

Chapter 42
SOLID WASTE AND ILLEGAL DUMPING*

***Cross reference**—Designation of public servants to have concurrent authority with police officers to enforce ordinances designated as blight violation; § 1-1-10(a); authorization for public servants to issue and serve blight violations, § 1-1-10(b); enforcement of blight violations, Ch. 3, Art. II; building construction and property maintenance, generally, Ch. 8; requirement for holder of wrecking permit to provide for suitable disposal of solid waste resulting from wrecking operation, § 8-2-20; requirement for holder of wrecking permit to remove all excess solid waste from site above grade, § 8-2-20; prohibition against accumulation of solid waste on exterior of buildings, premises, and structures, § 8-15-101; requirement for solid waste to be separated and stored in approved containers on exterior of buildings, premises, and structures, § 8-15-101; prohibition against using building, premises, or structure for storage or handling of solid waste to preclude place for rodent harborage, § 8-15-105; prohibition against permitting solid waste to accumulate on any portion of the exterior lot of vacant building or structure, § 8-15-113; prohibition against accumulation of solid waste on interior of buildings and structures, § 8-15-331; requirement for domestic solid waste from buildings and structures to be separated, stored, and disposed of in accordance with this chapter, § 8-15-332; requirement for commercial solid waste from buildings and structures to be separated, stored, and disposed of in accordance with this chapter, § 8-15-333; requirement for demolition deferral after show cause hearing before City Council for owner or party-in-interest to file statement, among other things, that premises is free from solid waste, § 8-17-26; environment, generally, Ch. 16; nuisances, § 16-2-1 *et seq.*; requirements for solid waste receptacles and storage areas in food establishments, § 19-3-851 *et seq.*; adoption of Michigan Public Health Code, § 20-1-1; licenses, Ch. 28; offenses, Ch. 31; prohibition against disposing of solid waste or construction solid waste upon parks, public places, or boulevards, § 33-1-19; disposal of solid waste by stationary and street vendors, § 34-1-11; requirement for rubbish and garbage receptacles in public lodging houses, § 36-1-31; storage, preparation, collection, transport, disposal, and placement of solid waste at public markets, § 37-1-9; secondhand goods, Ch. 41; streets, sidewalks, and other public places, generally, Ch. 43; prohibition against permitting dust, dirt, or other solid waste to remain on sidewalk in front of or adjacent to side of any house, premises, building or lot, § 43-6-3; prohibition against obstructing or encumbering public wharf, street, alley, or public place with animals, boxes, signs, barrels, posts, fences, buildings, dirt, stones, bricks, solid waste, or any other material with exception, § 43-8-2; requirement during building construction to keep one-half of sidewalk space in front of premises where permit is granted free and unobstructed of solid waste, dirt, snow, and ice for purpose of passage, § 43-8-34; prohibition against storing dirt from excavations and solid waste taken from buildings on sidewalks and roadway of streets, § 43-8-36; prohibition against disposing of solid waste or depositing bodily discharges within any vehicle or station area of the Detroit People Mover System except in provided receptacles, § 47-4-11; prohibition against disposing of solid waste or depositing bodily discharges within any vehicle or station area of the Streetcar System except in provided receptacles, § 47-8-30; prohibition against depositing or permitting the deposit of garbage or litter into park waters, § 49-3-2.

Case law annotation--Garbage lacks a sufficient value to form the basis of a vested property right so as to authorize a court of equity to enjoin the enforcement of a penal ordinance regulating its disposal; *Gardner v Michigan*, 199 US 325; 50 L Ed 212; 26 S Ct 106 (1905).

Federal law reference—Solid waste disposal, 42 USC 6901 *et seq.*

State law reference—Michigan Garbage Disposal Act, MCL 123.361 *et seq.*; solid waste facilities, MCL 324.4301 *et seq.*; hazardous waste management act, MCL 324.11101 *et seq.*; hazardous materials transportation act, MCL 29.471 *et seq.*; solid waste management, MCL 324.11501 *et seq.*; waste reduction assistance, MCL 324.14501 *et seq.*; clean Michigan fund, MCL 324.19101 *et seq.*; Michigan Low-level Radioactive Waste Authority Act, MCL 333.26201 *et seq.*

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ARTICLE I. GENERALLY

DIVISION 1. DEFINITIONS AND ENFORCEMENT

Sec. 42-1-1. Definitions: A-B.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Approved means that equipment, method or procedure, which, for Article II of this chapter, the Director of the Department of Public Works or the Director of the Buildings, Safety Engineering, and Environmental Department, and for Article III of this chapter, the Chief of Police, designates as acceptable, having been, by demonstration or test, proven workable and safe for its intended purpose.

Approved containers means receptacles designated for use in specific areas or for specific uses by the Director of the Department of Public Works, which are limited to Courville containers, large movable or stationary containers, and portable containers as defined in this section.

Asphalt milling, also known as asphalt grinding or RAP (Reclaimed Asphalt Pavement) means the fine particles of bitumen and inorganic material that are produced by the mechanical grinding of bituminous concrete surfaces.

ASTM means the American Society for Testing and Materials.

Authorized local official means a police officer, or other City personnel, who is authorized by the Director of the Department of Public Works in accordance with Chapter 3 of this Code, *Administrative Hearings and Enforcement, and Administrative Appeals*, to issue a blight violation in accordance with this chapter and provisions of this Code that are designated as blight violations.

Blight violation means any unlawful act, or any omission or failure to act, which is designated by this Code as a blight violation pursuant to Section 4l(4) of the Michigan Home Rule City Act, being MCL 117.1

Blight violation determination means a determination that:

- (1) An alleged violator is responsible for one or more blight violations as a result of the admission of responsibility for the allegation in a blight violation notice; or
- (2) After an administrative hearing that a person is or is not responsible for one or more blight violations; or
- (3) As a result of a decision and order of default for failing to appear as directed by the blight violation notice, or other notice regarding one or more blight violations, at a scheduled appearance at the Blight Administrative Hearings Bureau in accordance with Section 4q(8)(c) of the Michigan Home Rule City Act, being MCL 117.4q(8)(c).

Blight violation notice means a written violation notice prepared by an authorized local official, which directs an alleged violator:

- (1) To pay the civil fine(s) fine specified in the notice, including any required fees or costs, for one or more blight violations in accordance with the fines, fees, or costs specified in this Code; and
- (2) To appear at the Blight Administrative Hearings Bureau regarding the occurrence or existence of one or more blight violations pursuant to Section 4q(8) of the Michigan Home Rule City Act, being MCL 117.4q(8).

Blight violation proceeding means an administrative process that results in a blight violation determination.

Bulk solid material means:

- (1) Any solid substance or material that can be used as a fuel or as an ingredient or component in a manufacturing or construction process, that may create fugitive dust, and that is accumulated in an amount of 50 cubic yards or more at any one time, including, but not limited to, asphalt millings, ores, iron and steel slag, gravel, sand, and lime stone, but does not mean salt, grains, commercial solid waste, or garbage; and
- (2) Any carbonaceous material regardless of the amount but does not mean material stored in nurseries, garden centers, and farm supply stores.

Bulk solid waste means solid waste that is larger than can be stored in an approved container or greater than ten cubic feet, including appliances, beds, cradles, furniture, refrigerators, stoves, water heaters, other bulk heavy items, and four or fewer scrap tires.

(Code 1984, §§ 22-1-1, 22-5-5; Ord. No. 15-02, § 1(22-2-1), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-1), eff. 4-9-2003; Ord. No. 17-04, § 1(22-1-1), eff. 6-15-2004; Ord. No. 35-04, § 1(22-1-1), eff. 12-1-2004; Ord. No. 36-06, § 1(22-1-1), eff. 1-21-2007; Ord. No. 23-07, § 1(22-1-1), eff. 7-6-2007; Ord. No. 20-09, § 1(22-1-1), eff. 12-4-2009; Ord. No. 32-17, § 1(22-5-5), eff. 12-6-2017)

Sec. 42-1-2. Definitions: C-D.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Carbonaceous bulk solid material means bulk solid material that includes carbonaceous material.

Carbonaceous bulk solid material facility means a source, site, or facility where carbonaceous bulk solid material is stored, loaded, unloaded, stockpiled, handled on-site, blended, processed, or otherwise managed.

Carbonaceous material means a solid substance that occurs naturally or exists as a result of a human-made process that is rich in carbon, and includes, but is not limited to, coal and coke in its various forms, including, but not limited to, nut coke, coke breeze, petroleum coke, and metallurgical coke, but excluding asphalt millings.

CFR means the United States Code of Federal Regulations.

Chemical stabilizer means any chemical dust suppressant which is not prohibited for the uses regulated by this chapter or by any other applicable law, and meets all applicable specifications required by any federal, state, or local agency.

Coal means a solid, brittle, carbonaceous rock classified as anthracite, bituminous, subbituminous, or lignite by ASTM Designation D388-77.

Coke means a solid carbonaceous material derived from the distillation of coal, (including metallurgical coke), or from oil refinery coker units or other cracking processes, (including petroleum coke), and includes, but is not limited to, nut coke and coke breeze.

Commercial establishments means all businesses, non-profit organizations, churches, governmental agencies, and other such institutions, which cannot be classified as residential structures, as well as residential structures containing five (5) or more household units.

Commercial solid waste means:

- (1) The solid waste resulting from the operation of commercial establishments; and
- (2) Construction solid waste, but does not include domestic solid waste.

Construction bulk solid material means bulk solid material that can be used in a construction process and includes asphalt millings, ores, iron and steel slag, gravel, sand, and limestone.

Construction solid waste means waste from building construction, alteration, demolition or repair, and dirt from excavations.

Courville containers means receptacles which are 100, 300 or 400 gallons in capacity, are the property of the City, are provided by the Department of Public Works for use at residential structures and commercial establishments, and are mechanically emptied.

Domestic solid waste means the solid waste resulting from the usual routine of housekeeping, but does not include commercial solid waste.

(Code 1984, §§ 22-1-1, 22-5-5; Ord. No. 15-02, § 1(22-2-1), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-1), eff. 4-9-2003; Ord. No. 17-04, § 1(22-1-1), eff. 6-15-2004; Ord. No. 35-04, § 1(22-1-1), eff. 12-1-2004; Ord. No. 36-06, § 1(22-1-1), eff. 1-21-2007; Ord. No. 23-07, § 1(22-1-1), eff. 7-6-2007; Ord. No. 20-09, § 1(22-1-1), eff. 12-4-2009; Ord. No. 32-17, § 1(22-5-5), eff. 12-6-2017)

Sec. 42-1-3. Definitions: E-H.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Emergency means any condition or situation that reasonably constitutes a threat to public interest, safety, or welfare.

Erected means new buildings, or any addition to a structure or any conversion of use or occupancy of a structure, which results either in new or increased production of food wastes, except the remodeling of kitchens in one-or two-family dwellings or the replacement of residential kitchen sinks.

Facility means all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, on-site handling, loading, unloading, stock piling or processing bulk solid material.

Food wastes means vegetable or animal matter, or a combination thereof, produced or developed as the result of preparation, processing, marketing, cooking, serving, distributing, sale, spoilage, decay, deterioration, storage or in any other manner of food which renders such unfit, undesirable or unacceptable for sale, distribution, or human consumption.

Fugitive dust means any solid particulate matter that becomes airborne by natural or human-made activities, excluding engine combustion exhaust and particulate matter emitted from a properly permitted exhaust stack equipped with a pollution control device.

Garbage means, as likewise defined in Section 11503 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.11503, rejected food wastes, including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attends the preparation, use, cooking, dealing in, or dealing with the storing of meat, fish, fowl, fruit, or vegetable matter.

Generator means the person responsible for creating, disposing, storing, or transporting of solid waste, medical waste, or hazardous waste.

Hazardous waste means any chemical or other material or substance defined as hazardous waste or substance under Parts 111 and 201 of the Michigan Natural Resources and Environmental Protection Act, respectively, being MCL 324.11101 *et seq.*, and MCL 324.20101 *et seq.*

High wind conditions means when average wind speeds exceed 20 miles per hour over two consecutive five minute intervals of time.

Homestead or *primary homestead* means the tax parcel for which a valid principal residence exemption has been filed and is in existence under Section 7cc of the Michigan General Property Tax Act, being MCL 211.7cc.

Household units means the individual residences of the residents of the City of Detroit.

(Code 1984, §§ 22-1-1, 22-2-54(f), 22-5-5; Ord. No. 15-02, § 1(22-2-1), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-1), eff. 4-9-2003; Ord. No. 17-04, § 1(22-1-1), eff. 6-15-2004; Ord. No. 35-04, § 1(22-1-1), eff. 12-1-2004; Ord. No. 36-06, § 1(22-1-1), eff. 1-21-2007; Ord. No. 23-07, § 1(22-1-1), eff. 7-6-2007; Ord. No. 20-09, § 1(22-1-1), eff. 12-4-2009; Ord. No. 01-17, §1(22-2-54(f)), eff. 4-10-2017; Ord. No. 32-17, § 1(22-5-5), eff. 12-6-2017)

Sec. 42-1-4. Definitions: I-M.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Industrial site means a location where heavy warehousing, manufacturing, processing, assembling, utility generation, tool and dye operations, pumping, fabricating, iron working, welding, grinding, and the like occurs.

Industrial site solid waste means garbage, as defined in this section, and rubbish, as defined in this section, resulting from the daily activities of persons at industrial sites, but does not include industrial waste, as defined in this section.

Industrial waste means the liquid, solid, or gaseous waste or form of energy, or combination thereof, resulting from any processing of industry, manufacturing, business, trade or research, including the development, recovery, or processing of natural resources.

Internal road means any route within a facility that is not located in an area normally used for staging or storage of material and that has evidence of repeated prior travel by, or is otherwise regularly used by, vehicles for transporting materials to, from, or within a facility.

Large movable or stationary containers means receptacles which are two-cubic yards, three-cubic yards, or six-cubic yards or larger in capacity and are mechanically emptied.

Litter means, as likewise defined by Section 8901(a)(i) of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.8901(a)(i), all rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, or other foreign substances when the amount is under five-cubic feet.

Manifest means a form provided or approved by the Michigan Department of Environmental Quality that is used for identifying the quantity, composition, (including class, curie count, and radio-active nuclides), origin, routing, and destination of waste from the point of generation to the point of disposal, treatment, or storage within the meaning of Section 11103(8) of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.11103(8).

Medical waste means any of the following that are not generated from a household, or a farm operation or other agricultural business:

- (1) Cultures and stocks of infectious agents and associated biologicals, including laboratory waste, biological production wastes, discarded live and attenuated vaccines, culture dishes, and related devices;
- (2) Liquid human and animal waste, including blood and blood products and bodily fluids, but not including urine or materials stained with blood or body fluids;
- (3) Pathological waste;
- (4) Sharps; and
- (5) Contaminated wastes from animals that have been exposed to agents infectious to humans, these being primarily research animals.

Metallurgical coke, or metcoke, means a carbonaceous material resulting from the manufactured purification of coal.

Municipal solid waste means solid waste material from residential structures that is classified as domestic solid waste, from commercial establishments that is classified as commercial solid waste, and from industrial sites as industrial solid waste.

(Code 1984, §§ 22-1-1, 22-5-5; Ord. No. 15-02, § 1(22-2-1), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-1), eff. 4-9-2003; Ord. No. 17-04, § 1(22-1-1), eff. 6-15-2004; Ord. No. 35-04, § 1(22-1-1), eff. 12-1-2004; Ord. No. 36-06, § 1(22-1-1), eff. 1-21-2007; Ord. No. 23-07, § 1(22-1-1), eff. 7-6-2007; Ord. No. 20-09, § 1(22-1-1), eff. 12-4-2009; Ord. No. 32-17, § 1(22-5-5), eff. 12-6-2017)

Sec. 42-1-5. Definitions: N-Q.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

On-site disposal means the disposal within the premises by approved methods or system of any food wastes produced or developed therein.

Opacity means the highest degree to which visibility of a background, (e.g., for example, blue sky), is reduced by fugitive dust, expressed as a percentage where zero percent represents no interference by fugitive dust and 100 percent represents zero visibility due to complete interference by fugitive dust.

Owner or operator means any person whether owner, occupant, tenant, lessee, agent or other person who:

- (1) Has legal or equitable title to any facility, private property, or water; or
- (2) Has charge, care or control of any facility, private property, or water; or
- (3) Is in possession of any facility private property or water or any part thereof; or
- (4) Is entitled to control or direct the management of any facility, private property, or water.

Pathological waste means human organs, tissues, body parts other than teeth, products of conception, and fluids removed by trauma or during surgery, autopsy, or other medical procedure, and not fixed in formaldehyde but does not mean a fetus or fetal body parts.

Person means an individual, partnership, co-partnership, firm, company, limited-liability company, corporation, association, sole proprietorship, joint venture, joint stock company, trust, estate, political subdivision, state agency, owner, operator or generator, or any other legal entity, or its legal representative, agent, or assigns.

Petroleum coke, or petcoke, means a solid carbonaceous residue produced from a coker after cracking and distillation from petroleum refining operations, including such residues produced by petroleum upgraders in addition to petroleum refining.

PM10 means particulate matter that has an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured by a reference test specified in 40 CFR Part 51, Appendix M.

Portable containers means receptacles which are not more than 30 gallons in capacity and are manually emptied.

Private property or water means any of the following:

- (1) A privately-owned right-of-way of a road or highway, a body of water or watercourse, or the shore or beach of the body of water or watercourse, including the ice above the water;
- (2) A privately-owned park, playground, building, structure, parking lot, vacant lot, or conservation or recreation area;
- (3) Residential or farm properties or timberlands; or
- (4) Motor vehicles or vessels.

Process or processing means any chemical, industrial, commercial, or manufacturing operation or activity that causes, or has the potential to cause, the emission of airborne particles including, but not limited to, blending, mixing, crushing, screening, breaking, wet or dry cleaning, thermal drying, and chemically treating.

Qualified bulk solid materials means bulk solid materials that satisfy all of the following:

- (1) Are construction bulk solid materials;
- (2) Are not part of an active construction site described in Section 22-5-10(b) 42-2-10(b) of this Code;
- (3) Are not carbonaceous bulk solid material; and
- (4) Are a fugitive dust source or a potential fugitive dust source.

(Code 1984, §§ 22-1-1, 22-5-5, 22-5-6(f); Ord. No. 15-02, § 1(22-2-1), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-1), eff. 4-9-2003; Ord. No. 17-04, § 1(22-1-1), eff. 6-15-2004; Ord. No. 35-04, § 1(22-1-1), eff. 12-1-2004; Ord. No. 36-06, § 1(22-1-1), eff. 1-21-2007; Ord. No. 23-07, § 1(22-1-1), eff. 7-6-2007; Ord. No. 20-09, § 1(22-1-1), eff. 12-4-2009; Ord. No. 32-17, §1(22-5-5, 22-5-6(f)), eff. 12-6-2017)

Sec. 42-1-6. Definitions: R-S.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Repeat means a second, or any subsequent, blight violation determination regarding a blight violation notice that is made within a one-year period for the same blight violation, except for a determination by an administrative hearings officer that a person is not responsible for a blight violation for the first or subsequent violation.

Reportable action level means a PM10 level of 150 micrograms per cubic meter or more measured at a facility that will trigger response activities under a contingency plan pursuant to Section 42-2-179(9) of this Code as established in the Fugitive Dust Plan submitted by a facility under Section 42-2-178 of this Code.

Residential structures means the household units of the residents of the City of Detroit.

Rubbish means, as likewise defined by Section 11505 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.11505, non-putrescible solid waste, excluding ashes, consisting of both combustible and noncombustible waste, including paper, cardboard, metal containers, yard clippings, wood, glass, bedding, crockery, demolished building materials, or litter of any kind that may be a detriment to the public health and safety.

Scrap processor means, as likewise defined in Section 3 of the Michigan Secondhand Dealer and Junk Dealers Act, being MCL 445.403, a person, utilizing machinery and equipment and operating from a fixed location, whose principal business is the processing and manufacturing of iron, steel, nonferrous metals, paper, plastic, or glass, into prepared grades of products suitable for consumption by recycling mills, foundries, and other scrap processors.

Scrap tire hauler means a person transporting scrap tires within the meaning of Section 16901(k) of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.16901(k).

Scrap tires means continuous solid or pneumatic rubber coverings, which were manufactured to encircle a wheel for use in the operation of any motorized vehicle and are no longer being used for their original intended purpose as defined by Section 16901 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.16901.

Senior citizen means an individual, or either one or two persons filing a joint income tax return, who is 65 years of age or older on the July 1st within the service period for which a senior discount applies.

Sharps means needles, syringes, scalpels, and intravenous tubing with needles attached.

Solid waste means any material defined as a solid waste within the meaning of Part 115 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.11501 *et seq.*, and 42 USC 6901 *et seq.*, and specifically includes the terms “scrap” and “litter” as defined by Part 89 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.8901 *et seq.*, and the term “medical waste” as defined in this section.

Solid waste hauler means a person who owns or operates a solid waste transporting unit within the meaning of Section 11506(2) of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.11506(2).

Solid waste transporting unit means, as likewise defined in Section 11506(4) of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.11506(4), a container that may be an integral part of a truck or other piece of equipment used for the transportation of solid waste.

State Operating Plan means an operating program for a fugitive dust source or potential fugitive dust source under Section 5524 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.5524, which includes a Fugitive Dust Control Program under R 336.1371 and R 336.1372 of the Michigan Administrative Code.

(Code 1984, §§ 22-1-1, 22-2-54(f), 22-5-5, 22-5-6(f), 22-5-7(g); Ord. No. 15-02, § 1(22-2-1), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-1), eff. 4-9-2003; Ord. No. 17-04, § 1(22-1-1), eff. 6-15-2004; Ord. No. 35-04, § 1(22-1-1), eff. 12-1-2004; Ord. No. 36-06, § 1(22-1-1), eff. 1-21-2007; Ord. No. 23-07, § 1(22-1-1), eff. 7-6-2007; Ord. No. 20-09, § 1(22-1-1), eff. 12-4-2009; Ord. No. 01-17, § 1(22-2-54(f)), eff. 4-10-2017; Ord. No. 32-17, § 1(22-5-5, 22-5-6(f), 22-5-7(g)), eff. 12-6-2017)

Sec. 42-1-7. Definitions: T-Z.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Transfer point means the location at or within a facility where material being moved, carried, or conveyed is dropped or deposited.

Unapproved containers means all receptacles, which are not approved containers.

Vehicle means every motor vehicle which is required to be registered under the Michigan Vehicle Code, being MCL 257.1 *et seq.*

Vessel, when used in this chapter except in Article II, Division 5, Subdivision B, *Bulk Solid Materials*, means a vessel which is required to be numbered under the Michigan Marine Safety Act, being MCL 324.80101 *et seq.*

Vessel, when used in Article II, Division 5, Subdivision B, *Bulk Solid Materials*, means every description of watercraft used or capable of being used as a means of transportation on water.

Violation means any act which is prohibited or made or declared to be a blight violation by any section of this chapter, and any omission or failure to act where the act is required by any section of this chapter.

Violator means a person who is responsible for a blight violation.

Wind screen means a structure that is sufficient to deflect the wind away from stored or conveyed material to reduce fugitive dust emissions to compliance levels, is adjacent to three sides of stored material and for conveyed material is adjacent to both sides of and extends along the entire length of the conveyor, and is tall enough to extend above and below both the conveyor and conveyed material.

(Code 1984, §§ 22-1-1, 22-5-5; Ord. No. 15-02, § 1(22-2-1), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-1), eff. 4-9-2003; Ord. No. 17-04, § 1(22-1-1), eff. 6-15-2004; Ord. No. 35-04, § 1(22-1-1), eff. 12-1-2004; Ord. No. 36-06, § 1(22-1-1), eff. 1-21-2007; Ord. No. 23-07, § 1(22-1-1), eff. 7-6-2007; Ord. No. 20-09, § 1(22-1-1), eff. 12-4-2009; Ord. No. 32-17, § 1(22-5-5), eff. 12-6-2017)

Sec. 42-1-8. Violation of this chapter deemed to be a blight violation; warning notice by authorized local official permitted prior to issuance of blight violation notice in certain circumstances.

(a) In accordance with Section 3-2-1 of this Code, a violation of this chapter is deemed to be a blight violation, unless specifically stated to be a misdemeanor. As set forth in Section 42-1-61 of this Code, the City, through its Corporation Counsel, may institute an appropriate legal action or proceeding in equity to prevent, restrain, correct, or abate any violation of the provisions of this chapter.

(b) In accordance with Section 3-2-21 of this Code, an authorized local official is authorized to issue a warning notice prior to the issuance of a blight violation notice.

(Code 1984, § 22-1-2; Ord. No. 15-02, § 1(22-1-2), eff. 9-27-2002; Ord. No. 35-04, § 1(22-1-2), eff. 12-1-2004; Ord. No. 20-09, § 1(22-1-2), eff. 12-4-2009)

Sec. 42-1-9. Penalties.

(a) In accordance with Chapter 3 of this Code, *Administrative Hearings and Enforcement, and Administrative Appeals*, any person, or anyone acting on behalf of said person, who admits responsibility, or is found to be responsible, through a blight violation determination, for violation of any provision of this chapter shall be subject to a civil fine as provided for in Division 2 of this article, and to removal costs as provided for in Division 3 of this article.

(b) In the case of a firm or a partnership, the civil fine may be imposed upon the partners or members thereof, and in the case of a corporation, the civil fine may be imposed upon the officers thereof.

(c) Where the blight violation is issued and an admission of responsibility is made for the violation at the Blight Administrative Hearings Bureau:

(1) A civil fine that is paid before the administrative hearing date shall be reduced by ten percent.

(2) A civil fine that is paid after the administrative hearing date shall be increased by ten percent;

(3) A civil fine that is paid on the administrative hearing date shall be neither reduced nor increased.

(d) Each day that a violation continues shall constitute a separate violation. The imposition of a fine under this chapter shall not be construed to excuse or to permit the continuation of any violation and, upon a blight violation determination, the violator may be subject to a civil fine for each day the violation continues. The determination as to whether an act or a failure to act is a continuing violation is within the discretion of the hearings officer.

(Code 1984, § 22-1-4; Ord. No. 15-02, § 1(22-1-4), eff. 9-27-2002; Ord. No. 35-04, § 1(22-1-4), eff. 12-1-2004)

Secs. 42-1-10--42-1-20. Reserved.

DIVISION 2. CIVIL FINES FOR VIOLATIONS

Sec. 42-1-27. Civil fines for violation of Section 42-2-154, 42-2-155(b) and 42-2-156(b) of this Code regarding bulk solid material; cost of removal incurred by City of Detroit; factors to be considered by hearings officer when determining fine; burden of proof for factors upon violator.

(a) A person who violates any of the provisions of Section 42-2-154, Section 42-2-155(b) or Section 42-2-156(b) of this Code, is responsible for a blight violation and, for the first violation, is subject to a civil fine of \$1,000.00 and, in accordance with Section 42-1-41 of this Code, is responsible for the cost of removal by the City.

(b) For a repeat or subsequent blight violation under Section 42-2-154, Section 42-2-155(b) or Section 42-2-156(b) of this Code, a person shall be subject to a civil fine not less than \$2,500.00 and, in accordance with Section 42-1-41 of this Code, is responsible for the cost of removal by the City.

(c) Each day on which any violation of any of the provisions of Section 42-2-154, Section 42-2-155(b) or Section 42-2-156(b) of this Code, continues shall constitute a separate violation and, upon a blight violation determination, may be subject to a civil fine for each day the violation continues. The determination as to whether an act or a failure to act is a continuing violation is within the discretion of the hearings officer. The imposition of a fine under this section shall not be construed to excuse or to permit the continuation of any violation.

(d) When determining the amount of a civil fine issued under Subsections (a) or (b) of this section, the hearings officer shall consider all of the following factors:

- (1) The type of bulk solid material;
- (2) The nature of the violation;
- (3) The duration of the violation;
- (4) The preventability of the violation;
- (5) The potential and actual effect on the surrounding neighborhood or the environment;
- (6) The economic benefit to the violator;
- (7) The violator's recalcitrance or efforts to comply with law; and
- (8) The economic impact of the fine on the violator.

These factors shall only be considered where the hearings officer determines that the violator has made all good faith efforts to correct and terminate the violation. The violator shall have the burden of proof regarding the presence and degree of any factor to be considered by the hearings officer is determining the amount of the fine. In each case, the fine shall be set within the range that is delineated in Subsections (a) or (b) of this section.

(Code 1984, § 22-1-17; Ord. No. 32-17, § 1(22-1-17), eff. 12-6-2017)

Secs. 42-1-28--42-1-40. Reserved.

DIVISION 3. ADDITIONAL PENALTIES FOR VIOLATIONS

Sec. 42-1-41. Costs and fees for removing solid, medical or hazardous waste.

In addition to any other penalty or sanction provided for in this chapter, or by any other applicable state or federal law, a violator shall pay the following, as applicable:

- (1) The cost of removing all solid waste, medical waste, or hazardous waste which is the subject of the violation and the cost of damage to any land, water, wildlife, vegetation, or other natural resource, or to any facility which is damaged by the violation of this chapter. The United States Environmental Protection Agency's Illegal Dumping Economic Assessment--Cost Estimating Model or the actual costs incurred by the Department of Public Works, or other City department, shall be considered sufficient proof of the cost to the City. Costs collected under this section shall be used to reimburse the Department of Public Works or other appropriate department for the cost of removing said solid waste, medical waste, or hazardous waste; and
- (2) The reasonable fees that result from impoundment and storage under Section 42-1-42 of this Code, which are calculated as beginning on the date of impoundment. Fees collected under this section shall be disbursed to the Detroit Police Department, or to other appropriate departments that impounded the vehicle involved in the violation of this chapter.

(Code 1984, § 22-1-31; Ord. No. 15-02, § 1(22-1-31), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-31), eff. 4-9-2003; Ord. No.

Sec. 42-1-42. Impoundment and procedure for release of a vehicle; forfeiture of bond.

(a) *Impoundment and procedure for release of a vehicle.* A police officer may impound a vehicle that is operated in the commission of a violation of this chapter. Upon impoundment, the vehicle is subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, and damages that the violator may be ordered to pay under this chapter. The person who is issued the blight violation, or a person with an ownership interest in the vehicle, may obtain release of the vehicle by taking one of the following actions:

- (1) Appearing at the Blight Administrative Hearings Bureau, admitting responsibility, and pay all fines, costs and fees; or
- (2) Admitting responsibility with explanation, or denying responsibility for the violation at the Blight Administrative Hearings Bureau, and providing a copy of a certified bond in the amount of \$1,500.00; or
- (3) Where there is a blight violation determination by the Blight Administrative Hearings Bureau that the alleged violator is not responsible for the violation, the vehicle shall be released, and the administrative hearings officer shall assess, against the City, costs payable to the person who sustained any damage to the vehicle directly resulting from its impoundment.

(b) *Forfeiture of bond.* Where a blight violation determination regarding this chapter is made and the violator fails to pay any fine, costs or damages, or any installment as required within 120 days after a blight violation determination is made under this chapter, payment shall be satisfied in the following order of priority:

- (1) Any bond that is posted under Subsection (a) of this section shall be forfeited and applied to the fines, costs, damages, or installment. In such instance, the Blight Administrative Hearings Bureau shall certify any remaining unpaid amount to the City.
- (2) The Corporation Counsel, or the Corporation Counsel's designee, may enforce the lien, in accordance with Section 42-1-43 of this Code, by a foreclosure sale which shall be conducted in the manner provided for and be subject to the same rights as apply in the case of execution sales under Sections 6031, 6032, 6041, 6042, and 6044 through 6047 of the Michigan Revised Judicature Act of 1961, being MCL 600.6031, 600.6032, 600.6041, 600.6042 and 600.6044 through 600.4047.

(Code 1984, § 22-1-32; Ord. No. 15-02, § 1(22-1-22), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-32), eff. 4-9-2003; Ord. No. 35-04, § 1(22-1-32), eff. 12-1-2004)

Sec. 42-1-43. Foreclosure sale of vehicles.

Not less than 21 days before the foreclosure sale under Section 42-1-42 of this Code, the Corporation Counsel, or the Corporation Counsel's designee, shall send, by certified mail, written notice of the time and place of the foreclosure sale to each person with a known ownership interest in, or lien of record on, the vehicle. In addition, not less than ten days before the foreclosure sale, the Corporation Counsel, or the Corporation Counsel's designee, shall publish notice of the time and place of the foreclosure sale twice in a newspaper of general circulation in the county where the vehicle was impounded. The proceeds of the foreclosure sale shall be distributed in the following order of priority:

- (1) To discharge any lien on the vehicle that was recorded prior to the creation of the lien under Section 42-1-42 of this Code;
- (2) To the Clerk of the Court for the payment of the fines, costs, and damages that the violator was ordered to pay;
- (3) To discharge any lien on the vehicle that was recorded after the creation of the lien under Section 42-1-42 of this Code; and
- (4) To the owner of the vehicle.

(Code 1984, § 22-1-33; Ord. No. 15-02, § 1(22-1-33), eff. 9-27-2002; Ord. No. 06-03, § 1(22-1-33), eff. 4-9-2003)

Sec. 42-1-44. Justice system assessment fee.

In accordance with Section 4q(13) of the Michigan Home Rule City Act, being MCL 117.4q(13), and Section 3-3-5(a) of this Code, the Blight Administrative Hearings Bureau shall impose a justice system assessment fee for each blight violation determination.

(Code 1984, § 22-1-34; Ord. No. 15-02, § 1(22-1-34), eff. 9-27-2002; Ord. No. 35-04, § 1(22-1-34), eff. 12-1-2004)

Sec. 42-1-45. Administrative processing and adjudication fee.

In accordance with Section 3-3-5(b) of this Code, each blight violation notice shall be subject to an administrative processing and adjudication fee as approved by City Council.

(Code 1984, § 22-1-35; Ord. No. 15-02, § 1(22-1-34), eff. 9-27-2002; Ord. No. 35-04, § 1(22-1-35), eff. 12-1-2004)

Secs. 42-1-46--42-1-60. Reserved.

DIVISION 4. LEGAL AND EQUITABLE REMEDIES REMAIN AVAILABLE

Sec. 42-1-61. Legal and equitable remedies unimpaired.

Nothing in this chapter shall be an exclusive remedy, or be construed to impair or bar any cause of action or legal or equitable remedy of any person or the public under applicable environmental laws and regulations for injury or damage arising from the emission or release from any source, into the atmosphere, water or ground.

(Code 1984, § 22-1-41; Ord. No. 15-02, § 1(22-1-41), eff. 9-27-2002; Ord. No. 35-04, § 1(22-1-41), eff. 12-1-2004)

Secs. 42-1-62--42-1-80. Reserved.

ARTICLE II. STORAGE, PREPARATION, COLLECTION, TRANSPORT, DISPOSAL, AND PLACEMENT

DIVISION 1. GENERALLY

Sec. 42-2-1. Purpose and intent of this article.

It is the intent of City Council that this article be liberally construed for the purpose of providing a sanitary and satisfactory method of storage, preparation, collection, transport, disposal and placement of municipal solid waste, and for the maintenance of public and private property in a clean, orderly, and sanitary condition to ensure the peace, health, safety, and welfare of the People of the City of Detroit.

(Code 1984, § 22-2-1; Ord. No. 15-02, § 1(22-2-1), eff. 9-27-2002; Ord. No. 35-04, § 1(22-2-1), eff. 12-1-2004)

Sec. 42-2-2. Conditions on which collection is dependent; frequency of collection.

(a) The collection of all domestic solid waste, commercial solid waste or industrial site solid waste is conditioned upon observance of all provisions of this chapter by persons in household units, commercial establishments and industrial sites. Collection is subject to weather and other conditions beyond the control of the Department of Public Works.

(b) Collection frequency shall be determined by the Department of Public Works. For commercial solid waste and industrial site solid waste, the Department of Public Works shall have the right to determine whether collections are made.

(Code 1984, § 22-2-2; Ord. No. 35-04, § 1(22-2-2), eff. 12-1-2004; Ord. No. 23-07, § 1(22-2-2), eff. 7-6-2007)

Secs. 42-2-3--42-2-20. Reserved.

DIVISION 5. ILLEGAL DUMPING

Subdivision B. Bulk Solid Materials
Part I. In General

Sec. 42-2-151. Purpose and scope.

(a) The purpose of this subdivision is to regulate the storage and transporting, including loading and unloading, of bulk solid materials in order to minimize the proliferation of fugitive dust that has the potential to collect in residents' homes and vehicles and to protect residents from potential health hazards of inhaling fugitive dust including pulmonary inflammation and fibrosis, and to classify non-compliant bulk solid material storage as a visual nuisance and blight within the City and along its waterways.

(b) This subdivision prescribes reasonable, specific operating, and maintenance practices to minimize emissions of fugitive dust from the storage, on-site transporting or handling, loading, unloading, stockpiling, and processing of bulk solid materials as defined in Section 42-1-1 of this Code. This subdivision applies to any owner, operator, or other person who processes, handles or transports onsite, transfers, loads, unloads, stockpiles, or stores bulk solid materials.

(c) This subdivision provides criteria to assure that processing, handling, transporting, loading, unloading, stockpiling and storage of bulk solid materials is conducted in accordance with a fugitive dust plan compliant with the standards and criteria set forth in Section 5524 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.5524, and in R 336.1371 and R 336.1372 of the Michigan Administrative Code, subject to such additional requirements as may be imposed by this subdivision and this chapter.

(Code 1984, § 22-5-1; Ord. No. 32-17, § 1(22-5-1), eff. 12-6-2017)

Sec. 42-2-152. Authority under Michigan Natural Resources and Environmental Protection Act.

The provision of this subdivision are authorized by and adopted pursuant to Part 55 of the Michigan Natural Resources and Environmental Protection Act, titled "Air Pollution Control," particularly Sections 5540 and 5542, being MCL 324.5540 and 324.5542, and specifically Section 5542(1), being MCL 324.5542(1), which provides: "(1) Nothing in this part or in any rule promulgated under this part invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this part or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this part."

(Code 1984, § 22-5-2; Ord. No. 32-17, § 1(22-5-2), eff. 12-6-2017)

Sec. 42-2-153. Other laws.

The requirements of this subdivision do not affect the responsibilities of the facility owner and operator to comply with all other applicable federal or state law or regulations, or this Code, including, but not limited to, those regarding the zoning, construction, operation, maintenance, and closure of the facility, whether or not such other laws are specifically referenced in this subdivision.

(Code 1984, § 22-5-3; Ord. No. 32-17, § 1(22-5-3), eff. 12-6-2017)

Sec. 42-2-154. Dumping, storing, or depositing bulk solid material on any publicly-owned property, or private property or water, without permit; exception; other violations of subdivision.

(a) Unless otherwise provided for in this chapter, the dumping, storing, or depositing of bulk solid material on any private property, public property, right of way, or surface water or around any approved or portable container is illegal dumping and is a blight violation subject to the fines and penalties provided for in Section 42-1-27 of this Code, provided, that asphalt millings removed as part of a public paving or repaving project conducted, controlled, or funded by the City, the County of Wayne, the State of Michigan, or the United States and temporarily stored on or adjacent to that project for reuse in that project is not illegal dumping if the temporary-storage period does not exceed 45 days.

(b) A violation of this subdivision that is not described in Subsection (a) of this section, including, but not limited to, the escape of fugitive dust from an otherwise authorized collection of bulk solid material in an amount that exceeds the opacity limit specified in Section 5524(2) of the Michigan Natural Resources and Environmental Protection, being MCL 324.5524(2), regardless of qualification under Section 5524(1) of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.5524(1), is unlawful and is subject to the fines and penalties provided for in Section 42-1-27 of this Code.

(Code 1984, § 22-2-83(g), (h); Ord. No. 32-17, § 1(22-2-83(g), (h)), eff. 12-6-2017)

Sec. 42-2-155. Alternative compliance for qualified solid bulk materials.

(a) Notwithstanding Parts II through V of this subdivision, the owner or operator of a facility that processes, handles or transfers on-site, transfers, loads, unloads, stockpiles, or stores qualified solid bulk materials shall be deemed in compliance with this subdivision where all of the following apply:

- (1) The owner or operator has submitted a state operating plan for the facility pursuant to Section 5524 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.5524, and R 336.1371 and 336.1372 of the Michigan Administrative Code, in compliance with Section 5524 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.5524;
- (2) The state operating plan, including any amendment, is effective and the owner or operator is in compliance with the state operating plan; and
- (3) The state operating plan includes the information required by Section 5524(5) of the Michigan Natural Resources Environmental Protection Act, being MCL 324.5524(5), and all of the following additional information is included in the state operating plan, included in an active national pollutant discharge elimination system or active groundwater permit for the facility issued by the Michigan Department of Environmental Quality, or included with any supplemental information filed with the Buildings, Safety Engineering, and Environmental Department with an application for a Certificate of Alternative Compliance under this section:
 - a. A site map for the facility that includes all of the information required under Section 42-2-179(3)(b) to (e) of this Code;
 - b. A description of the facility's operations, including a list of all bulk solid materials that are construction bulk solid materials handled at, processed at, or transported to, from, or within the facility;
 - c. A description of the control measures, devices, and technologies to be used to minimize and control fugitive dust at the facility consistent with any applicable standard for density of emissions under R 336.1301 of the Michigan Administrative Code, a description of how all control measures, devices, and technologies will be maintained and calibrated to ensure their continued effectiveness, and a description of the training provided to staff regarding the proper application and operation of the control measures, devices, and technologies;
 - d. A description of the owner or operator's system for recordkeeping compliant with the requirements otherwise applicable under Section 42-2-191(1), (2) and (6) of this Code, the system of recordkeeping for the owner or operator's compliance with Subsections (3)c and h of this section, and compliant with a requirement that the owner or operator keep and maintain the records described in this subsection at the facility and available for inspection by the Buildings, Safety Engineering, and Environmental Department for at least three years after creation;
 - e. A description of the owner or operator's measures to comply with any applicable setback requirements under a state law, rule, or permit, or applicable under Chapter 50 of this Code, *Zoning*;
 - f. A description of measures to comply with the requirements relating to height limits and screening of piles otherwise applicable under Section 42-2-213 of this Code;
 - g. A description of protections for water ways consistent with the requirements of any applicable state law, rule, or permit, or the requirements of this Code or a permit issued by the City;

- h. A description of the owner or operator's measures to monitor wind speeds at the facility and to suspend disturbance of piles of qualified bulk solid materials, including, but not limited to, outdoor loading, unloading, and any other processing, during high wind conditions unless alternate measures are implemented to effectively control dust in accordance with any applicable state operating plan or permit; and
 - i. A description of storm water management, erosion, sediment control, and drainage measures to control runoff or migration at or from the facility in a manner consistent with requirements under any applicable state law, rule, or permit, or with any requirement of this Code or a City permit, or both.
- (4) If the owner or operator is relying only upon a state operating plan for compliance with this section, the owner or operator files a copy of the state operating plan and any amendments to document compliance with this section and all of the following apply:
- a. Within 45 days of receipt, the Buildings, Safety Engineering, and Environmental Department reviews the operating plan and any amendments, and inspects the facility for compliance with the requirements of this section to determine whether the operating plan and any amendments satisfy the requirements of this section and are adequate to protect the public health and the environment and to prevent the emission of fugitive dust that causes unreasonable interference with the comfortable enjoyment of life and property;
 - b. Within 45 days of the inspection, the Buildings, Safety Engineering, and Environmental Department determines and notifies the owner or operator of the facility in writing that the owner or operator of the facility is in compliance with this section; and
 - c. The owner or operator remains in compliance with this section.
- (5) If the owner or operator is relying upon a state permit not part of a state operating plan or other supplemental information filed with the Buildings, Safety Engineering, and Environmental Department in addition to a state operating plan for compliance with this section, the owner or operator complies with all of the following:
- a. The owner or operator files a copy of the state operating plan and any amendments and any supplemental information to document compliance with this section with the Buildings, Safety Engineering, and Environmental Department along with an application for alternative compliance under this section on a form determined by the Buildings, Safety Engineering, and Environmental Department;
 - b. Within 45 days of receipt, the Buildings, Safety Engineering, and Environmental Department:
 - 1. Reviews the application and other documents submitted,
 - 2. Inspects the facility for compliance with the requirements of this section to determine whether the application and other documents submitted satisfy the requirements of this section and are adequate to protect the public health and the environment and to prevent the emission of fugitive dust that causes unreasonable interference with the comfortable enjoyment of life and property, and
 - 3. Issues a Certificate of Alternative Compliance confirming compliance with this section; and
 - c. The owner or operator remains in compliance with this section. The Buildings, Safety Engineering, and Environmental Department may revoke a Certificate of Alternative Compliance issued under this section if an owner or operator does not remain in compliance with this section.

(b) If an owner or operator of a facility is deemed in compliance with this subdivision through Subsection (a) of this section and the owner or operator either violates the requirements of the state operating plan or permit for the facility or otherwise violates Section 5524 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.5524, or R 336.1371 and 336.1372 of the Michigan Administrative Code, and the Michigan Department of Environmental Quality or another state officer or agency does not act to remedy or penalize the violation, the violation may be enforced as a blight violation under Section 42-1-27 of this Code.

(c) Subsection (b) of this section shall not be an exclusive remedy, or be construed to impair or bar any cause of action or legal or equitable remedy of any person or the public under applicable laws and regulations.

(d) The Buildings, Safety Engineering, and Environmental Department shall conduct semi-annual inspections for the purpose of monitoring compliance with this section and may conduct other inspections for the purpose of monitoring compliance with this subdivision. If the Buildings, Safety Engineering, and Environmental Department determines that an owner or operator is not complying with the requirements of this subdivision, including, but not limited to this section, the Buildings, Safety Engineering, and Environmental Department shall require the owner or operator to take action to comply with this subdivision or both, and shall impose fines authorized under this chapter for each day that the owner or operator fails to take the action required by the Buildings, Safety Engineering, and Environmental Department.

(e) An owner or operator of a facility not in compliance with this section at any time must comply with Parts II through V of this subdivision. An owner or operator of a facility shall not be deemed in compliance with this section if one or more of the following apply:

- (1) The State determines that the owner or operator is not in compliance with a state operating program or state permit applicable to the facility;
- (2) The Buildings, Safety Engineering, and Environmental Department determines that the owner or operator has not complied with the requirements of this section; or
- (3) The owner or operator of the facility violates R 336.1901 of the Michigan Administrative Code.

(Code 1984, § 22-5-6; Ord. No. 32-17, § 1(22-5-6), eff. 12-6-2017)

Sec. 42-2-156. Alternative compliance for scrap processors.

(a) Notwithstanding Parts II through V of this subdivision, a scrap processor shall be deemed in compliance with this subdivision where all of the following apply:

- (1) The scrap processor holds a business license as a scrap metal dealer that is issued by the Buildings, Safety Engineering, and Environmental Department under Chapter 41, Article IV, of this Code and the business license has not expired without submission of a renewal application or been suspended or revoked;
- (2) The scrap processor does not handle or transfer on-site, transfer, load, unload, stockpile, store, or process carbonaceous bulk solid materials at the facility for which the business license described in Subsection (a)(1) of this section was issued;
- (3) The scrap processor is in compliance with all of the following:
 - a. Chapter 41, Article IV, of this Code;
 - b. Sections 7, 9, and 10 of the Michigan Scrap Metal Regulatory Act, being MCL 445.427, 445.429, and 445.430; and
 - c. Any applicable standard for density of emissions under R 336.1301 of the Michigan Administrative Code.
- (4) The scrap processor does not engage in a milling activity at the facility for which the business license described in Subsection (a)(1) of this section was issued that generates fugitive dust visible beyond the property line of the facility in violation of an applicable permit for the facility or an applicable standard for density of emissions under R 336.1301 of the Michigan Administrative Code; and

(5) The scrap processor uses measures to mitigate out-going material transport vehicles from causing any track-out of materials onto the public way such as rumble strips or wheel wash stations, or both;

(b) Where a scrap processor is deemed in compliance with Subsection (a)(1) of this section, the scrap processor violates R 336.1301 of the Michigan Administrative Code, and a state officer or agency does not act to remedy or penalize the violation, the violation may be enforced as a blight violation under Section 42-1-27 of this Code.

(c) Nothing in Subsection (b) of this section shall be an exclusive remedy, or be construed to impair or bar any cause of action or legal or equitable remedy of any person or the public under applicable laws and regulations.

(d) The Buildings, Safety Engineering, and Environmental Department shall conduct semiannual inspections for the purpose of monitoring compliance with this section and may conduct other inspections for the purpose of monitoring compliance with this subdivision.

(e) An owner or operator of a facility not in compliance at any time with this section must comply with Parts II through V of this subdivision.

(Code 1984, § 22-5-7; Ord. No. 32-17, § 1(22-5-7), eff. 12-6-2017)

Secs. 42-2-157--42-2-170. Reserved.

Part II. Bulk Solid Material Facilities—General Requirements

Sec. 42-2-171. Operating and maintenance practices.

(a) Except as provided for in Subsections (b) and (c) of this section, a facility that processes, handles or transfers on-site, transfers, loads, unloads, stockpiles, or stores bulk solid materials shall comply with the requirements of this subdivision.

(b) A location that is an active construction site with all appropriate building permits and to which bulk solid materials are delivered for use in the construction at that site or at which bulk solid materials are temporarily situated for use in the construction at that site shall not be considered a facility subject to the requirements of this subdivision.

(c) Asphalt millings removed as part of a public paving or repaving project conducted, controlled, or funded by the City, the County of Wayne, the State of Michigan, or the United States and temporarily stored on or adjacent to the project for reuse in the project shall not be considered a facility subject to the requirements of this subdivision if the temporary storage period does not exceed 45 days.

(Code 1984, § 22-5-10; Ord. No. 32-17, § 1(22-5-10), eff. 12-6-2017)

Sec. 42-2-172. Certificate of Operation.

(a) Every owner or operator of a facility subject to this subdivision must possess a Certificate of Operation that is issued by the Buildings, Safety Engineering, and Environmental Department.

(b) The owner or operator shall submit to the Buildings, Safety Engineering, and Environmental Department an application for a Certificate of Operation. Upon the owner or operator providing evidence of compliance with the provisions of this subdivision, including, where applicable, submitting an approved fugitive dust plan or an approved enclosure plan, or both, and upon payment of the fee established by the Director of the Buildings, Safety Engineering, and Environmental Department pursuant to a schedule of fees, to cover the cost of application review and compliance inspection. The Buildings, Safety Engineering, and Environmental Department shall issue a Certificate of Operation in accordance with the provisions of this subdivision.

(c) The Certificate of Operation shall be conditioned upon continued compliance with this subdivision.

(d) The Buildings, Safety Engineering, and Environmental Department may impose dust control requirements, in addition to the requirements set forth in this subdivision, as a condition of the facility's Certificate of Operation, if the Buildings, Safety Engineering, and Environmental Department finds that the facility has failed to demonstrate its ability to control fugitive dust and the additional dust control requirements are necessary to protect the public health and environment.

(e) In the case of a facility operating under all applicable permits issued by the Buildings, Safety Engineering, and Environmental Department and subject to a Certificate of Operation issued by the Buildings, Safety Engineering, and Environmental Department as of the effective date of the ordinance that enacted this section, the Buildings, Safety Engineering, and Environmental Department may issue a temporary Certificate of Operation.

(Code 1984, § 22-5-11; Ord. No. 32-17, § 1(22-5-11), eff. 12-6-2017)

Sec. 42-2-173. Reviewing and approving applications.

(a) In determining whether to approve a fugitive dust plan and issue a Certificate of Operation, the Buildings, Safety Engineering, and Environmental Department shall solicit comments from the Health Department and the Water and Sewerage Department. The Buildings, Safety Engineering, and Environmental Department shall evaluate the information provided in the application to meet the requirements of this subdivision.

(b) The Director of the Buildings, Safety Engineering, and Environmental Department shall deny the application if it is incomplete or if the application does not demonstrate compliance with the requirements of this subdivision.

(c) The Director of the Buildings, Safety Engineering, and Environmental Department may attach reasonable conditions to the Certificate of Operation to ensure minimization of any adverse impacts.

(Code 1984, § 22-5-12; Ord. No. 32-17, § 1(22-5-12), eff. 12-6-2017)

Sec. 42-2-174. Change in facility operations.

Where any part of the facility's operation expands or changes, then, at least 30 days before the expansion or change in operation, the facility owner or operator shall notify the Director of the Buildings, Safety Engineering, and Environmental Department, submit an application to amend the Certificate of Operation, and submit a revised fugitive dust plan or establish to the Buildings, Safety Engineering, and Environmental Department's satisfaction that the expanded or changed operation will be compliant with the existing fugitive dust plan.

(Code 1984, § 22-5-13; Ord. No. 32-17, § 1(22-5-13), eff. 12-6-2017)

Sec. 42-2-175. Inspections by Buildings, Safety Engineering, and Environmental Department.

The Buildings, Safety Engineering, and Environmental Department shall conduct inspections for the purpose of monitoring compliance with this subdivision on a semiannual basis. The Buildings, Safety Engineering, and Environmental Department may conduct inspections for the purpose of monitoring compliance with this subdivision in response to any complaint received by the Buildings, Safety Engineering, and Environmental Department or the Buildings, Safety Engineering, and Environmental Department's reasonable suspicion of a violation of this subdivision.

(Code 1984, § 22-5-14; Ord. No. 32-17, § 1(22-5-14), eff. 12-6-2017)

Sec. 42-2-176. Fugitive dust.

(a) A facility owner or operator shall prevent the discharge into the atmosphere of visible fugitive dust as specified in this division.

(b) A facility owner or operator shall not cause or allow any fugitive dust that is visible beyond the property line of the facility. The facility owner or operator shall prevent the discharge into the atmosphere of visible fugitive dust as specified in this division.

(Code 1984, § 22-5-15; Ord. No. 32-17, § 1(22-5-15), eff. 12-6-2017)

Sec. 42-2-177. Opacity limits; measurement.

(a) An owner, operator or other person responsible for any fugitive dust source subject to this subdivision shall not cause or allow the emission of fugitive dust from any road, lot, or storage pile, including any material handling activity at a storage pile that has an opacity greater than five percent.

(b) An owner or operator of a facility subject to this subdivision shall not cause or allow any fugitive dust beyond the property line of the facility that has an opacity greater than zero percent.

(c) Opacity shall be determined by reference test method 9d, as defined in Section 5525(j) of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.5525(j).

(d) The facility owner or operator shall perform, on at least a quarterly basis, tests of visual fugitive dust and opacity in accordance with the protocol set forth in the approved fugitive dust plan.

(Code 1984, § 22-5-16; Ord. No. 32-17, § 1(22-5-16), eff. 12-6-2017)

Sec. 42-2-178. Fugitive dust plan--Required.

(a) Every owner or operator of a facility subject to this subdivision must submit and follow a fugitive dust plan.

(b) If the owner or operator of the facility has obtained approval from the State of Michigan of a state operating plan as defined in Section 42-1-6 of this Code pursuant to state laws or regulations, including but not limited to Section 5524 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.5524, and R 336.1371 and R 336.1372 of the Michigan Administrative Code and the State Operating Plan, including any amendments, is currently legally enforceable and in effect, then the owner or operator of the facility shall provide a complete and current copy of the State Operating Plan, including any amendments to the Buildings, Safety Engineering, and Environmental Department, along with a statement indicating where and how the requirements of this subdivision are addressed by the State Operating Plan. Unless the Buildings, Safety Engineering, and Environmental Department makes specific findings that the State Operating Plan contains deficiencies or omissions that would render it insufficient to ensure compliance with this subdivision, the State Operating Plan shall be presumed to satisfy the requirements of this subdivision. The owner or operator shall notify the Buildings, Safety Engineering, and Environmental Department in advance of any submissions of new or amended state operating plans. Notwithstanding this subsection, the owner or operator of the facility shall install, operate, and maintain fugitive dust monitors pursuant to Section 42-2-180 of this Code unless the owner or operator of the facility conducts fugitive dust monitoring that is no less stringent than the requirements of Section 42-2-180 of this Code.

(c) If, at any time, the Buildings, Safety Engineering, and Environmental Department finds that the submitted fugitive dust plan is missing any required information or is insufficient to ensure compliance with this subdivision, the Buildings, Safety Engineering, and Environmental Department shall disapprove the fugitive dust plan and require submission of an amended fugitive dust plan. If there is any change, modification, or addition to any facility component described in an approved fugitive dust plan, the facility owner or operator shall submit an amended fugitive dust plan to the Buildings, Safety Engineering, and Environmental Department for review and approval at least 30 days before such change, modification, or addition.

(d) The first fugitive dust plan shall be due within 180 days of the effective date of the ordinance that enacted this subdivision. For facilities that are constructed or become subject to this subdivision after enactment, the first fugitive dust plan shall be submitted with the facility's application for a Certificate of Operation and before the facility accepts any bulk solid materials. After April 30 and before July 1 of each year, the owner or occupant of the facility shall submit to the Buildings, Safety Engineering, and Environmental Department an annual update to the fugitive dust plan for the Buildings, Safety Engineering, and Environmental Department's review.

(Code 1984, § 22-5-17; Ord. No. 32-17, § 1(22-5-17), eff. 12-6-2017)

Sec. 42-2-179. Fugitive dust plan--Contents.

The fugitive dust plan shall include, at a minimum, the following components:

- (1) The name and address of the facility;
- (2) The name, address, and contact information of the owner or operator responsible for implementation of the fugitive dust plan
- (3) A site map, drawn to scale, depicting the following information:
 - a. Facility boundaries;
 - b. All buildings, internal roadways, and utilities on facility property;
 - c. All roadways and transportation corridors within one quarter mile of the perimeter of the facility that are used for transport of material to or from the facility;

- d. The location of all floor drains, storm drains, and storm water outfalls;
 - e. All potential emissions points at the facility, including a depiction of the footprints of all bulk solid material storage piles; and
 - f. The locations of all control devices and monitoring devices, including the fugitive dust monitors required under Section 42-2-180 of this Code and the wind monitors required under Section 42-2-181 of this Code;
- (4) A description of the facility's operations, including a list of all bulk solid materials handled at, processed at, or transported to, from, or within the facility;
 - (5) A description of the truck routes within one quarter mile of the perimeter of the facility that are used to transport material to and from the facility, including an explanation of how dust will be minimized during transport, for example, travel on paved roads where possible, minimize truck speeds, and the like, and a description of the measures that will be used to ensure trucks are cleaned of loose material before they leave the facility;
 - (6) A calculation showing the facility's maximum total indoor and outdoor bulk solid material storage capacity in tons or cubic yards, in the first fugitive dust plan, due within 180 days of the ordinance that enacted this subdivision, the calculation shall be certified by signature of an authorized representative of the owner or operator and shall be accompanied by evidence of authority to sign on behalf of the owner or operator;
 - (7) A description of the control measures, devices, and technologies to be used to minimize and control fugitive dust, a description of how all control measures, devices, and technologies will be maintained and calibrated to ensure their continued effectiveness, and a description of the training provided to staff regarding the proper application and operation of the control measures, devices, and technologies;
 - (8) A dust monitoring plan that describes:
 - a. The placement, operation, and maintenance of the PM10 monitors if required under Section 42-2-180 of this Code; and
 - b. The schedule and plan for quarterly testing to ensure compliance with the prohibition on fugitive dust set forth in this subdivision. Such testing must be:
 - 1. Conducted by a professional trained and certified to read opacity in accordance with the measurement method specified in Section 42-2-177 of this Code; and
 - 2. Conducted during a range of weather conditions to ensure that representative conditions at the facility are covered;
 - (9) A contingency plan describing the owner's or operator's response activities when PM10 exceeds the reportable action level. The response activities should consist of a range of increasingly aggressive measures appropriate to different levels of exceedance;
 - (10) A contingency plan for an alternative method of monitoring in the event of malfunction or failure of any required PM10 monitors;
 - (11) A description of the facility's recordkeeping system, which shall include a schedule for routine inspection, testing, and maintenance as required in Section 42-2-191 of this Code;
 - (12) Other information as the Buildings, Safety Engineering, and Environmental Department may require to facilitate its review of the fugitive dust plan; and
 - (13) A fact sheet or executive summary of the fugitive dust plan designed to inform the public of the facility's plan to control and minimize fugitive dust, which may be posted on the City's website.

(Code 1984, § 22-5-18; Ord. No. 32-17, § 1(22-5-18), eff. 12-6-2017)

Sec. 42-2-180. Fugitive dust monitoring.

Unless, either pursuant to the variance procedure set forth in Part V of this subdivision or because the facility does not include carbonaceous bulk solid materials and is enclosed in accordance with Section 42-2-203 of this Code, the facility owner or operator establishes that the facility's operations do not and will not result in off-site fugitive dust emissions, the owner or operator of the facility shall install, operate, and maintain around the perimeter of the facility, according to manufacturer's specifications, permanent, continuous Federal Equivalent Method (FEM) real-time PM10 monitors, or other sensors acceptable to the Buildings, Safety

Engineering, and Environmental Department and the Health Department that provide equivalent information, in accordance with the following specific requirements:

(1) During the first year of monitoring, at least two monitors must be located at opposite ends of the facility to monitor fugitive dust in the ambient air around the facility:

(2) During the second and subsequent years of monitoring, monitors must be placed at the facility in compliance with an approved fugitive dust monitoring plan for the facility based on data collected from monitors placed Subsection (1) of this section;

(3) A data logger shall be attached to the monitors to record readings from the monitors, and the facility owner or operator shall notify the Buildings, Safety Engineering, and Environmental Department, in writing within 24 hours, each time the monitors exceed the reportable action level set forth in the fugitive dust plan and any time monitoring equipment has malfunctioned preventing readings or logging of data; and

(4) The facility owner or operator shall maintain a log of all routine and non-routine maintenance and calibration activities associated with each fugitive dust monitor.

(Code 1984, § 22-5-19; Ord. No. 32-17, § 1(22-5-19), eff. 12-6-2017)

Sec. 42-2-181. Wind monitoring.

(a) Except as provided in Subsection (b) of this section, the owner or operator shall install, operate, and maintain, according to manufacturer's specifications, a weather station or other permanent device to monitor and log wind speed and wind direction at the facility at an unobstructed, unsheltered area, centrally positioned in relation to the storage piles, and at a minimum height of 15 feet above ground level, unless the Buildings, Safety Engineering, and Environmental Department determines that another height is appropriate pursuant to applicable U.S. Environmental Protection Agency protocols and guidance.

(b) Subsection (a) of this section does not apply to bulk solid materials other than carbonaceous bulk solid materials if all handling and storage of the bulk solid materials is conducted within enclosed buildings, vehicles, and conveyors.

(Code 1984, § 22-5-20; Ord. No. 32-17, § 1(22-5-20), eff. 12-6-2017)

Sec. 42-2-182. Conveyors and transfer points.

The owner or operator shall install, operate, and maintain conveyors and material transfer points in compliance with one or a combination of the following measures in order to ensure compliance with the opacity limit set forth in Section 42-2-177 of this Code;

(1) Total enclosure;

(2) Water spray system sufficient to control fugitive dust emissions during operations;

(3) Vented to air pollution control equipment which is in full operation; or

(4) Transfer only moist material with a minimum moisture content of eight percent by weight as determined by ASTM analysis, unless another standard is established by an applicable state law or rule, and conduct the transfer in a manner that minimizes the exposed drop.

(Code 1984, § 22-5-21; Ord. No. 32-17, § 1(22-5-21), eff. 12-6-2017)

Sec. 42-2-183. Transport.

When transport is by truck, the facility owner or operator shall ensure that:

(1) All vehicles and off-road mobile heavy equipment handling or transporting bulk solid material shall adhere to the posted speed limit within the facility, which shall be no more than eight miles per hour;

(2) Except for existing facilities, material is received or transferred only in truck beds or trailers that, within one quarter mile of the perimeter of the facility, are driven only on paved roads;

(3) Unless the approved fugitive dust plan specifies an aggregate street sweeping plan or other measures to ensure that the trucks will not cause any unaddressed track-out of materials onto the public way, all outgoing material transport trucks, whether loaded or empty, are cleaned so that:

- a. Any part of any tractor, bed, trailer or the exterior surface, excluding the inside of the beds or trailer, are free of all loose material; and
- b. The material removed by the truck cleaning operation is collected and recycled or otherwise disposed of so that it does not result in fugitive dust emissions.

(4) All outgoing material transport trucks, whether loaded or empty, pass over rumble strips that will vibrate the trucks and shake off loose material and dust.

(5) Unless the approved fugitive dust plan specifies an aggressive street sweeping plan or other measures in addition to the rumble strips to ensure that the trucks will not cause any unaddressed trackout of materials onto the public way, all outgoing material transport trucks, whether loaded or empty, pass through a wheel wash station.

(Code 1984, § 22-5-22; Ord. No. 32-17, § 1(22-5-22), eff. 12-6-2017)

Sec. 42-2-184. Coverings and other dust control.

The facility owner or operator shall not load material into any truck bed or trailer, railcar, or vessel unless measures are in place to prevent material from escaping from the truck bed or trailer, railcar, or vessel as follows:

(1) Truck beds and trailers must be immediately covered before leaving the facility in one of the following manners:

- a. A solid sliding cover or stackable cover on the top of the truck bed or trailer that is kept completely closed except during loading; or
- b. A continuous tarp that completely covers the truck bed or trailer and that is installed or constructed to prevent wind from entering over the leading edge of the bed or trailer rim into the interior of the bed or trailer.

(2) Railcars and vessels must be loaded in a manner that will control dust through the use of best management practices such as, but not limited to, the use of solid covers, the application of dust suppression agents and/or water, and the profiling of materials to prevent wind erosion.

(Code 1984, § 22-5-23; Ord. No. 32-17, § 1(22-5-23), eff. 12-6-2017)

Sec. 42-2-185. Prohibition against leakage.

Facility owners or operators shall not load material into a truck bed or trailer, railcar, or vessel such that the truck bed or trailer, railcar, or vessel leaks material or liquid that contains material onto internal roads or into waterways. Where the truck bed or trailer, railcar, or vessel leaks material or liquid that contains material onto an internal road or into a waterway, the facility owner or operator shall clean the affected road within one hour with a street sweeper or water and shall clean the affected waterway immediately.

(Code 1984, § 22-5-24; Ord. No. 32-17, § 1(22-5-24), eff. 12-6-2017)

Sec. 42-2-186. Truck loading and unloading.

For enclosed carbonaceous bulk solid material storage piles, the facility owner or operator shall conduct material truck loading and unloading only in an enclosed structure that is either equipped with a water spray system to be used as needed to prevent visible dust emissions or vented to permitted air pollution control equipment that is operated during loading and unloading activities. The ends of the structure shall have overlapping flaps that reduce the opening, sliding doors which shall remain closed except to allow the trucks to enter and leave, or other equally effective devices. For outdoor bulk solid material storage, the facility owner or operator shall ensure that truck loading and unloading occurs in compliance with the requirements for transfer points specified in Section 42-2-182 of this Code.

(Code 1984, § 22-5-25; Ord. No. 32-17, § 1(22-5-25), eff. 12-6-2017)

Sec. 42-2-187. Railcar loading and unloading.

For enclosed carbonaceous bulk solid material storage piles, the facility owner or operator shall conduct railcar material loading and unloading only in an enclosed structure that is either equipped with a water spray system operated to prevent visible dust emissions or vented to permitted air pollution control equipment that is operated during loading and unloading activities. The ends of the structure shall have overlapping flaps, sliding doors or other equally effective devices, which shall remain closed except to allow the railcars to enter and leave. For outdoor bulk solid material storage, the facility owner or operator shall ensure that railcar loading and unloading occurs in compliance with the requirements for transfer points specified in Section 42-2-182 of this Code.

(Code 1984, § 22-5-26; Ord. No. 32-17, § 1(22-5-26), eff. 12-6-2017)

Sec. 42-2-188. Vessel loading and unloading.

The facility owner or operator shall conduct vessel material loading only through an enclosed chute that uses a water spray system, or an air pollution control system or other mechanism described in the approved fugitive dust plan, in order to control fugitive dust emissions during operations. Vessel unloading shall be conducted in a manner that will minimize dust in accordance with measures set forth in the fugitive dust plan and in compliance with the requirements for transfer points specified in Section 42-2-182 of this Code.

(Code 1984, § 22-5-27; Ord. No. 32-17, § 1(22-5-27), eff. 12-6-2017)

Sec. 42-2-189. Roadway cleaning.

In order to clean roads of spilled and tracked material, the facility owner or operator shall use street sweeper to clean any paved road that is used to transport material inside or within one quarter mile of the perimeter of the facility and shall comply with all of the following requirements:

- (1) The street sweeper shall be equipped with a water spray for use during non-freezing weather and a vacuum system to prevent fugitive dust during street sweeping;
- (2) The street sweeping shall be sufficient so that not more than eight hours elapses between each street sweeper cleaning or after every 100 truck material receipts or dispatches, but not less than one time daily when the facility is open for business, unless the roads are free and clear of any material transported to or from the facility; and
- (3) Each day, the facility owner or operator shall document whether for that day the facility owner or operator is street sweeping every eight hours or every 100 trucks, or whether the roads are free and clear of any material transported to or from the facility. The record shall show the date and time when street sweeping was performed and the truck count, as applicable.

(Code 1984, § 22-5-29; Ord. No. 32-17, § 1(22-5-29), eff. 12-6-2017)

Sec. 42-2-190. Spilled material.

The facility owner or operator shall maintain all areas within the facility not regularly used for storage of bulk solid material free of any spilled or misplaced material by removing such material by the end of each work shift.

(Code 1984, § 22-5-30; Ord. No. 32-17, § 1(22-5-30), eff. 12-6-2017)

Sec. 42-2-191. Recordkeeping.

The facility owner or operator shall keep and maintain facility logs as follows:

- (1) Record daily, all cleaning and street sweeping;
- (2) Record the application of water and/or chemical stabilizers as applicable, and note any instances when such application is suspended for any reason, including but not limited to, weather conditions;

(3) Record any instances when activities are suspended due to high winds as required by Section 42-2-215 of this Code as applicable;

(4) Record the results of the continuous monitoring for fugitive dust as required in Section 42-2-180 of this Code, indicate any instances when a monitor detects fugitive dust that exceeds the reportable action level set forth in the fugitive dust plan, and record the action taken to respond to the detection of fugitive dust;

(5) Record quarterly, the results of the tests of visual fugitive dust and opacity as required in Section 42-2-177 of this Code;

(6) Maintain a schedule for routine inspection, maintenance, and testing of all control measures, devices, and technologies, including a schedule for inspection of bulk solid material piles, inspection of any monitors and inspection of off-site areas for the presence of dust, and identify the person or persons responsible for such inspections, maintenance, and testing;

(7) All records that are required to be kept pursuant to this subdivision shall be submitted to the Buildings, Safety Engineering, and Environmental Department on a quarterly basis and kept and maintained at the facility and be available for inspection for a minimum of three years from the date the record is created.

(Code 1984, § 22-5-31; Ord. No. 32-17, § 1(22-5-31), eff. 12-6-2017)

Sec. 42-2-192. Inspections.

Inspections for the purpose of monitoring compliance with this subdivision shall be conducted by the Buildings, Safety Engineering, and Environmental Department on at least a semiannual basis and in response to any complaint received by the Buildings, Safety Engineering, and Environmental Department.

(Code 1984, § 22-5-32; Ord. No. 32-17, § 1(22-5-32), eff. 12-6-2017)

Secs. 42-2-193--42-2-200. Reserved.

Part III. Carbonaceous Bulk Solid Material Facilities

Sec. 42-2-201. Enclosure of carbonaceous bulk solid material.

The owner or operator of a carbonaceous bulk solid material facility shall maintain all carbonaceous bulk solid material in fully enclosed structures in accordance with the enclosure requirements set forth in this division.

(Code 1984, § 22-5-40; Ord. No. 32-17, § 1(22-5-40), eff. 12-6-2017)

Sec. 42-2-202. Enclosure plan.

The owner or operator of any carbonaceous bulk solid material facility shall submit to the Buildings, Safety Engineering, and Environmental Department for review and approval a plan (the “enclosure plan”) for total enclosure of all carbonaceous bulk solid material piles, conveyors, transfer points, and processing areas at the facility. The enclosure plan shall include:

(1) A construction schedule prepared using the critical path method for completion of engineering, procurement, permitting, and construction of the enclosure; and

(2) A fugitive dust plan that shall include, at a minimum, the following components:

a. A site map, drawn to scale depicting the following information;

1. Facility boundaries

2. All buildings, internal roads and utilities on facility property;

3. All roadways within one quarter mile of the perimeter of the facility that are used for transport of material to or from the facility

4. The location of all floor drains, storm drains, and storm water outfalls;

5. All potential fugitive dust emissions points at the facility, including a depiction of the footprints of all carbonaceous bulk solid material piles;
 6. The locations of all control devices and monitoring devices, including the fugitive dust monitors required under Section 42-2-180 of this Code and the wind monitor required under Section 42-2-181 of this Code.
- b. A site maps drawn to scale, depicting the boundaries of any associated carbonaceous bulk solid material facility owned or operated by the owner or operator at which the owner or operator intends to temporarily store carbonaceous bulk solid materials during implementation of the enclosure plan, and including all the information required in Subsection (2)a of this section;
 - c. A description of the facility's operations, including a list of all carbonaceous bulk solid materials handled at the facility;
 - d. A description of all control measures, devices, and technologies to be used to minimize and control fugitive dust during transport to and from the facility while materials are staged, loaded, unloaded, processed, or otherwise handled at the facility;
 - e. A dust monitoring plan that describes the placement, operation, and maintenance of the PM10 monitors required under Section 42-2-180 of this Code, including an explanation of the background levels or PM10 leaving a facility that will determine the reportable action level (20 percent increase) based on the concentration of PM10 detected at the downwind monitor(s) at a facility;
 - f. A contingency plan describing the owner's or operator's response activities when the monitor required under Section 42-2-180 of this Code detect PM10 that exceeds the reportable action level established pursuant to Section 42-2-179(7) of this Code, and a contingency plan for an alternative method of monitoring in the event of malfunction or failure of the approved PM10 monitors;
 - g. A spill control and pollution prevention plan describing the owner's or operator's response activities to address spills of any stored materials and to protect and prevent any stored material from spilling into any floor drains, storm drains, or storm water outfalls; and
 - h. A description of the facility's recordkeeping system, which shall include a schedule for routine inspection and maintenance of the control measures, devices, and technologies, and the identity of the person or persons responsible for such maintenance and testing.

(Code 1984, § 22-5-41; Ord. No. 32-17, § 1(22-5-41), eff. 12-6-2017)

Sec. 42-2-203. Enclosure requirements.

Fully-enclosed structures for all carbonaceous bulk solid material handling, storage, and transfer operations must satisfy the following requirements:

- (1) Structures used to store, handle, or transfer carbonaceous bulk solid materials must be completely enclosed structures with an impervious floor, four walls, and an approved roof;
- (2) Structures used to store, handle, or transfer carbonaceous bulk solid materials shall be designed, permitted, and constructed in accordance with Chapter 8, Article II, of this Code, *Building Code*, Chapter 50 of this Code, *Zoning*, and other applicable state laws and regulations;
- (3) Structures used to store, handle, or transfer carbonaceous bulk solid materials shall be properly maintained and shall be equipped with and shall use a permitted air pollution control system and/or the ability to apply water to materials within a structure sufficient to control fugitive dust emissions at designed vents and at any other openings, including entrances and exits;
- (4) Entrances and exits for material or vehicles shall have overlapping flaps, sliding doors or other devices(s), which shall remain closed except to allow material or vehicles to enter and leave or to allow people to enter and exit, provided, that if devices other than overlapping flaps or sliding doors are used, then the performance for dust control at the openings must be shown in the fugitive dust plan to be equivalent to or better than that of the overlapping flaps or sliding doors used in conjunction with the required air pollution controls as determined by the Buildings, Safety Engineering, and Environmental Department; and
- (5) Fully enclosed structures in compliance with this section need not comply with the fugitive dust monitoring requirements of Section 42-2-180 of this Code.

(Code 1984, § 22-5-42; Ord. No. 32-17, § 1(22-5-42), eff. 12-6-2017)

Secs. 42-2-204--42-2-210. Reserved.

Part IV. Outdoor Storage of Bulk Solid Materials Other Than Carbonaceous Bulk Solid Materials

Sec. 42-2-211. Outdoor bulk solid material storage.

The facility owner or operator may maintain outdoor storage of bulk solid material other than carbonaceous bulk solid material if the facility meets all of the requirements of this division.

(Code 1984, § 22-5-50; Ord. No. 32-17, § 1(22-5-50), eff. 12-6-2017)

Sec. 42-2-212. Setbacks.

Bulk solid material storage piles shall be located in accordance with setback requirements established in Chapter 50 of this Code, *Zoning*.

(Code 1984, § 22-5-51; Ord. No. 32-17, § 1(22-5-51), eff. 12-6-2017)

Sec. 42-2-213. Height limit; screening from view.

The vertical distance from grade immediately adjacent to a pile to the highest point of that pile shall be no greater than 50 feet. The facility owner or operator shall install and maintain, or otherwise have available at the facility, equipment or devices used to measure the height of each pile, with the equipment or devices available for use by an inspector during any inspection or use by the owner or operator of the facility to demonstrate compliance with the height limit to the satisfaction of the inspector during any inspection. Piles shall be screened from view or adjacent rights-of-way and from view of properties adjacent to the facility at the level of the right-of-way or separated from the facility by a right-of-way if the properties are located in districts zoned residential, SD4, or PR in conformance with Chapter 50, Article XIV, Division 2, Subdivision D, in particular Sections 50-14-365 and 50-14-367 of this Code.

(Code 1984, § 22-5-52; Ord. No. 32-17, § 1(22-5-52), eff. 12-6-2017)

Sec. 42-2-214. Protection of waterways.

Outdoor storage piles shall be set back at least 25 feet from any waterway, except that material in the process of being unloaded from or loaded to a vessel may be located within 25 feet of a waterway for a period of time not to exceed 24 hours so long as no materials are allowed to fall, erode, be thrown, discharged, dumped, disposed of, or deposited in the waterway at any time, the Buildings, Safety Engineering, and Environmental Department may reduce the 25 feet setback requirement upon receipt and verification of information that a shorter setback satisfies runoff and engineering requirements specific to the site.

(Code 1984, § 22-5-53; Ord. No. 32-17, § 1(22-5-53), eff. 12-6-2017)

Sec. 42-2-215. High-wind events.

Disturbance of outdoor bulk solid material piles, including but not limited to outdoor loading, unloading, and any other processing, shall be suspended during high wind conditions unless alternate measures are implemented to effectively control dust in accordance with the approved fugitive dust plan.

(Code 1984, § 22-5-54; Ord. No. 32-17, § 1(22-5-54), eff. 12-6-2017)

Sec. 42-2-216. Dust-suppressant system.

The Buildings, Safety Engineering, and Environmental Department shall require the facility owner or operator to apply chemical stabilizers and/or maintain and operate wind screens, water spray bars, a misting

system, water spray systems, and/or water trucks to prevent fugitive dust emissions in violation of Sections 42-2-176 and 42-2-177 of this Code, in accordance with the following requirements:

- (1) Except pursuant to Subsection (3) of this section, the dust suppressant system shall be operable and able to dispense water, water-based solutions, and/or chemical stabilizers at all times unless all bulk storage material piles are covered or protected by wind screens.
- (2) When the temperature falls below 32 degrees Fahrenheit, the facility must use chemical stabilizers and/or water heating systems to ensure that dust suppression continues.
- (3) If any part of the dust suppressant system is undergoing maintenance or otherwise becomes inoperable, the facility owner or operator must suspend disturbance of bulk solid material piles that would be controlled by the inoperable portion of the dust suppressant system until such time as the system becomes operable again.

(Code 1984, § 22-5-55; Ord. No. 32-17, § 1(22-5-55), eff. 12-6-2017)

Sec. 42-2-217. Run-off management.

The facility owner or operator shall install and maintain storm water management, erosion, and sediment controls, pursuant to a written plan, sufficient to:

- (1) Prevent runoff from the pile onto neighboring parcels, public ways, or any water bodies;
- (2) Prevent runoff from entering into public sewers or any entry points into the storm water collection system, unless such discharges are in compliance with all applicable discharge permits
- (3) Address timely and effective ways to respond to spills and/or visible migration of pollutants that could occur on site or offsite
- (4) Demonstrate that the site is graded in such a way as to ensure proper drainage and to prevent pooling of water.

(Code 1984, § 22-5-56; Ord. No. 32-17, § 1(22-5-56), eff. 12-6-2017)

Secs. 42-2-218--42-2-230. Reserved.

Part V. Variances

Sec. 42-2-231. Applications for a variance; fee.

The facility owner or operator may apply to the Director of the Buildings, Safety Engineering, and Environmental Department for a variance from any requirement or provision set forth in Part II, Part III, or Part IV of this subdivision in accordance with the provisions set forth in Part V of this subdivision. The Director of the Buildings, Safety Engineering, and Environmental Department may establish a schedule of fees pursuant to which a variance review fee may be assessed per application.

(Code 1984, § 22-5-60; Ord. No. 32-17, § 1(22-5-60), eff. 12-6-2017)

Sec. 42-2-232. Requirements of the variance application.

The request for a variance must be in writing and must set forth, in detail, all of the following:

- (1) A statement identifying the provision or requirement of this subdivision from which the variance is requested;
- (2) A description of the process or activity for which the variance is requested, including pertinent data on location, size, and the population and geographic area affected by, or potentially affected by, the process or activity;
- (3) The quantity and types of materials used in the process or activity in connection with which the variance is requested, as appropriate;
- (4) A demonstration that issuance of the variance will not create a public nuisance or adversely impact the surrounding area, surrounding environment, or surrounding property uses;
- (5) A statement explaining:

- a. Why compliance with the regulations imposes an arbitrary or unreasonable hardship;
 - b. Why compliance cannot be accomplished during the required timeframe due to events beyond the facility owner or operator's control such as permitting delays or natural disasters; or
 - c. Why the proposed alternative measure is superior or preferable.
- (6) A description of the proposed methods to achieve compliance with the regulations and a timetable for achieving that compliance, if applicable;
- (7) A discussion of alternate methods of compliance and of the factors influencing the choice of applying for a variance;
- (8) A statement regarding the person's current status as related to the subject matter of the variance request;
- (9) For any request for a variance from the enclosure deadline set forth in Section 42-2-252 of this Code, if the applicant is not the owner or operator of a facility operating on the effective date of the ordinance that enacted this section, the applicant must submit all of the information required in Subsections (1) through (8) of this section and shall also submit all of the following:
- a. Fugitive dust monitoring reports for the four months before the date of the variance application, and
 - b. In the event that the variance is granted, monthly fugitive dust monitoring reports for the duration of the variance which shall be due 14 days following the end of the month which the report covers.
- (10) The monthly fugitive dust monitoring reports required by this section shall be submitted in an electronic format as specified in the variance.

(Code 1984, § 22-5-61; Ord. No. 32-17, § 1(22-5-61), eff. 12-6-2017)

Sec. 42-2-233. Criteria for reviewing applications.

(a) In determining whether to grant a variance, the Director of the Buildings, Safety Engineering, and Environmental Department will consider public comments received pursuant to Section 42-2-235 of this Code and will evaluate the information provided in the application to meet the requirements of Section 42-2-232 of this Code. Particular consideration will be given to the following information:

- (1) Inclusion of a definite compliance program;
- (2) Evaluation of all reasonable alternatives for compliance;
- (3) Demonstration that any adverse impacts will be minimal.

(b) The Director of the Buildings, Safety Engineering, and Environmental Department shall deny the variance if the application for the variance is incomplete or if the application is outside the scope of relief provided by variances.

(c) The Director of the Buildings, Safety Engineering, and Environmental Department may deny a variance, may grant a variance in whole or in part, and may attach reasonable conditions to the variance to ensure minimization of any adverse impacts.

(d) Granting a variance is at the sole discretion of the Director of the Buildings, Safety Engineering, and Environmental Department. A variance may be revoked at any time if the Director of the Buildings, Safety Engineering, and Environmental Department finds that operation of the facility is creating a public nuisance or otherwise adversely impacting the surrounding area, surrounding environment, or surrounding property uses.

(Code 1984, § 22-5-62; Ord. No. 32-17, § 1(22-5-62), eff. 12-6-2017)

Sec. 42-2-234. Change in facility operations.

If any part of the facility's operation that is the subject of the variance expands or changes, then, at least 30 days before the expansion or change in operation, the facility owner or operator shall notify the Director of the Buildings, Safety Engineering, and Environmental Department and either apply for a new variance or notify the Director of the Buildings, Safety Engineering, and Environmental Department of the owner or operator's intent to comply with the requirements that were the subject of the variance, in which case the variance will automatically terminate.

(Code 1984, § 22-5-63; Ord. No. 32-17, § 1(22-5-63), eff. 12-6-2017)

Sec. 42-2-235. Notice of variance applications; public hearing; public comment.

The Director of the Buildings, Safety Engineering, and Environmental Department shall not grant any variance under this section until after a public hearing at which members of the public have had an opportunity to comment on the variance application. Members of the public shall also have the opportunity to submit written comments on the variance application. The Director of the Buildings, Safety Engineering, and Environmental Department shall provide notice of all variance applications by:

- (1) Publication in a newspaper of general circulation published within the City;
- (2) Posting on the City's website; and
- (3) Mailed or delivered notice to all addresses located within 300 feet of the boundaries of the facility seeking the variance.

The public hearing shall be held not less than 14 days after publication of the notice. The Director of the Buildings, Safety Engineering, and Environmental Department shall accept written comments for a period of not less than 30 days from the date of publication of the notice. The Director of the Buildings, Safety Engineering, and Environmental Department shall not make a decision until after close of the comment period. Notice of the decision shall be posted on the City's website.

(Code 1984, § 22-5-64; Ord. No. 32-17, § 1(22-5-64), eff. 12-6-2017)

Secs. 42-2-236--42-2-250. Reserved.

Part VI. Implementation and Compliance

Sec. 42-2-251. Implementation schedule.

The provisions of this subdivision shall take effect in three phases as follows:

(1) The following sections and subsections shall take effect immediately upon the effective date of the ordinance that enacted this subdivision:

- a. All sections with respect to new facilities or expansions of facilities, except those portions in operation on the effective date of the ordinance that enacted this subdivision
- b. All sections within Part I of this subdivision, *In General*;
- c. All sections within Part V of this subdivision, *Variances*;
- d. Sec. 42-2-171, Operating and Maintenance Practices;
- e. Sec. 42-2-172, Certificate of Operation;
- f. Sec. 42-2-173, Reviewing and Approving Applications;
- g. Sec. 42-2-174, Change in Facility Operations;
- h. Sec. 42-2-175, Inspections by Buildings, Safety Engineering, and Environmental Department;
- i. Sec. 42-2-177, Opacity Limits: Measurement;
- j. Sec. 42-2-185, Prohibition Against Leakage;
- k. Sec. 42-2-189, Roadway Cleaning;
- l. Sec. 42-2-190, Spilled Material;
- m. Sec. 42-2-191(1), Recordkeeping--Daily cleaning;
- n. Sec. 42-2-191(6), Recordkeeping--Maintain Schedule for Routine Inspection;
- o. Sec. 42-2-191(7), Recordkeeping--Timeframe for Maintenance of Required Records;
- p. Sec. 42-2-192, Inspections;
- q. Sec. 42-2-251, Implementation Schedule;
- r. Sec. 42-2-253, Enclosure Reporting;
- s. Sec. 42-2-254, Issuance of Certificate of Operation;
- t. Sec. 42-2-27, Penalties;
- u. Sec. 42-2-255, Public Health Fund.

(2) For facilities in operation on the effective date of the ordinance that enacted this subdivision, the following sections and subsections shall take effect 180 days from the effective date of the ordinance that enacted this subdivision:

- a. Sec. 42-2-176, Fugitive Dust;
- b. Sec. 42-2-178, Fugitive Dust Plan--Required;
- c. Sec. 42-2-179, Fugitive Dust Plan--Contents;
- d. Sec. 42-2-180, Fugitive Dust Monitoring;
- e. Sec. 42-2-181, Wind Monitoring;
- f. Sec. 42-2-182, Conveyors and Transfer Points;
- g. Sec. 42-2-183, Transport;
- h. Sec. 42-2-184, Coverings and Other Dust Control;
- i. Sec. 42-2-186, Truck Loading and Unloading;
- j. Sec. 42-2-187, Railcar Loading and Unloading;
- k. Sec. 42-2-188, Vessel Loading and Unloading;
- l. Sec. 42-2-191(2), Recordkeeping--Weather Conditions;
- m. Sec. 42-2-191(2), Recordkeeping--Application of Water or Chemical Stabilizer;
- n. Sec. 42-2-191(3), Recordkeeping--Suspension of Activities Due to High Winds;
- o. Sec. 42-2-191(4), Recordkeeping--Dust Monitoring Results;
- p. Sec. 42-2-191(5), Recordkeeping--Record Quarterly Tests of Visual Fugitive Dust;
- q. Sec. 42-2-201, Enclosure of Carbonaceous Bulk Solid Material;
- r. Sec. 42-2-202, Enclosure Plan;
- s. All sections within Part IV of this subdivision, Outdoor Storage of Bulk Solid Materials Other than Carbonaceous Bulk Solid Materials.

(3) For facilities in operation on the effective date of the ordinance that enacted this subdivision, the following sections shall take effect two years from the effective date of the ordinance that enacted this subdivision:

- a. Sec. 42-2-203, Enclosure Requirements.
- b. Sec. 42-2-252, Enclosure Deadline.

(Code 1984, § 22-5-70; Ord. No. 32-17, § 1(22-5-70), eff. 12-6-2017)

Sec. 42-2-252. Enclosure deadline.

(a) For facilities continuing in operation on the effective date of the ordinance that enacted this subdivision: Within two years from the submission of the enclosure plan, as required by Section 42-2-202 of this Code, and Section 42-2-251(2)(q) of this Code, all carbonaceous bulk solid materials must be either fully enclosed or removed from the facility, as required by Section 42-2-201 of this Code.

(b) For new facilities, expansion or recommencement of operation of existing facilities, compliance with the enclosure requirements is a condition to receiving a Certificate of Operation.

(Code 1984, § 22-5-71; Ord. No. 32-17, § 1(22-5-71), eff. 12-6-2017)

Sec. 42-2-253. Enclosure reporting.

During the two-year period provided in 42-2-251(3) of this Code, the facility owner or operator shall submit to the Buildings, Safety Engineering, and Environmental Department quarterly reports describing the work completed within the previous quarter, and the work planned in the current quarter and following quarter, towards compliance with these sections. The first report shall be due on the 15th day of the second month following the effective date of the ordinance that enacted this subdivision, with subsequent reports due on the 15th day of the month following each calendar quarter. The address to submit the reports is:

Buildings, Safety Engineering, and Environmental Department
Attn: Environmental Affairs Division
Two Woodward Avenue, 4th Floor
Detroit, MI Michigan 48226

The Director of the Buildings, Safety Engineering, and Environmental Department may, at the Director's sole discretion, grant extensions of the timeframes provided, in accordance with the variance provisions set forth in Part V of this subdivision upon request and only for good cause shown by the facility owner or operator.

(Code 1984, § 22-5-72; Ord. No. 32-17, § 1(22-5-72), eff. 12-6-2017)

Sec. 42-2-254. Issuance of Certificate of Operation.

Upon the owner or operator providing evidence of compliance with the provisions of this subdivision, including but not limited to submitting an approved fugitive dust plan and where applicable, an approved fugitive dust plan and enclosure plan, and upon payment of the fee established by the Director of the Buildings, Safety Engineering, and Environmental Department pursuant to a schedule of fees, to cover the cost of application review and compliance inspection. The Buildings, Safety Engineering, and Environmental Department shall issue a Certificate of Operation. The Certificate of Operation shall be conditioned upon continued compliance with this subdivision.

(Code 1984, § 22-5-73; Ord. No. 32-17, § 1(22-5-73), eff. 12-6-2017)

Sec. 42-2-255. Public Health Fund.

- (a) The Public Health Fund is created as a separate depository fund. The Public Health Fund shall consist of the following:
 - (1) Money deposited in the Public Health Fund under Subsection (c) of this section;
 - (2) Money appropriated or allocated to the Public Health Fund by resolution or by this Code; and
 - (3) Donations of money to the Public Health Fund from any other source.
- (b) Money in the Public Health Fund at the close of a fiscal year will remain in the Public Health Fund and not revert to the General Fund.
- (c) Notwithstanding a contrary provision of this Code, a penalty or fine paid to the City for a violation of this subdivision must be credited to and deposited in the Public Health Fund.
- (d) The Health Department and the Buildings, Safety Engineering, and Environmental Department may expend money from the Public Health Fund upon appropriation only for activities promoting the public health and wellness of residents of the City and to mitigate negative health impacts of pollution on residents of the City, including, but not limited to, enforcement of this subdivision, purchasing, installation use, and maintenance of air monitoring equipment, installation of vegetation to buffer the impact of activities subject to regulation under this subdivision, and conducting health impact assessments.
- (e) A grant or other donation to the Public Health Fund must be accepted by City Council and is subject to any conditions on the grant or donation.
- (f) An agreement or contract for expenditure of money from the Public Health Fund must be approved by the City Council and the Mayor.

(Code 1984, § 22-5-75; Ord. No. 32-17, § 1(22-5-75), eff. 12-6-2017)

Secs. 42-2-256--42-2-300. Reserved.