction in the total amount of financial assurance required. The request may be made at the time of

reapplication for an operating license. The DNRE must grant or deny the request within 60 days. Financial assurance is still required in an amount as follows: the amount of money in the perpetual care fund, plus the amount of the reduced financial assurance, equals the amount of financial assurance required under MCL 324.11523, plus an additional 20%. [MCL 324.11524](#).

## **J. Solid Waste Incinerators §3.39**

An incinerator is considered a disposal area under Part 115. A municipal solid waste incinerator is defined as an incinerator owned or operated by any person (i.e., government, public, or private entity). A municipal solid waste incinerator receives solid waste from off-site and burns only household waste and sometimes a combination of household solid waste and waste from commercial, institutional or industrial sources, as long as the non-household waste would otherwise not be required to be disposed of as hazardous waste. [MCL 324.11504](#).

To qualify as a municipal solid waste incinerator, a facility must take steps to ensure that it does not receive or burn hazardous waste. Such steps include requiring contractual provisions that serve to notify all parties to the contract that the disposal of hazardous waste at the facility is prohibited, and making regular inspections of the waste arriving at the facility. [MCL 324.11504\(b\)](#).

Incinerators that burn only medical waste or hospital waste are not considered municipal solid waste incinerators. An industrial furnace is excluded from the definition of a municipal solid waste incinerator. [MCL 324.11504\(d\)-\(e\)](#). Municipal solid waste incinerators and medical waste incinerators, however, may be regulated as air pollution sources under Part 55 of NREPA. [MCL 324.5502](#) and [MCL 324.5504](#). See Chapter 1, Air Resources Protection.

The owner or operator of a municipal solid waste incinerator must have a program in place to reduce the burning of non-combustible material and dangerous combustible material within nine months of the completion of the construction of the incinerator. The program must aim to reduce the hazardous by-products that may result from the burning of solid waste. The DNRE must approve or disapprove of the plan within 30 days after receipt. If the DNRE denies the plan, it must notify the owner or operator and provide comments and proposed modifications. The proposed modifications will be the type and quality that, if included, would result in the approval of the plan. The owner or operator must submit a revised plan within 30 days and the DNRE will provide final approval or disapproval within 30 days following the resubmittal of the plan. [MCL 324.11517\(1\)](#).

The plan must be implemented within six months of final approval. The incinerator owner or operator will be subject to sanctions if it operates without a plan. [MCL 324.11517\(2\)](#).

### **1. Municipal Solid Waste Incinerator Ash §3.40**

Municipal solid waste incinerator ash is the substance remaining after the combustion of waste at a municipal solid waste incinerator. [MCL 324.11504\(8\)](#). A disposal area owner or operator cannot accept incinerator ash that is generated in another county unless the approved solid waste management plan for the county where the incinerator is located expressly allows the incinerator ash to be accepted. If a disposal area accepts such waste without authorization under the county

solid waste management plan, then the DNRE may take enforcement action within 30 days of gaining knowledge of the violation. [MCL 324.11513](#).

## 2. Incineration of Used Oil §3.41

Michigan prohibits the incineration of used oil in a municipal solid waste incinerator. MCL 324.11545.

## K. Recycling and Reuse

### 1. In General §3.42

One of the objectives of Part 115 and the [Michigan Solid Waste Policy](#) is to recycle and reuse solid waste. [MCL 324.11514](#)(1).

[Michigan's Solid Waste Policy](#) states that it will recognize solid waste as a resource that should be managed to promote economic vitality, ecological integrity, and improved quality of life in a way that fosters sustainability. In accordance with this objective, a person must not deliver medical waste, used oil, lead acid batteries, low-level radioactive waste, regulated hazardous waste, bulk or non-containerized liquids or free liquids, more than a *de minimis* amount of whole motor vehicle tires, more than a *de minimis* amount of empty beverage containers, or more than a *de minimis* amount of yard clippings (unless they are diseased, see [§ 3.44](#)). *De minimis* refers to a small amount of material or number of items, as applicable, commingled and incidentally disposed of with other solid waste. [MCL 324.11503](#)(1). A disposal area must not accept any of these items for disposal. [MCL 324.11514](#)(2)-(3).

### 2. Electronics §3.43

In accordance with Michigan's Solid Waste Policy, the state recognizes that it is in the best interest of the public and will promote public health and welfare to encourage the reuse of materials from electronic devices. [MCL 324.11514](#)(1). Part 173 of NREPA regulates both electronics manufacturers and recyclers. [MCL 324.17315](#) regulates electronic devices including computer or video display devices. [MCL 324.17301](#)(f). A computer or video display device includes a computer or video display device that was or will be used primarily for personal or small business purposes in this state. Part 173 provides that they shall be recycled in compliance with federal and state laws, including rules promulgated by the DNRE, and local ordinances. *ibid* at (e) and (g). An electronics manufacturer in the state must register with the DNRE on a form provided by the DNRE. A manufacturer who has not registered by October 30, 2009, shall register within ten business days after the manufacturer begins to sell or offer for sale new covered electronic devices in this state. Registration is good for one year and must be updated within 30 days of the end of the state fiscal year. [MCL 324.17303](#). A manufacturer of covered electronic devices shall also establish a take back program by April 1, 2010. [MCL 324.17309](#) and [MCL 324.17311](#).

A person who recycles covered electronic devices must also register with the DNRE on a form provided by the DNRE by October 30, 2009. After October 30, 2009, a recycler who has not already filed a registration under this part shall submit a registration within ten business days

after the recycler begins to recycle covered electronic devices. Beginning October 30, 2010, a recycler of covered electronic devices must report the total weight of covered electronic devices recycled during the previous year. [MCL 324.17317](#).

### 3. Yard Waste §3.44

No more than a *de minimis* amount of yard clippings may be disposed of at a municipal solid waste incinerator, unless the clippings are diseased, infested or composed of invasive species (e.g., purple loosestrife, garlic mustard, spotted knapweed, etc.). [MCL 324.11514](#)(4) and [MCL 324.11521](#).

The Statute [MCL 324.11521](#) at (1) requires the disposal of yard clippings by composting on the property where the clippings are generated, temporary accumulation, composting at a composting facility, composting on a farm, decomposing in a controlled manner in a container, composting and use as part of the normal operations of a municipal solid waste landfill in accordance with law, or processing at a processing facility in accordance with law.

At (2) it allows temporary accumulation of yard clippings is permitted if the accumulation does not create a nuisance, the yard clippings are not combined with other compostable materials, no more than 1,000 cubic yards are accumulated at one time (unless a greater amount is approved by the DNRE), and yard clippings accumulated at a site on or after April 1st and before December 1st are moved within 30 days.

Several bills have been introduced in the legislature during the past several years that propose to adopt a definition for a “Landfill Energy Production Facility” that will provide for the disposal of yard waste at a landfill that has a landfill energy production facility designation as part of its operating permit.

### 4. Inert Material §3.45

Inert material includes rock, trees, stumps and other land clearing debris that can be buried at the site of generation, or another location approved by the landowner. Burial of these materials cannot be in a floodplain or wetland and the debris cannot be buried less than four feet above the level of the groundwater. Burial of these materials may not create a nuisance. In addition, the amount of material buried cannot be more than one acre or 20 feet in depth. [R 299.4114](#)(2)(a)-(b).

Inert material includes excavated soil, except if the materials are contaminated by hazardous substances in concentrations sufficient to cause environmental contamination. [R 299.4114](#)(2)(c) and [299.4114](#)(3). Construction brick, masonry, pavement, and broken concrete that is used for fill, riprap, slope stabilization, or other construction are considered inert materials if they are not otherwise in violation of Parts 301 of NREPA, [MCL 324.30101](#) *et seq.* or Part 303 of NREPA, [MCL 324.30301](#) *et seq.*, and are also not contaminated by hazardous substances in concentrations sufficient to cause environmental contamination. [R 299.4114](#)(2)(d) and [299.4114](#)(3).

Construction brick, masonry, pavement, and broken concrete that is used for fill, riprap, slope stabilization, or other construction is not inert material if there are exposed reinforcing bars or other construction and demolition waste. A site that accepts more than 1,000 cubic yards of construction brick, masonry, pavement, or broken concrete must notify the director of the DNRE on a form provided by the DNRE. R 299.4114(2)(d)(iii).

Chipped tires used in the construction and operation of a sanitary landfill are considered inert materials if approved by the DNRE. R 299.4114(e).

Inert materials include Portland cement clinker produced by a cement kiln using solid waste as a fuel, but cement kiln dust is not an inert material. R 299.4114(f).

Low-hazard industrial waste tested and meeting the inertness criteria in R 299.4115 and approved by the DNRE is considered an inert material. Low-hazard industrial waste used as aggregate, road, or building material and which upon ultimate use will be stabilized or bonded by cement, limes or asphalt is inert material. R 299.4114(g)-(h).

To determine if a material is contaminated by hazardous substances in concentrations sufficient to cause environmental contamination a person may (i) test the material as required by [R 299.4118](#) (material is not contaminated if the concentration of hazardous material is less than the concentration listed for inert materials in [R 299.4115](#)), or (ii) apply knowledge of the material. Based upon knowledge and experience, unless materials have been contaminated during use, such as by chemical spills, application of paint or coatings, or by changes in the material, they are not considered contaminated by hazardous substances. R 299.4114(3). A material may not be contaminated during use, but may otherwise be a hazardous substance. Careful consideration should be given when relying only on option (ii) to determine that a material is not contaminated by a hazardous substance. It is also a good practice to document any waste characterization and maintain such information on file with the landowner or waste generator.

The rules distinguish between designating inert materials appropriate for general reuse and appropriate for site-specific reuse. When considering whether an inert material is appropriate for general reuse a person must petition the director of the DNRE to approve the material for general reuse. [R 299.4115](#). The Director of the DNRE will approve a material for general reuse if the petitioner demonstrates that the material meets the following criteria: (i) is below the background concentration for the substance; (ii) is below the method detection limit for the substance; and (iii) is below the concentration for soil in [R 299.5711](#). The petition shall contain the information specified in [R 299.4118](#).

When considering if an inert material is appropriate only for site-specific reuse, a person must petition the Director of the DNRE to approve the material for site-specific reuse. [R 299.4116](#). The Director of the DNRE will approve the petition for site-specific reuse if the petitioner demonstrates that the material meets the following criteria: (i) it will not have an adverse impact on groundwater; (ii) it will not otherwise result in unacceptable risk as defined in [R 299.5711](#); and (iii) if the material contains concentrations of hazardous substances above the levels specified in R 299.5711, the applicant must demonstrate that the conditions of reuse on the specific site will prohibit exposures that would result in unacceptable risks. The demonstration is made in accordance with R 299.5717 and [R 299.5719](#). A demonstration that there is no

adverse impact to groundwater should be made by showing that the concentrations of each hazardous substance in the leachate of the waste is less than the leachate concentration generated by background soil, is less than the method detection limit, or is less than the criteria described in [R 299.4116\(3\)\(c\)\(i\)-\(iv\)](#). The petition for designating an inert material for site-specific reuse must contain the information specified in [R 299.4118](#).

[R 299.4117](#) discusses the criteria for designating inert materials appropriate for specific reuse instead of virgin material. A person may petition the Director of the DNRE to approve the designation of an inert material for a specific type of reuse in place of virgin material. If inert materials are used in place of virgin material, the petitioner must show that the material meets the criteria in R 299.4115, does not pose a threat to groundwater, and does not pose a greater threat to human health or the environment than the virgin material. R 299.4117.

### **5. Petitions to Classify Wastes §3.46**

A person may petition the Director of the DNRE to designate a solid waste as an inert material, compostable material, or low-hazard industrial waste. [R 299.4118\(1\)](#). A petition shall be made on a form provided by the DNRE and must contain the information listed in R 299.4118(2), including the name of the petitioner, the name of the facility that generates the material, a general description of the material, the maximum and average amounts of material generated monthly and annually, documentation that the material is not hazardous waste as defined in Part 111 of NREPA, [MCL 324.11101 et seq.](#), and the proposed use or disposal method for the material. R 299.4118.

Within 60 days after receiving the petition, the Director of the DNRE will determine whether the petition contains all of the information required by the rule and request any additional information that is necessary to evaluate the petition. Within 180 days after receiving all of the information necessary to evaluate the petition the Director of the DNRE will either approve the petition with conditions that are necessary to protect human health and the environment or deny the petition. [R 299.4118\(3\)](#).

Material classified by the Director of the DNRE as an inert material, compostable material, or low-hazard industrial waste must be re-tested not less than annually to confirm the classification. The test results must be submitted to the DNRE. R 299.4118(4).

If a hazardous substance is reported to be present in a sample at concentrations above the hazardous waste classification criteria, a person may demonstrate that the data are not statistically significant by using one of the methods specified in [R 299.4908](#). R 299.4118(5).

### **L. Open Burning §3.47**

Any municipality with a population of 7,500 people or more must ban the open burning of grass clippings or leaves. A municipality, however, may pass an ordinance that overrides the prohibition and otherwise allows open burning of these items. [MCL 324.11522](#).

## **M. Solid Waste Transporters**

### **1. Inspections §3.48**

The DNRE, a health officer or a law enforcement officer may inspect a vehicle or unit transporting solid waste along a public road. The inspectors may inspect the unit to determine if it is designed, maintained, and operated in a manner that prevents littering and is operating in compliance with law. [MCL 324.11526](#).

The DNRE and the Department of the State Police may conduct regular, random inspections of solid waste transporting units, wastes being transported, and disposal areas.

### **2. Delivery to a Licensed Disposal Area §3.49**

A solid waste transporting unit or hauler must deliver all waste to a licensed disposal area or solid waste transfer facility. The transporter must take care to use a vehicle or container that does not contribute to littering. If a solid waste transporter violates Part 115, it will be subject to the penalties described in [MCL 324.11549](#) and discussed in [§ 3.32](#). [MCL 324.11527](#).

A solid waste transporting unit used for garbage, industrial or domestic sludge or other materials and that may contain liquid or moisture and is not otherwise regulated by MCL 324.12101 *et seq.* must be constructed to be watertight and maintained and operated to prevent littering. [MCL 324.11528](#).

A solid waste transporting unit or hauler that does not comply with Part 115 and its rules can be ordered out of service by the DNRE, a health officer, or a law enforcement officer. Continued operation following an order to discontinue service is a violation, subjecting the violator to penalties. MCL 324.11528.

### **3. Materials Prohibited from Disposal §3.50**

The DNRE maintains a list of materials prohibited from disposal in a landfill under [MCL 324.11514](#) and provides appropriate alternative disposal methods for those prohibited materials. See the DNRE site under [Solid Waste](#). A solid waste transporting unit or hauler that disposes of solid waste in a landfill is responsible for annually notifying each of its customers about the materials prohibited from disposal in a landfill under MCL 324.11514, the appropriate disposal options, and how to access the DNRE's web-page. [MCL 324.11527a](#).

## **N. County Solid Waste Management Plans**

### **1. In General §3.51**

Each county solid waste management plan must include an enforceable program and process to assure that non-hazardous waste that is generated in the planning area, for a period of ten years or more, is collected, recovered, processed or disposed of at disposal areas that are in compliance with Michigan law and rules. The solid waste management plan should cover all municipalities in the county and must take into consideration the solid waste management plans of contiguous

counties. A county preparing or updating a solid waste management plan must consult with the regional planning agency from the beginning to the completion of the plan. The regional solid waste planning agency is designated by the Governor and contributes in the solid waste planning of each county in its regional area. [MCL 324.11533](#) and [R 299.4701](#) *et seq.* For example, the regional solid waste planning agency for southeast Michigan is the Southeast Michigan Council of Governments (SEMCOG). A solid waste management plan must be reviewed, updated, and submitted to the DNRE every five years. MCL 324.11533(2).

## 2. Requirements and Contents §3.52

Each county must have a solid waste management plan in order to dispose of, store, or transport solid waste in Michigan. The solid waste management plan must include the following:

- Goals and objectives for the prevention of adverse effects on the environment (i.e., surface and groundwater, air quality and the land) and public health, which may result from the improper collection, processing or disposal of solid waste.
- 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 other industrial and municipal sources.
- Evaluation and selection of technically and economically viable solid waste management options.
- Inventory and description of all existing facilities in the county where solid waste is being treated, processed or disposed of; including a summary of the deficiencies of the facilities in meeting current solid waste management needs.
- Encouragement and documentation of all opportunities for participation and involvement of the public, affected agencies and the private sector.
- Enforceable mechanisms for implementing the plan.
- Current and projected population densities for the county, and identification of population centers and centers of solid waste generation and industrial facilities.
- A statement that the solid waste management plan area has, and will have during the plan period, access to a sufficient amount of land (although the land does not necessarily need to be within the county) to accommodate the development of solid waste disposal areas or resource recovery facilities that are described in the plan.
- A statement that the solid waste disposal areas or resource recovery facilities that are described in the plan are capable of being developed and operated in compliance with Michigan law and administrative rules.

- A timetable or schedule for implementing the plan.
- Identification of specific sites for solid waste disposal areas for a five-year period after approval of the plan or a plan update. If this is not possible, then the solid waste management plan must include an interim siting mechanism and an annual certification process. The interim siting mechanism and annual certification process are described in detail in MCL 342.11538(2).

### **3. Siting Mechanisms §3.53**

Each county solid waste management plan must, at a minimum, include a siting mechanism to site its disposal area to meet a ten-year capacity need. If a county can demonstrate to the DNRE that it has enough capacity to meet a 66-month need, then the county can refuse to use its siting mechanism until its capacity has exceeded the 66-month capacity or until the county solid waste management plan is further amended. [MCL 324.11537a](#).

### **4. Submission and Approval §3.54**

Within six months of submittal by the county, the DNRE must approve or disapprove the plan. An approved plan, at a minimum, must meet the requirements described in [§ 3.52](#).

The DNRE will review a county solid waste management plan periodically and determine if revisions or corrections are needed to bring the plan into compliance. The DNRE may withdraw approval of a county solid waste management plan only after notice and opportunity for a public hearing is provided. If a county solid waste management plan is withdrawn, then the DNRE will establish a schedule for compliance. [MCL 324.11537](#).

### **5. Updating the Plan §3.55**

A county solid waste management plan update will not be approved by the DNRE unless the plan contains an analysis that shows that the best available information applicable to the plan area with regard to recyclable materials has been included. The updated plan must also provide for recycling and composting recyclable material from the plan area's waste stream or the plan must show that recycling and composting are not necessary or feasible or it is only necessary to a certain extent. An updated plan that proposes a recycling or composting program must also detail the major features of that program (i.e., volumes of materials to be composted, anticipated costs, and program financing). The updated plan must include an evaluation of how the county is meeting Michigan's waste reduction and recycling goals. [MCL 324.11539](#). A county solid waste management plan update should be completed on a form provided by the DNRE. MCL 324.11539a.

### **O. Solid Waste Management Fund §3.56**

The Solid Waste Management Fund provides money for the administration of Part 115 and the administration and oversight of the following activities: (1) preparing guidance regarding the solid waste permit and license program, its implementation, and enforcement; (2) reviewing permit and license applications, revisions, renewals, and the associated notice to the public; (3)

performing an advisory analysis pursuant to the statute; (4) inspection of licensed disposal areas and open dumps; (5) implementing and enforcing permit conditions; (6) reviewing and acting upon corrective action plans for disposal areas; (7) closure and post closure reviews and inspections; and (8) review of bonds and financial assurance mechanisms. [MCL 324.11550](#).

**P. PBB Landfill Maintenance Trust Fund §3.57**

The Landfill Maintenance Trust Fund may be used by the DNRE to monitor the effectiveness of response activities and to provide necessary long-term maintenance at landfills that are sites of polybrominated biphenyl (PBB) contamination. The fund may be used by the DNRE where the DNRE has taken a response activity through funds appropriated by the state pursuant to an approved PBB settlement agreement. [MCL 324.11301](#) et seq.

## **IV. Other Michigan Solid Waste Statutes**

**A. Medical Waste §3.58**

In Michigan, medical waste is regulated under 1978 PA 368, Part 138 the Public Health Code. [MCL 333.13801](#) et seq.

Part 138 regulates the storage, decontamination and disposal of medical wastes such as cultures and stocks of material contaminated with an infectious agent, blood and blood products and bodily fluids, pathological waste, sharps, and animal waste. [MCL 333.13805](#).

In some instances and under specific limited conditions these materials are permitted to be disposed in a solid waste or sanitary landfill. The producers of such waste should refer to the statute to determine the circumstances and conditions for disposal. [MCL 333.13811](#).

**B. Beverage Containers §3.59**

The Michigan law regarding beverage containers is known as the “Bottle Bill.” The Bottle Bill provides for the return of beverage containers for which a deposit of at least ten cents has been paid and for which a refund of at least ten cents in cash is payable by every dealer or distributor in Michigan. Returnable containers include soft drinks, soda water, carbonated natural or mineral water, other non-alcoholic carbonated drink, and beer, ale, or other malt drink of whatever alcoholic content. The Bottle Bill promotes recycling and reduces solid waste, and is in concert with Michigan’s Solid Waste Policy for 2007. [MCL 445.571](#) et seq.

## Table of Authorities

### Cases

<i>Fort Gratiot Sanitary Landfill, Inc v Michigan Dep't of Natural Resources</i> , 504 US 353 (1992)	15
<i>Lyon Development Co v Dep't of Natural Resources</i> , 157 Mich App 190; 403 NW2d 78 (1986)	7
<i>People v Shumacher</i> , 276 Mich App 165, 175-176; 740 NW2d 534 (2007)	13
<i>Saginaw Cty v John Sexton Corp of Michigan</i> , 232 Mich App 202; 591 NW2d 52 (1999)	14
<i>Southeastern Oakland Cty Incinerator Auth v Dep't of Natural Resources</i> , 176 Mich App 434, 437-441; 440 NW2d 649 (1989)	7, 8
<i>Stephens v City of Anadarko</i> , 2008 WL 896172 (WD Okla 2008)	5

### Statutes

11 USC 101 <i>et seq.</i>	19
42 USC 6901 <i>et seq.</i>	1
42 USC 6941	1
42 USC 6942	2
42 USC 6943	2
42 USC 6943(a)	2
42 USC 6943(a)(2)	2
42 USC 6943(b)	2
42 USC 6944	2
42 USC 6944(a)	4
42 USC 6944(b)	2
42 USC 6945	3
42 USC 6945(a)	3
42 USC 6945(b)	3
42 USC 6945(c)(2)(a)	5
42 USC 6946	4
42 USC 6947	4
42 USC 6947(b)	4
42 USC 6948	4
42 USC 6972	5
42 USC 6972(a)(1)(B)	5
42 USC 6972(a)(2)	5
42 USC 6972(b)	5
MCL 324.11101	24
MCL 324.11301	28
MCL 324.11501 <i>et seq.</i>	1
MCL 324.11503(1)	21
MCL 324.11504	20
MCL 324.11504(8)	20
MCL 324.11504(b)	20
MCL 324.11506(3)	11
MCL 324.11506(5)	11
MCL 324.11507a	6

MCL 324.11508.....	6
MCL 324.11509.....	7, 9
MCL 324.11509(2).....	7, 8, 9
MCL 324.11509(4).....	10
MCL 324.11509(5).....	9
MCL 324.11509(6).....	9
MCL 324.11510.....	7, 9
MCL 324.11511.....	8, 9
MCL 324.11511(1).....	9
MCL 324.11511(2).....	9
MCL 324.11511(3).....	9
MCL 324.11512.....	8, 11
MCL 324.11512(1).....	10
MCL 324.11512(10).....	11
MCL 324.11512(4).....	10
MCL 324.11512(5).....	11, 12
MCL 324.11512(7).....	11, 12
MCL 324.11512(9).....	11
MCL 324.11513.....	21
MCL 324.11514.....	25
MCL 324.11514(1).....	21
MCL 324.11514(2).....	21
MCL 324.11514(4).....	22
MCL 324.11515.....	11
MCL 324.11516(1).....	12
MCL 324.11516(2).....	12
MCL 324.11516(3).....	11
MCL 324.11516(4).....	12
MCL 324.11516(5).....	12
MCL 324.11517(1).....	20
MCL 324.11518.....	12
MCL 324.11518(1).....	12, 13
MCL 324.11518(2).....	13
MCL 324.11519.....	9
MCL 324.11521.....	22
MCL 324.11522.....	24
MCL 324.11523.....	18, 19
MCL 324.11523(1)(b).....	19
MCL 324.11523a.....	13, 18, 19
MCL 324.11523a(2)(a).....	13
MCL 324.11523a(3).....	13, 14
MCL 324.11523a(4).....	14
MCL 324.11523a(5)(a).....	19
MCL 324.11523a(7).....	19
MCL 324.11523b.....	19
MCL 324.11524.....	20

MCL 324.11525.....	13, 18
MCL 324.11525(1).....	18
MCL 324.11525(2).....	18
MCL 324.11525(7).....	18
MCL 324.11525a.....	14
MCL 324.11525a(1)(b).....	14
MCL 324.11525b.....	14
MCL 324.11526.....	25
MCL 324.11526a.....	15
MCL 324.11526b.....	15
MCL 324.11526c.....	15
MCL 324.11526e.....	15
MCL 324.11527.....	25
MCL 324.11527a.....	25
MCL 324.11528.....	25
MCL 324.11529(1).....	13
MCL 324.11529(3).....	13
MCL 324.11529(5).....	13
MCL 324.11532(4).....	15
MCL 324.11533.....	26
MCL 324.11537.....	27
MCL 324.11537a.....	27
MCL 324.11538(8).....	14
MCL 324.11539.....	27
MCL 324.11541.....	4
MCL 324.11546.....	16
MCL 324.11546(4).....	16
MCL 324.11549.....	16, 25
MCL 324.11550.....	28
MCL 324.17301(f).....	21
MCL 324.17303.....	21
MCL 324.17309.....	21
MCL 324.17311.....	21
MCL 324.17315.....	21
MCL 324.17317.....	22
MCL 324.5502.....	20
MCL 324.5504.....	20
MCL 333.13801.....	28

**Rules**

40 CFR 256.02(a)(1).....	2
40 CFR 256.02(a)(2).....	2
40 CFR 257.3.....	2
40 CFR 257.3-1.....	3
40 CFR 257.3-2.....	3
40 CFR 257.3-3.....	3

---

40 CFR 257.3-4.....	3
40 CFR 257.3-5.....	3
40 CFR 257.3-6.....	3
40 CFR 257.3-7.....	3
40 CFR 257.3-8.....	3
40 CFR Part 257.....	2
40 CFR Part 258.....	3
42 CFR Part 256.....	2
R 299.4101.....	5
R 299.4101(e).....	17
R 299.4102(b).....	12
R 299.4102(l).....	5, 6
R 299.4103(p).....	6
R 299.4104(d).....	10
R 299.4105(a)(ii).....	11
R 299.4107.....	7
R 299.4114(2)(a).....	22
R 299.4115.....	23
R 299.4116.....	23
R 299.4116(3)(c)(i).....	24
R 299.4117.....	24
R 299.4118.....	23
R 299.4118(1).....	24
R 299.4201.....	6
R 299.4302.....	8
R 299.4305.....	8
R 299.4305(2)(b)(iv).....	8
R 299.4310.....	8
R 299.4313.....	10
R 299.4315.....	14
R 299.4317.....	12, 17
R 299.4411.....	8
R 299.4420.....	8
R 299.4426.....	14
R 299.4437.....	10
R 299.4446.....	17
R 299.4446(3).....	17
R 299.4448.....	10, 17
R 299.4448(2).....	17
R 299.4448(4).....	17
R 299.4448(5).....	17
R 299.4449.....	12
R 299.4501.....	13
R 299.4503.....	7
R 299.4504.....	10
R 299.4701.....	26

---

R 299.4902.....	7
R 299.4903.....	8
R 299.4904.....	8
R 299.4905.....	8
R 299.4908.....	24
R 299.4909.....	8
R 299.4910.....	8
R 299.4911.....	8
R 299.4916.....	8
R 299.4921.....	17
R 299.5711.....	23

## Endnotes

<sup>1</sup> When Subtitle D was enacted, it provided for financial assistance to states that chose to include provisions in their plans related to recycled oil. [42 USC 6948\(a\)\(3\)\(A\)](#). This assistance, however, is no longer available.

<sup>2</sup> Michigan's fiscal year begins on October 1st of each year.

<sup>3</sup> The United States and Canada entered into the Transboundary Agreement in 1986 that originally applied to hazardous waste only. In 1992, the Transboundary Agreement was extended to cover municipal solid waste. To date, however, it has not been implemented with respect to municipal solid waste.

<sup>4</sup> Completion refers to a "closed unit." A closed unit is defined as "a landfill unit at which final closure has been completed and certified in accordance with [R 299.4317](#) and [R 299.4449](#)."