

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)**  
**Act 451 of 1994**

PART 115  
SOLID WASTE MANAGEMENT

**324.11501 Meanings of words and phrases.**

Sec. 11501. For purposes of this part, the words and phrases defined in sections 11502 to 11506 have the meanings ascribed to them in those sections.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11502 Definitions; A to C.**

Sec. 11502. (1) "Agronomic rate" means a rate that meets both of the following requirements:

(a) Is generally recognized by the agricultural community or is calculated for a particular area of land to improve the physical nature of soil, such as structure, tilth, water retention, pH, or porosity, or to provide macronutrients or micronutrients in an amount not materially in excess of that needed by the crop, forest, or vegetation grown on the land.

(b) Takes into account and minimizes runoff of beneficial use by-products to surface water or neighboring properties, the percolation of excess nutrients beyond the root zone, and the liberation of metals from the soil into groundwater.

(2) "Ashes" means the residue from the burning of wood, scrap wood, tires, biomass, wastewater sludge, fossil fuels including coal or coke, or other combustible materials.

(3) "Beneficial use 1" means use as aggregate, road material, or building material that in ultimate use is or will be bonded or encapsulated by cement, limes, or asphalt.

(4) "Beneficial use 2" means use as any of the following:

(a) Construction fill at nonresidential property that meets all of the following requirements:

(i) Is placed at least 4 feet above the seasonal groundwater table.

(ii) Does not come into contact with a surface water body.

(iii) Is covered by concrete, asphalt pavement, or other material approved by the department.

(iv) Does not exceed 4 feet in thickness, except for areas where exceedances are incidental to variations in the existing topography. This subparagraph does not apply to construction fill placed underneath a building or other structure.

(b) Road base or soil stabilizer that does not exceed 4 feet in thickness except for areas where exceedances are incidental to variations in existing topography, is placed at least 4 feet above the seasonal groundwater table, does not come into contact with a surface water body, and is covered by concrete, asphalt pavement, or other material approved by the department.

(c) Road shoulder material that does not exceed 4 feet in thickness except for areas where exceedances are incidental to variations in existing topography, is placed at least 4 feet above the seasonal groundwater table, does not come into contact with a surface water body, is sloped, and is covered by asphalt pavement, concrete, 6 inches of gravel, or other material approved by the department.

(5) "Beneficial use 3" means applied to land as a fertilizer or soil conditioner under part 85 or a liming material under 1955 PA 162, MCL 290.531 to 290.538, if all of the following requirements are met:

(a) The material is applied at an agronomic rate consistent with generally accepted agricultural and management practices.

(b) The use, placement, or storage at the location of use does not do any of the following:

(i) Violate part 55 or create a nuisance.

(ii) Cause groundwater to no longer be fit for 1 or more protected uses as defined in R 323.2202 of the Michigan administrative code.

(iii) Cause a violation of a part 31 surface water quality standard.

(6) "Beneficial use 4" means any of the following uses:

(a) To stabilize, neutralize, solidify, or otherwise treat waste for ultimate disposal at a facility licensed under this part or part 111.

(b) To treat wastewater, wastewater treatment sludge, or wastewater sludge in compliance with part 31 or the federal water pollution control act, 33 USC 1251 to 1388, at a private or publicly owned wastewater treatment plant.

(c) To stabilize, neutralize, solidify, cap, or otherwise remediate hazardous substances or contaminants as part of a response activity in compliance with part 201, part 213, or the comprehensive environmental response, compensation and liability act of 1980, 42 USC 9601 to 9657, or a corrective action in compliance with part 111 or the solid waste disposal act, 42 USC 6901 to 6992k.

(d) As construction material at a landfill licensed under this part.

(7) "Beneficial use 5" means blended with inert materials or with compost and used to manufacture soil.

(8) "Beneficial use by-product" means the following materials if the materials are stored for beneficial use or are used beneficially as specified and the requirements of section 11551(1) are met:

(a) Coal bottom ash or wood ash used for beneficial use 3 or wood ash or coal ash, except for segregated flue gas desulfurization material, used for beneficial use 1, 2, or 4.

(b) Pulp and paper mill ash used for beneficial use 1, 2, 3, or 4.

(c) Mixed wood ash used for beneficial use 1, 2, 3, or 4.

(d) Cement kiln dust used as a flue gas scrubbing reagent or for beneficial use 1, 2, 3, or 4.

(e) Lime kiln dust used as a flue gas scrubbing reagent or for beneficial use 1, 2, 3, or 4.

(f) Stamp sands used for beneficial use 1 or 2.

(g) Foundry sand from ferrous or aluminum foundries used for beneficial use 1, 2, 3, 4, or 5.

(h) Pulp and paper mill material, other than the following, used for beneficial use 3:

(i) Rejects, from screens, cleaners, and mills dispersion equipment, containing more than de minimis amounts of plastic.

(ii) Scrap paper.

(i) Spent media from sandblasting, with uncontaminated sand, newly manufactured, unpainted steel used for beneficial use 1 or 2.

(j) Dewatered concrete grinding slurry from public transportation agency road projects used for beneficial use 1, 2, 3, or 4.

(k) Lime softening residuals from the treatment and conditioning of water for domestic use or from a community water supply used for beneficial use 3 or 4.

(l) Soil washed or otherwise removed from sugar beets that is used for beneficial use 3.

(m) Segregated flue gas desulfurization material used for beneficial use 1 or 3.

(n) Materials and uses approved by the department under section 11553(3) or (4). Approval of materials and uses by the department under section 11553(3) or (4) does not require the use of those materials by any governmental entity or any other person.

(9) "Beverage container" means an airtight metal, glass, paper, or plastic container, or a container composed of a combination of these materials, which, at the time of sale, contains 1 gallon or less of any of the following:

(a) A soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink.

(b) A beer, ale, or other malt drink of whatever alcoholic content.

(c) A mixed wine drink or a mixed spirit drink.

(10) "Bond" means a financial instrument executed on a form approved by the department, including a surety bond from a surety company authorized to transact business in this state, a certificate of deposit, a cash bond, an irrevocable letter of credit, insurance, a trust fund, an escrow account, or a combination of any of these instruments in favor of the department. The owner or operator of a disposal area who is required to establish a bond under another state statute or a federal statute may petition the department to allow such a bond to meet the requirements of this part. The department shall approve a bond established under another state statute or a federal statute if the bond provides equivalent funds and access by the department as other financial instruments allowed by this subsection.

(11) "Captive facility" means a landfill or coal ash impoundment that accepts for disposal, and accepted for disposal during the previous calendar year, only nonhazardous industrial waste generated only by the owner of the landfill or coal ash impoundment.

(12) "Cement kiln dust" means particulate matter collected in air emission control devices serving Portland cement kilns.

(13) "Certificate of deposit" means a negotiable certificate of deposit held by a bank or other financial institution regulated and examined by a state or federal agency, the value of which is fully insured by an agency of the United States government. A certificate of deposit used to fulfill the requirements of this part shall be in the sole name of the department with a maturity date of not less than 1 year and shall be renewed not less than 60 days before the maturity date. An applicant who uses a certificate of deposit as a bond shall

receive any accrued interest on that certificate of deposit upon release of the bond by the department.

(14) "Certified health department" means a city, county, or district department of health that is specifically delegated authority by the department to perform designated activities as prescribed by this part.

(15) "Coal ash", subject to subsection (16), means any of the following:

(a) Material recovered from systems for the control of air pollution from, or the noncombusted residue remaining after, the combustion of coal or coal coke, including, but not limited to, coal bottom ash, fly ash, boiler slag, flue gas desulfurization materials, or fluidized-bed combustion ash.

(b) Residuals removed from coal ash impoundments.

(16) For beneficial use 2, coal ash does not include coal fly ash except for the following if used at nonresidential property:

(a) Class C fly ash under ASTM standard C618-12A.

(b) Class F fly ash under ASTM standard C618-12A if that fly ash forms a pozzolanic-stabilized mixture by being blended with lime, Portland cement, or cement kiln dust.

(c) A combination of class C fly ash and class F fly ash under ASTM standard C618-12A if that combination forms a pozzolanic-stabilized mixture by being blended with lime, Portland cement, or cement kiln dust and is used as a road base, soil stabilizer, or road shoulder material under subsection (4)(b) or (c).

(17) "Coal ash impoundment" means a natural topographic depression, man-made excavation, or diked area that is not a landfill and that is designed to hold and, after October 14, 2015, accepted an accumulation of coal ash and liquids or other materials approved by the department for treatment, storage, or disposal and did not receive department approval of its closure. A coal ash impoundment in existence before October 14, 2015 that receives waste after the effective date of the amendatory act that added this subsection, and that does not have a permit pursuant to part 31, is considered an open dump beginning 2 years after the effective date of the amendatory act that added this subsection unless the owner or operator has completed closure of the coal ash impoundment under section 11519b or obtained an operating license for the coal ash impoundment.

(18) "Coal ash landfill" means a landfill that is used for the disposal of coal ash and may also be used for the disposal of inert materials and construction material used for purposes of meeting the definition of beneficial use 4, or other materials approved by the department.

(19) "Coal bottom ash" means ash particles from the combustion of coal that are too large to be carried in flue gases and that collect on furnace walls or at the bottom of the furnace.

(20) "Collection center" means a tract of land, building, unit, or appurtenance or combination thereof that is used to collect junk motor vehicles and farm implements under section 11530.

(21) "Composting facility" means a facility where composting of yard clippings or other organic materials occurs using mechanical handling techniques such as physical turning, windrowing, or aeration or using other management techniques approved by the director.

(22) "Consistency review" means evaluation of the administrative and technical components of an application for a permit or license or evaluation of operating conditions in the course of inspection, for the purpose of determining consistency with the requirements of this part, rules promulgated under this part, and approved plans and specifications.

(23) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of constituents, as defined in a facility's approved hydrogeological monitoring plan, released into the environment from a disposal area, or the taking of other actions related to the release as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources that is consistent with 42 USC 6941 to 6949a and regulations promulgated thereunder.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2004, Act 35, Imd. Eff. Mar. 19, 2004;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11503 Definitions; D to G.**

Sec. 11503. (1) "De minimis" refers to a small amount of material or number of items, as applicable, incidentally commingled with inert material for beneficial use by-products, or incidentally disposed of with other solid waste.

(2) "Department", subject to section 11554, means the department of environmental quality.

(3) "Director" means the director of the department.

(4) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the environment that is

or may become injurious to the public health, safety, or welfare, or to the environment.

(5) "Disposal area" means 1 or more of the following at a location as defined by the boundary identified in its construction permit or engineering plans approved by the department:

- (a) A solid waste transfer facility.
- (b) An incinerator.
- (c) A sanitary landfill.
- (d) A processing plant.
- (e) A coal ash impoundment.

(f) Any other solid waste handling or disposal facility utilized in the disposal of solid waste. However, a waste diversion center is not a disposal area.

(6) "Diverted waste" means waste that meets all of the following requirements:

- (a) Is generated by households, businesses, or governmental entities.
- (b) Can lawfully be disposed of at a licensed sanitary landfill or municipal solid waste incinerator.
- (c) Is separated from other waste.
- (d) Is 1 or more of the following:
  - (i) Hazardous material.
  - (ii) Liquid waste.
  - (iii) Pharmaceuticals.
  - (iv) Electronics.
  - (v) Batteries.
  - (vi) Light bulbs.
  - (vii) Pesticides.
  - (viii) Thermostats, switches, thermometers, or other devices that contain elemental mercury.
  - (ix) Sharps.
- (x) Other wastes approved by the department that can be readily separated from solid waste for diversion to preferred methods of management and disposal.

(7) "Enforceable mechanism" means a legal method whereby this state, a county, a municipality, or another person is authorized to take action to guarantee compliance with an approved county solid waste management plan. Enforceable mechanisms include contracts, intergovernmental agreements, laws, ordinances, rules, and regulations.

(8) "Escrow account" means an account that is managed by a bank or other financial institution whose account operations are regulated and examined by a federal or state agency and that complies with section 11523b.

(9) "Existing coal ash impoundment" means a coal ash impoundment that received coal ash before the effective date of the amendatory act that added this subsection, and that, as of that date, has not initiated elements of closure that include dewatering, stabilizing residuals, or placement of an engineered cover or otherwise closed pursuant to its part 31 permit or pursuant to R 299.4309 of the part 115 rules and, therefore, is capable of receiving coal ash in the future. A coal ash impoundment that has initiated closure is considered an open dump unless the owner or operator has completed closure of the coal ash impoundment under section 11519b or obtained an operating license for the coal ash impoundment within 2 years after the effective date of the amendatory act that added this subsection.

- (10) "Existing disposal area" means any of the following:
- (a) A disposal area that has in effect a construction permit under this part.
  - (b) A disposal area that had engineering plans approved by the director before January 11, 1979.
  - (c) An industrial waste landfill that was authorized to operate by the director or by court order before October 9, 1993.
  - (d) An industrial waste pile that was located at the site of generation on October 9, 1993.
  - (e) An existing coal ash impoundment.

(11) "Existing landfill unit" or "existing unit" means any landfill unit that received solid waste on or before October 9, 1993.

(12) "Farm" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(13) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(14) "Financial assurance" means the mechanisms used to demonstrate that the funds necessary to meet the cost of closure, postclosure maintenance and monitoring, and corrective action will be available whenever they are needed.

(15) "Financial test" means a corporate or local government financial test or guarantee approved for type II

landfills under 42 USC 6941 to 6949a and regulations promulgated thereunder. An owner or operator may use a single financial test for more than 1 facility. Information submitted to the department to document compliance with the test shall include a list showing the name and address of each facility and the amount of funds assured by the test for each facility. For purposes of the financial test, the owner or operator shall aggregate the sum of the closure, postclosure, and corrective action costs it seeks to assure with any other environmental obligations assured by a financial test under state or federal law.

(16) "Flue gas desulfurization material" means the material recovered from air pollution control systems that capture sulfur dioxide from the combustion of wood, coal, or fossil fuels, or other combustible materials, if the other combustible materials constitute less than 50% by weight of the total material combusted and the department determines in writing that the other combustible materials do not materially affect the character of the residue. Flue gas desulfurization material includes synthetic gypsum.

(17) "Food processing residuals" means any of the following:

(a) Residuals of fruits, vegetables, aquatic plants, or field crops.

(b) Otherwise unusable parts of fruits, vegetables, aquatic plants, or field crops from the processing thereof.

(c) Otherwise unusable food products that do not meet size, quality, or other product specifications and that were intended for human or animal consumption.

(18) "Foundry sand" means silica sand used in the metal casting process, including binding material or carbonaceous additives, from ferrous or nonferrous foundries.

(19) "GAAMPS" means the generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(20) "Garbage" means rejected food wastes including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that results from the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetable matter.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11504 Definitions; H to P.**

Sec. 11504. (1) "Health officer" means a full-time administrative officer of a certified health department.

(2) "Industrial waste" means solid waste that is generated by manufacturing or industrial processes and that is not a hazardous waste regulated under part 111.

(3) "Industrial waste landfill" means a landfill that is used for the disposal of any of the following, as applicable:

(a) Industrial waste that has been characterized for hazard and that has been determined to be nonhazardous under part 111.

(b) If the landfill is an existing disposal area, nonhazardous solid waste that originates from an industrial site.

(4) "Inert material" means any of the following:

(a) Rock.

(b) Trees, stumps, and other similar land-clearing debris, if all of the following conditions are met:

(i) The debris is buried on the site of origin or another site, with the approval of the owner of the site.

(ii) The debris is not buried in a wetland or floodplain.

(iii) The debris is placed at least 3 feet above the groundwater table as observed at the time of placement.

(iv) The placement of the debris does not violate federal, state, or local law or create a nuisance.

(c) Uncontaminated excavated soil or dredged sediment. Excavated soil or dredged sediment is considered uncontaminated if it does not contain more than de minimis amounts of solid waste and 1 of the following applies:

(i) The soil or sediment is not contaminated by a hazardous substance as a result of human activity. Soil or sediment that naturally contains elevated levels of hazardous substances above unrestricted residential or any other part 201 generic soil cleanup criteria is not considered contaminated for purposes of this subdivision. A soil or sediment analysis is not required under this subparagraph if, based on past land use, there is no reason to believe that the soil or sediment is contaminated.

(ii) For any hazardous substance that could reasonably be expected to be present as a result of past land use and human activity, the soil or sediment does not exceed the background concentration, as that term is defined

in part 201.

(iii) For any hazardous substance that could reasonably be expected to be present as a result of past land use and human activity, the soil or sediment falls below part 201 generic residential soil direct contact cleanup criteria and hazardous substances in leachate from the soil or sediment, using, at the option of the generator, EPA method 1311, 1312, or any other leaching protocol approved by the department, fall below part 201 generic residential health based groundwater drinking water values or criteria, and the soil or sediment would not cause a violation of any surface water quality standard established under part 31 at the area of placement, disposal, or use.

(d) Excavated soil from a site of environmental contamination, corrective action, or response activity if the soil is not a listed hazardous waste under part 111 and if hazardous substances in the soil do not exceed generic soil cleanup criteria for unrestricted residential use as defined in part 201 or background concentration as defined in part 201, as applicable.

(e) Construction brick, masonry, pavement, or broken concrete that is reused for fill, rip rap, slope stabilization, or other construction, if all of the following conditions are met:

(i) The use of the material does not violate section 3108, part 301, or part 303.

(ii) The material is not materially contaminated. Typical surface oil staining on pavement and concrete from driveways, roadways, and parking lots is not material contamination. Material covered in whole or in part with lead-based paint is materially contaminated.

(iii) The material does not include exposed reinforcing bars.

(f) Portland cement clinker produced by a cement kiln using wood, fossil fuels, or solid waste as a fuel or feedstock, but not including cement kiln dust generated in the process.

(g) Asphalt pavement or concrete pavement that meets all of the following requirements:

(i) Has been removed from a public right-of-way.

(ii) Has been stockpiled or crushed for reuse as aggregate material.

(iii) Does not include exposed reinforcement bars.

(h) Cuttings, drilling materials, and fluids used to drill or complete a well installed pursuant to part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771, if the location of the well is not a facility under part 201.

(i) Any material determined by the department under section 11553(5) or (6) to be an inert material, either for general use or for a particular use.

(5) "Insurance" means insurance that conforms to the requirements of 40 CFR 258.74(d) provided by an insurer who has a certificate of authority from the director of insurance and financial services to sell this line of coverage. An applicant for an operating license shall submit evidence of the required coverage by submitting both of the following to the department:

(a) A certificate of insurance that uses wording approved by the department.

(b) A certified true and complete copy of the insurance policy.

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

(7) "Lateral expansion" means a horizontal expansion of the solid waste boundary of any of the following:

(a) A landfill, other than a coal ash landfill, if the expansion is beyond the limit established in a construction permit or engineering plans approved by the solid waste control agency before January 11, 1979.

(b) A coal ash landfill, if the expansion is beyond the limit established in a construction permit issued after the effective date of the amendatory act that added this subsection or the horizontal limits of coal ash in place on or before October 14, 2015.

(c) A coal ash impoundment, if the expansion is beyond the limit established in a construction permit or the horizontal limits of coal ash in place on or before October 14, 2015.

(8) "Letter of credit" means an irrevocable letter of credit that complies with 40 CFR 258.74(c).

(9) "Lime kiln dust" means particulate matter collected in air emission control devices serving lime kilns.

(10) "Low-hazard industrial waste" means industrial material that has a low potential for groundwater contamination when managed in accordance with this part. The following materials are low-hazard industrial wastes:

(a) Coal ash or wood ash.

(b) Cement kiln dust.

(c) Pulp and paper mill material.

(d) Scrap wood.

(e) Sludge from the treatment and conditioning of water for domestic use.

(f) Residue from the thermal treatment of petroleum contaminated soil, media, or debris.

(g) Sludge from the treatment and conditioning of water from a community water supply.

(h) Foundry sand.

- (i) Mixed wood ash, scrap wood ash, pulp and paper mill ash.
- (j) Street cleanings.
- (k) Asphalt shingles.
- (l) New construction or production scrap drywall.
- (m) Chipped or shredded tires.
- (n) Copper slag.
- (o) Copper stamp sands.
- (p) Dredge material from nonremedial activities.
- (q) Flue gas desulfurization material.
- (r) Dewatered grinding slurry generated from public transportation agency road projects.
- (s) Any material determined by the department under section 11553(7) to be a low-hazard industrial waste.
- (11) "Low-hazard-potential coal ash impoundment" means a coal ash impoundment that is a diked surface impoundment, the failure or misoperation of which is expected to result in no loss of human life and low economic or environmental losses principally limited to the impoundment owner's property.
- (12) "Medical waste" means that term as it is defined in section 13805 of the public health code, 1978 PA 368, MCL 333.13805.
- (13) "Mixed wood ash" means the material recovered from air pollution control systems for, or the noncombusted residue remaining after, the combustion of any combination of wood, scrap wood, railroad ties, or tires, if railroad ties composed less than 35% by weight of the total combusted material and tires composed less than 10% by weight of the total combusted material.
- (14) "Municipal solid waste incinerator" means an incinerator that is owned or operated by any person, and meets all of the following requirements:
  - (a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under part 111.
  - (b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to ensure that the incinerator receives and burns only waste referred to in subdivision (a).
  - (c) The incinerator meets the requirements of this part and the rules promulgated under this part.
  - (d) The incinerator is not an industrial furnace as defined in 40 CFR 260.10.
  - (e) The incinerator is not an incinerator that receives and burns only medical waste or only waste produced at 1 or more hospitals.
- (15) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.
- (16) "New coal ash impoundment" means a coal ash impoundment that first receives coal ash after the effective date of the amendatory act that added this subsection.
- (17) "New disposal area" means a disposal area that requires a construction permit under this part and includes all of the following:
  - (a) A disposal area, other than an existing disposal area, that is proposed for construction.
  - (b) For a landfill, a lateral expansion, vertical expansion, or other expansion that results in an increase in the landfill's design capacity.
  - (c) A new coal ash impoundment, or a lateral expansion of a coal ash impoundment beyond the placement of waste as of October 14, 2015.
  - (d) For a disposal area other than landfills or coal ash impoundments, an enlargement in capacity beyond that indicated in the construction permit or in engineering plans approved before January 11, 1979.
  - (e) For any existing disposal area, an alteration of the disposal area to a different disposal area type than had been specified in the previous construction permit application or in engineering plans that were approved by the director or his or her designee before January 11, 1979.
- (18) "Nonresidential property" means property not used or intended to be used for any of the following:
  - (a) A child day care center.
  - (b) An elementary school.
  - (c) An elder care and assisted living center.
  - (d) A nursing home.
  - (e) A single-family or multifamily dwelling unless the dwelling is part of a mixed use development and all dwelling units and associated outdoor residential use areas are located above the ground floor.
- (19) "Part 115 rules" means R 299.4101 to R 299.4922 of the Michigan Administrative Code including any amendments to or replacements of those rules.
- (20) "Perpetual care fund" means a trust or escrow account or perpetual care fund bond provided for in

section 11525.

(21) "Perpetual care fund bond" means a surety bond, an irrevocable letter of credit, or a combination of these instruments in favor of and on a form approved by the department by which a perpetual care fund is established.

(22) "Pulp and paper mill ash" means the material recovered from air pollution control systems for, or the noncombusted residue remaining after, the combustion of any combination of coal, wood, pulp and paper mill material, wood or biomass fuel pellets, scrap wood, railroad ties, or tires, from a boiler, power plant, or furnace at a pulp and paper mill, if railroad ties composed less than 35% by weight of the total combusted material and tires composed less than 10% by weight of the total combusted material.

(23) "Pulp and paper mill material" means all of the following materials if generated at a facility that produces pulp or paper:

(a) Wastewater treatment sludge, including wood fibers, minerals, and microbial biomass.

(b) Rejects from screens, cleaners, and mills.

(c) Bark, wood fiber, and chips.

(d) Scrap paper.

(e) Causticizing residues, including lime mud and grit and green liquor dregs.

(f) Any material that the department determines has characteristics that are similar to any of the materials listed in subdivisions (a) to (e).

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11505 Definitions; R, S.**

Sec. 11505. (1) "Recyclable materials" means source separated materials, site separated materials, high grade paper, glass, metal, plastic, aluminum, newspaper, corrugated paper, yard clippings, and other materials that may be recycled or composted.

(2) "Regional solid waste management planning agency" means the regional solid waste planning agency designated by the governor pursuant to 42 USC 6946.

(3) "Resource recovery facility" means machinery, equipment, structures, or any parts or accessories of machinery, equipment, or structures, installed or acquired for the primary purpose of recovering materials or energy from the waste stream.

(4) "Response activity" means an activity that is necessary to protect the public health, safety, welfare, or the environment, and includes, but is not limited to, evaluation, cleanup, removal, containment, isolation, treatment, monitoring, maintenance, replacement of water supplies, and temporary relocation of people.

(5) "Rubbish" means nonputrescible 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.

(6) "Salvaging" means the lawful and controlled removal of reusable materials from solid waste.

(7) "Sanitary landfill" means a type of disposal area consisting of 1 or more landfill units and the active work areas associated with those units. Sanitary landfills are classified as 1 of the following types of landfills:

(a) A type II landfill, which is a municipal solid waste landfill and includes a municipal solid waste incinerator ash landfill.

(b) A type III landfill, which is any landfill that is not a municipal solid waste landfill or hazardous waste landfill and includes all of the following:

(i) A construction and demolition waste landfill.

(ii) An industrial waste landfill.

(iii) A landfill that accepts waste other than household waste, municipal solid waste incinerator ash, or hazardous waste from conditionally exempt small quantity generators.

(iv) A coal ash landfill.

(v) An existing coal ash impoundment that is closed or is actively being closed as a landfill pursuant to R 299.4309 of the part 115 rules.

(8) "Scrap wood" means wood or wood product that is 1 or more of the following:

(a) Plywood, particle board, pressed board, oriented strand board, fiberboard, resonated wood, or any other wood or wood product mixed with glue, resins, or filler.



(b) Wood or wood product treated with creosote or pentachlorophenol.

(c) Any wood or wood product designated as scrap wood in rules promulgated by the department.

(9) "Sharps" means that term as defined in section 13807 of the public health code, 1978 PA 368, MCL 333.13807.

(10) "Site separated material" means glass, metal, wood, paper products, plastics, rubber, textiles, garbage, or any other material approved by the department that is separated from solid waste for the purpose of recycling or conversion into raw materials or new products.

(11) "Slag" means the nonmetallic product resulting from melting or smelting operations for iron or steel.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11506 Definitions; S to Y.**

Sec. 11506. (1) "Solid waste" means garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, municipal and industrial sludges, solid commercial waste, solid industrial waste, and animal waste. However, solid waste does not include the following:

(a) Human body waste.

(b) Medical waste.

(c) Organic waste generated in the production of livestock and poultry.

(d) Liquid waste.

(e) Ferrous or nonferrous scrap directed to a scrap metal processor or to a reuser of ferrous or nonferrous products.

(f) Slag or slag products directed to a slag processor or to a reuser of slag or slag products.

(g) Sludges and ashes managed as recycled or nondetrimental materials appropriate for agricultural or silvicultural use pursuant to a plan approved by the department.

(h) The following materials that are used as animal feed, or are applied on, or are composted and applied on, farmland or forestland for an agricultural or silvicultural purpose at an agronomic rate consistent with GAAMPS:

(i) Food processing residuals and garbage.

(ii) Precipitated calcium carbonate from sugar beet processing.

(iii) Wood ashes resulting solely from a source that burns only wood that is untreated and inert.

(iv) Lime from kraft pulping processes generated prior to bleaching.

(v) Aquatic plants.

(i) Materials approved for emergency disposal by the department.

(j) Source separated materials.

(k) Site separated material.

(l) Coal ash, when used under any of the following circumstances:

(i) As a component of concrete, grout, mortar, or casting molds, if the coal ash does not have more than 6% unburned carbon.

(ii) As a raw material in asphalt for road construction, if the coal ash does not have more than 12% unburned carbon and passes Michigan test method for water asphalt preferential test, MTM 101, as set forth in the state transportation department's manual for the Michigan test methods (MTM).

(iii) As aggregate, road material, or building material that in ultimate use is or will be stabilized or bonded by cement, limes, or asphalt, or itself act as a bonding agent. To be considered to act as a bonding agent, the coal ash must have at least 10% available lime.

(iv) As a road base or construction fill that is placed at least 4 feet above the seasonal groundwater table and covered with asphalt, concrete, or other material approved by the department.

(m) Inert material.

(n) Soil that is washed or otherwise removed from sugar beets, has not more than 55% moisture content, and is registered as a soil conditioner under part 85. Any testing required to become registered under part 85 is the responsibility of the generator.

(o) Soil that is relocated under section 20120c.

(p) Diverted waste that is managed through a waste diversion center.

(q) Beneficial use by-products.

(r) Coal bottom ash, if substantially free of fly ash or economizer ash, when used as cold weather road

abrasive.

(s) Stamp sands when used as cold weather road abrasive in the Upper Peninsula by any of the following:

(i) A public road agency.

(ii) Any other person pursuant to a plan approved by a public road agency.

(t) Any material that is reclaimed or reused in the process that generated it.

(u) Any secondary material that, as specified in or determined pursuant to 40 CFR part 241, is not a solid waste when combusted.

(v) Other wastes regulated by statute.

(2) "Solid waste hauler" means a person who owns or operates a solid waste transporting unit.

(3) "Solid waste processing plant" means a tract of land, building, unit, or appurtenance of a building or unit or a combination of land, buildings, and units that is used or intended for use for the processing of solid waste or the separation of material for salvage or disposal, or both, but does not include a plant engaged primarily in the acquisition, processing, and shipment of ferrous or nonferrous metal scrap, or a plant engaged primarily in the acquisition, processing, and shipment of slag or slag products.

(4) "Solid waste transporting unit" means a container, which may be an integral part of a truck or other piece of equipment used for the transportation of solid waste.

(5) "Solid waste transfer facility" means a tract of land, a building and any appurtenances, or a container, or any combination of land, buildings, or containers that is used or intended for use in the rehandling or storage of solid waste incidental to the transportation of the solid waste, but is not located at the site of generation or the site of disposal of the solid waste.

(6) "Source separated material" means any of the following materials if separated at the source of generation and not speculatively accumulated:

(a) Glass, metal, wood, paper products, plastics, rubber, textiles, garbage, or any other material approved by the department that is used for conversion into raw materials or new products. For the purposes of this subdivision, raw materials or new products include, but are not limited to, compost, biogas from anaerobic digestion, synthesis gas from gasification or pyrolysis, or other fuel. This subdivision does not prohibit material from being classified as a renewable energy resource as defined in section 11 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1011.

(b) Scrap wood and railroad ties used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, for production of new wood products, or for other uses approved by the department.

(c) Chipped or whole tires used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, or for other uses approved by the department. This subdivision does not prohibit material from being classified as a renewable energy resource as defined in section 11 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1011.

(d) Recovered paint solids if used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, or if used for other uses approved by the department.

(e) Gypsum drywall generated from the production of wallboard used for stock returned to the production process or for other uses approved by the department.

(f) Flue gas desulfurization gypsum used for production of cement or wallboard or other uses approved by the department.

(g) Asphalt shingles that do not contain asbestos, rolled roofing, or tar paper used as a component in asphalt or used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, or for other uses approved by the department.

(h) Municipal solid waste incinerator ash that meets criteria specified by the department and that is used as daily cover at a disposal facility licensed pursuant to this part.

(i) Utility poles or pole segments reused as poles, posts, or similar uses approved by the department in writing.

(j) Railroad ties reused in landscaping, embankments, or similar uses approved by the department in writing.

(k) Any materials and uses approved by the department under section 11553(8).

(l) Any material determined by the department in writing before September 16, 2014 to be a source separated material.

(7) "Stamp sands" means finely grained crushed rock resulting from mining, milling, or smelting of copper ore and includes native substances contained within the crushed rock and any ancillary material associated with the crushed rock.

(8) "Treated wood" means wood or wood product that has been treated with 1 or more of the following:

(a) Chromated copper arsenate (CCA).

(b) Ammoniacal copper quat (ACQ).

(c) Ammoniacal copper zinc arsenate (ACZA).

(d) Any other chemical designated in rules promulgated by the department.

(9) "Trust fund" means a fund held by a trustee who has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(10) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the Michigan Administrative Code.

(11) "Waste diversion center" means property or a building, or a portion of property or a building, designated for the purpose of receiving or collecting diverted wastes and not used for residential purposes.

(12) "Wood" means trees, branches and associated leaves, bark, lumber, pallets, wood chips, sawdust, or other wood or wood product but does not include scrap wood, treated wood, painted wood or painted wood product, or any wood or wood product that has been contaminated during manufacture or use.

(13) "Wood ash" means any type of ash or slag resulting from the burning of wood.

(14) "Yard clippings" means leaves, grass clippings, vegetable or other garden debris, shrubbery, or brush or tree trimmings, less than 4 feet in length and 2 inches in diameter, that can be converted to compost. Yard clippings do not include stumps, agricultural wastes, animal waste, roots, sewage sludge, or garbage.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 65, Imd. Eff. May 31, 1995;—Am. 1996, Act 392, Imd. Eff. Oct. 3, 1996;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2010, Act 345, Imd. Eff. Dec. 21, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 615, Eff. Mar. 28, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11507 Development of methods for disposal of solid waste; construction and administration of part; exemption of inert material from regulation.**

Sec. 11507. (1) The department and a health officer shall assist in developing and encouraging methods for the disposal of solid waste that are environmentally sound, that maximize the utilization of valuable resources, and that encourage resource conservation including source reduction and source separation.

(2) This part shall be construed and administered to encourage and facilitate the effort of all persons to engage in source separation and site separation of material from solid waste, and other environmentally sound measures to prevent materials from entering the waste stream or which encourage the removal of materials from the waste stream.

(3) The department may exempt from regulation under this part solid waste that is determined by the department to be inert material for uses and in a manner approved by the department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11507a Report on amount of solid waste received by landfill and amount of remaining disposal capacity.**

Sec. 11507a. (1) The owner or operator of a landfill shall annually submit a report to the state and the county and municipality in which the landfill is located that contains information on the amount of solid waste received by the landfill during the year itemized, to the extent possible, by county, state, or country of origin and the amount of remaining disposal capacity at the landfill. Remaining disposal capacity shall be calculated as the permitted capacity less waste in place for any area that has been constructed and is not yet closed plus the permitted capacity for each area that has a permit for construction under this part but has not yet been constructed. The report shall be submitted on a form provided by the department within 45 days following the end of each state fiscal year.

(2) By January 31 of each year, the department shall submit to the legislature a report summarizing the information obtained under subsection (1).

**History:** Add. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 39, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11508 Solid waste management program; certification.**

Sec. 11508. A city, county, or district health department may be certified by the department to perform a solid waste management program. Certification procedures shall be established by the department by rule. The department may rescind certification upon request of the certified health department or after reasonable notice and hearing if the department finds that a certified health department is not performing the program as required.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11509 Construction permit for establishment of disposal area; application; engineering plan; construction permit application fee for landfill; construction permit for solid waste transfer facility, solid waste processing plant, or other disposal area; fees; fee refund; permit denial; resubmission of application with additional information; modification or renewal of permit; multiple permits; disposition of fees.**

Sec. 11509. (1) Except as otherwise provided in section 11529, a person shall not establish a disposal area except as authorized by a construction permit issued by the department pursuant to part 13. In addition, a person shall not establish a disposal area contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued pursuant to this part. A person proposing the establishment of a disposal area shall apply for a construction permit to the department through the health officer. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department.

(2) The application for a construction permit shall contain the name and residence of the applicant, the location of the proposed disposal area, the design capacity of the disposal area, and other information specified by rule. A person may apply to construct more than 1 type of disposal area at the same facility under a single permit. The application shall be accompanied by an engineering plan and a construction permit application fee. A construction permit application for a landfill shall be accompanied by a fee in an amount that is the sum of all of the following fees, as applicable:

(a) For a new sanitary landfill, a fee equal to the following amount:

(i) For a municipal solid waste landfill, \$1,500.00.

(ii) For an industrial waste landfill, \$1,000.00.

(iii) For a type III landfill limited to low hazard industrial waste, \$750.00.

(b) For a lateral expansion of a sanitary landfill, a fee equal to the following amount:

(i) For a municipal solid waste landfill, \$1,000.00.

(ii) For an industrial waste landfill, \$750.00.

(iii) For a type III landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, \$500.00.

(c) For a vertical expansion of an existing sanitary landfill, a fee equal to the following amount:

(i) For a municipal solid waste landfill, \$750.00.

(ii) For an industrial waste landfill, \$500.00.

(iii) For an industrial waste landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, \$250.00.

(d) For a new coal ash impoundment, a fee of \$1,000.00.

(e) For a lateral or vertical expansion of a coal ash impoundment, a fee of \$750.00.

(3) The application for a construction permit for a solid waste transfer facility, a solid waste processing plant, other disposal area, or a combination of these, shall be accompanied by a fee in the following amount:

(a) For a new facility for municipal solid waste, or a combination of municipal solid waste and waste listed in subdivision (b), \$1,000.00.

(b) For a new facility for industrial waste, or construction and demolition waste, \$500.00.

(c) For the expansion of an existing facility for any type of waste, \$250.00.

(4) If an application is returned to the applicant as administratively incomplete, the department shall refund the entire fee. If a permit is denied or an application is withdrawn, the department shall refund 1/2 the amount specified in subsection (3) to the applicant. An applicant for a construction permit, within 12 months after a permit denial or withdrawal, may resubmit the application and the refunded portion of the fee, together with the additional information as needed to address the reasons for denial, without being required to pay an additional application fee.

(5) An application for a modification to a construction permit or for renewal of a construction permit which has expired shall be accompanied by a fee of \$250.00. Increases in final elevations that do not result in an increase in design capacity or a change in the solid waste boundary shall be considered a modification and not a vertical expansion.

(6) A person who applies to permit more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable fees listed in this section.

(7) The department shall deposit permit application fees collected under this section in the solid waste staff account of the solid waste management fund established in section 11550.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11510 Advisory analysis of proposed disposal area; duties of department upon receipt of construction permit application.**

Sec. 11510. (1) Before the submission of a construction permit application for a new disposal area, the applicant shall request a health officer or the department to provide an advisory analysis of the proposed disposal area. However, the applicant, not less than 15 days after the request, and notwithstanding an analysis result, may file an application for a construction permit.

(2) Upon receipt of a construction permit application, the department shall do all of the following:

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

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

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

(d) Conduct a consistency review of the plans of the proposed disposal area to determine if it complies with this part and the rules promulgated under this part. The review shall be made by persons qualified in hydrogeology and sanitary landfill engineering. A written acknowledgment that the application package is in compliance with the requirements of this part and rules promulgated under this part by the persons qualified in hydrogeology and sanitary landfill engineering shall be received before a construction permit is issued. If the consistency review of the site and the plans and the application meet the requirements of this part and the rules promulgated under this part, the department shall issue a construction permit that may contain a stipulation specifically applicable to the site and operation. Except as otherwise provided in section 11542, an expansion of the area of a disposal area, an enlargement in capacity of a disposal area, or an alteration of a disposal area to a different type of disposal area than had been specified in the previous construction permit application constitutes a new proposal for which a new construction permit is required. The upgrading of a disposal area type required by the department to comply with this part or the rules promulgated under this part or to comply with a consent order does not require a new construction permit.

(e) Notify the Michigan aeronautics commission if the disposal area is a sanitary landfill that is a new site or a lateral expansion or vertical expansion of an existing unit proposed to be located within 5 miles of a runway or a proposed runway extension contained in a plan approved by the Michigan aeronautics commission of an airport licensed and regulated by the Michigan aeronautics commission. The department shall make a copy of the application available to the Michigan aeronautics commission. If, after a period of time for review and comment not to exceed 60 days, the Michigan aeronautics commission informs the department that it finds that operation of the proposed disposal area would present a potential hazard to air

navigation and presents the basis for its findings, the department may either recommend appropriate changes in the location, construction, or operation of the proposed disposal area or deny the application for a construction permit. The department shall give an applicant an opportunity to rebut a finding of the Michigan aeronautics commission that the operation of a proposed disposal area would present a potential hazard to air navigation. The Michigan aeronautics commission shall notify the department and the owner or operator of a landfill if the Michigan aeronautics commission is considering approving a plan that would provide for a runway or the extension of a runway within 5 miles of a landfill.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 1998, Act 397, Imd. Eff. Dec. 17, 1998;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11511 Construction permit; approval or denial of issuance; expiration; renewal; fee; additional relevant information; conditions to issuance of construction permit for disposal area.**

Sec. 11511. (1) The department shall notify the clerk of the municipality in which the disposal area is proposed to be located and the applicant of its approval or denial of an application for a construction permit within 10 days after the final decision is made.

(2) A construction permit shall expire 1 year after the date of issuance, unless development under the construction permit is initiated within that year. A construction permit that has expired may be renewed upon payment of a permit renewal fee and submission of any additional relevant information the department may require.

(3) Except as otherwise provided in this subsection, the department shall not issue a construction permit for a disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. The department may issue a construction permit for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for electrical power generation in the absence of an approved county solid waste management plan, upon receipt of a letter of approval from whichever county or counties, group of municipalities, or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 215, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11511a Coal ash landfill, coal ash impoundment, or lateral expansion of landfill or impoundment; standard and location requirements; construction permit; detection monitoring program.**

Sec. 11511a. (1) A new coal ash landfill, a new coal ash impoundment, or a new lateral expansion of a coal ash landfill or impoundment shall comply with the requirements of R 299.4304, R 299.4305, and R 299.4307 to R 299.4317 of the part 115 rules, except that the minimum design standard for a new coal ash landfill, a new coal ash impoundment, or a new lateral expansion of a coal ash landfill or impoundment pursuant to R 299.4307(4) of the part 115 rules shall be solely R 299.4307(4)(b) of the part 115 rules and not R 299.4307(4)(a), (c), or (d) of the part 115 rules.

(2) A new coal ash landfill or coal ash impoundment or a new lateral expansion of a coal ash landfill or coal ash impoundment shall comply with the location requirements of R 299.4411 to R 299.4413 and R 299.4415 to 299.4418 of the part 115 rules, except that a new coal ash landfill or coal ash impoundment or a new lateral expansion of a coal ash landfill or coal ash impoundment shall maintain a permanent minimum clearance from the bottom of the primary liner of not less than 5 feet to the natural groundwater level.

(3) The department shall not issue a construction permit for a new coal ash landfill or new coal ash impoundment or a new lateral expansion of a coal ash landfill or coal ash impoundment unless all of the following apply:

(a) The landfill, impoundment, or expansion, respectively, complies with subsections (1) and (2), as applicable.

(b) The landfill, impoundment, or expansion, respectively, complies with R 299.4306 of the part 115 rules.

(c) The owner or operator has provided to the department a detection monitoring program in a hydrogeological monitoring plan that complies with R 299.4440 to R 299.4445 and R 299.4905 to R 299.4908 of the part 115 rules, as applicable. The waiver described in R 299.4440(2) of the part 115 rules is not available to coal ash impoundments or coal ash landfills. The constituents monitored in the detection monitoring program shall include all of the following:

- (i) Boron.
- (ii) Calcium.
- (iii) Chloride.
- (iv) Fluoride.
- (v) Iron.
- (vi) pH.
- (vii) Sulfate.
- (viii) Total dissolved solids.

(d) R 299.4440(3) and 299.4440(6) of the part 115 rules do not apply to coal ash impoundments or coal ash landfills.

(e) Groundwater sampling related to coal ash impoundments or coal ash landfills shall not be field filtered.

(f) The landfill, impoundment, or expansion, respectively, complies with 1 of the following:

(i) Section 11519b(2) and (4), if applicable.

(ii) A schedule, approved by the department, of remedial measures, including a sequence of actions or operations, that leads to compliance with this part within a reasonable time period but not more than 2 years after the effective date of the amendatory act that added this section.

(4) The constituents listed in this section shall be analyzed by methods specified in "Standard Methods for the Examination of Water and Wastewater, 19th Edition," published by the United States Environmental Protection Agency, or by other methods approved by the director or his or her designee.

**History:** Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Compiler's note:** Former MCL 324.11511a, which pertained to permit to construct, modify, or expand landfill, was repealed by Act 38 of 2004, Eff. Jan 1, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11511b RDDP.**

Sec. 11511b. (1) A person may submit to the department a project abstract for an RDDP. If, based on the project abstract, the director determines that the RDDP will provide beneficial data on alternative landfill design, construction, or operating methods, the person may apply for a construction permit under section 11509, including the renewal or modification of a construction permit, authorizing the person to establish the RDDP.

(2) An RDDP is subject to the same requirements, including, but not limited to, permitting, construction, licensing, operation, closure, postclosure, financial assurance, fees, and sanctions as apply to other type II landfills or landfill units under this part and the rules promulgated under this part, except as provided in this section.

(3) An extension of the processing period for an RDDP construction permit is not subject to the limitations under section 1307.

(4) An application for an RDDP construction permit shall include, in addition to the applicable information required in other type II landfill construction permit applications, all of the following:

(a) A description of the RDDP goals.

(b) Details of the design, construction, and operation of the RDDP as necessary to ensure protection of human health and the environment. The design shall be at least as protective of human health and the environment as other designs that are required under this part and rules promulgated under this part.

(c) A list and discussion of the types of waste that will be disposed of, excluded, or added, including the types and amount of liquids that will be added under subsection (5) and how the addition will benefit the RDDP.

(d) A list and discussion of the types of compliance monitoring and operational monitoring that will be performed.

(e) Specific means to address potential nuisance conditions, including, but not limited to, odors and health concerns as a result of human contact.

(5) The department may authorize the addition of liquids, including, but not limited to, septage waste or

other liquid waste, to solid waste in an RDDP if the applicant has demonstrated that the addition is necessary to accelerate or enhance the biostabilization of the solid waste and is not merely a means of disposal of the liquid. The department may require that the septage waste, or any other liquid waste, added to an RDDP originate within the county where the RDDP is located or any county contiguous to the county where the RDDP is located. If an RDDP is intended to accelerate or enhance biostabilization of solid waste, the construction permit application shall include, in addition to the requirements of subsection (4), all of the following:

(a) An evaluation of the potential for a decreased slope stability of the waste caused by any of the following:

- (i) Increased presence of liquids.
- (ii) Accelerated degradation of the waste.
- (iii) Increased gas pressure buildup.
- (iv) Other relevant factors.

(b) An operations management plan that incorporates all of the following:

(i) A description of and the proportion and expected quantity of all components that are needed to accelerate or enhance biostabilization of the solid waste.

(ii) A description of any solid or liquid waste that may be detrimental to the biostabilization of the solid waste intended to be disposed of or to the RDDP goals.

(iii) An explanation of how the detrimental waste described in subparagraph (ii) will be prevented from being disposed of in cells approved for the RDDP.

(c) Parameters, such as moisture content, stability, gas production, and settlement, that will be used by the department to determine the beginning of the postclosure period for the RDDP under subsection (10).

(d) Information to ensure that the requirements of subsection (6) will be met.

(6) An RDDP shall meet all of the following requirements:

(a) Ensure that added liquids are evenly distributed and that side slope breakout of liquids is prevented.

(b) Ensure that daily cover practices or disposal of low permeability solid wastes does not adversely affect the free movement of liquids and gases within the waste mass.

(c) Include all of the following:

(i) A means to monitor the moisture content and temperature of the waste.

(ii) A leachate collection system of adequate size for the anticipated increased liquid production rates. The design's factor of safety shall take into account the anticipated increased operational temperatures and other factors as appropriate.

(iii) A means to monitor the depth of leachate on the liner.

(iv) An integrated active gas collection system. The system shall be of adequate size for the anticipated methane production rates and to control odors. The system shall be operational before the addition of any material to accelerate or enhance biostabilization of the solid waste.

(7) The owner or operator of an RDDP for which a construction permit has been issued shall submit a report to the director at least once every 12 months on the progress of the RDDP in achieving its goals. The report shall include a summary of all monitoring and testing results, as well as any other operating information specified by the director in the permit or in a subsequent permit modification or operating condition.

(8) A permit for an RDDP shall specify the term of the permit, which shall not exceed 3 years. However, the owner or operator of an RDDP may apply for and the department may grant an extension of the term of the permit, subject to all of the following requirements:

(a) The application to extend the term of the permit must be received by the department at least 90 days before the expiration of the permit.

(b) The application shall include a detailed assessment of the RDDP showing the progress of the RDDP in achieving its goals, a list of problems with the RDDP and progress toward resolving those problems, and other information that the director determines is necessary to accomplish the purposes of this part.

(c) If the department fails to make a final decision within 90 days of receipt of an administratively complete application for an extension of the term of a permit, the term of the permit is extended for 3 years.

(d) An individual extension shall not exceed 3 years, and the total term of the permit with all extensions shall not exceed 21 years.

(9) If the director determines that the overall goals of an RDDP, including, but not limited to, protection of human health or the environment, are not being achieved, the director may order immediate termination of all or part of the operations of the RDDP or may order other corrective measures.

(10) The postclosure period for a facility authorized as an RDDP begins when the department determines that the unit or portion of the unit where the RDDP was authorized has reached a condition similar to the



condition that non-RDDP landfills would reach prior to postclosure. The parameters, such as moisture content, stability, gas production, and settlement, to attain this condition shall be specified in the permit. The perpetual care fund required under section 11525 shall be maintained for the period after final closure of the landfill as specified under section 11525.

(11) The director may authorize the conversion of an RDDP to a full-scale operation if the owner or operator of the RDDP demonstrates to the satisfaction of the director that the goals of the RDDP have been met and the authorization does not constitute a less stringent permitting requirement than is required under subtitle D of the solid waste disposal act, 42 USC 6941 to 6949a.

(12) As used in this section, "RDDP" means a research, development, and demonstration project for a new or existing type II landfill unit or for a lateral expansion of a type II landfill unit.

**History:** Add. 2005, Act 236, Imd. Eff. Nov. 22, 2005;—Am. 2011, Act 215, Imd. Eff. Nov. 10, 2011;—Am. 2016, Act 437, Eff. Apr. 4, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11512 Disposal of solid waste at licensed disposal area; license required to conduct, manage, maintain, or operate disposal area; application; contents; fee; certification; resubmitting application; additional information or corrections; operation of incinerator without operating license; additional fees; operation of coal ash landfill and coal ash impoundment; application; fees; public notice and meeting.**

Sec. 11512. (1) A person shall dispose of solid waste at a disposal area licensed under this part unless a person is permitted by state law or rules promulgated by the department to dispose of the solid waste at the site of generation. Waste placement in existing landfill units shall be consistent with past operating practices or modified practices to ensure good management.

(2) Except as otherwise provided in this section or in section 11529, a person shall not conduct, manage, maintain, or operate a disposal area within this state except as authorized by an operating license issued by the department pursuant to part 13. In addition, a person shall not conduct, manage, maintain, or operate a disposal area contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued under this part. A person who intends to conduct, manage, maintain, or operate a disposal area shall submit a license application to the department through a certified health department. Existing coal ash impoundments are exempt from the licensing requirements of this part through the date that is 2 years after the effective date of the amendatory act that added section 11511a. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department. A person authorized by this part to operate more than 1 type of disposal area at the same facility may apply for a single license.

(3) The application for a license shall contain the name and residence of the applicant, the location of the proposed or existing disposal area, the type or types of disposal area proposed, evidence of bonding, and other information required by rule. In addition, an applicant for a type II landfill shall submit evidence of financial assurance adequate to meet the requirements of section 11523a, the maximum waste slope in the active portion, an estimate of remaining permitted capacity, and documentation on the amount of waste received at the disposal area during the previous license period or expected to be received, whichever is greater. The application shall be accompanied by a fee as specified in subsections (7), (9), and (10).

(4) At the time of application for a license for a disposal area, the applicant shall submit to a health officer or the department a certification under the seal of a licensed professional engineer verifying that the construction of the disposal area has proceeded according to the approved plans. Any applicant for a license for an existing coal ash impoundment is exempt from the preceding requirement of this subsection but, when applying for a license, shall submit documentation in the applicant's possession or control regarding the construction of the impoundment. If construction of the disposal area or a portion of the disposal area is not complete, the department shall require additional construction certification of that portion of the disposal area during intermediate progression of the operation, as specified in section 11516(5).

(5) An applicant for an operating license, within 6 months after a license denial, may resubmit the application, together with additional information or corrections as are necessary to address the reason for denial, without being required to pay an additional application fee.

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

(7) The application for a type II landfill operating license shall be accompanied by the following fee for the 5-year term of the operating license, calculated in accordance with subsection (8):

- (a) Landfills receiving less than 100 tons per day, \$250.00.
- (b) Landfills receiving 100 tons per day or more, but less than 250 tons per day, \$1,000.00.
- (c) Landfills receiving 250 tons per day or more, but less than 500 tons per day, \$2,500.00.
- (d) Landfills receiving 500 tons per day or more, but less than 1,000 tons per day, \$5,000.00.
- (e) Landfills receiving 1,000 tons per day or more, but less than 1,500 tons per day, \$10,000.00.
- (f) Landfills receiving 1,500 tons per day or more, but less than 3,000 tons per day, \$20,000.00.
- (g) Landfills receiving greater than 3,000 tons per day, \$30,000.00.

(8) Type II landfill application fees shall be based on the average amount of waste projected to be received daily during the license period. Application fees for license renewals shall be based on the average amount of waste received in the previous calendar year. Application fees shall be adjusted in the following circumstances:

(a) If a landfill accepts more waste than projected, a supplemental fee equal to the difference shall be submitted with the next license application.

(b) If a landfill accepts less waste than projected, the department shall credit the applicant an amount equal to the difference with the next license application.

(c) A type II landfill that measures waste by volume rather than weight shall pay a fee based on 3 cubic yards per ton.

(d) A landfill used exclusively for municipal solid waste incinerator ash that measures waste by volume rather than weight shall pay a fee based on 1 cubic yard per ton.

(e) If an application is submitted to renew a license more than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/2 the application fee.

(f) If an application is submitted to renew a license more than 6 months but less than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/4 the application fee.

(9) The operating license application for a type III landfill shall be accompanied by a fee of \$2,500.00.

(10) An application for an operating license by a coal ash landfill shall be accompanied by a fee of \$13,000.00. On the anniversary of the issuance of the operating license, while the operating license remains in effect, the coal ash landfill owner or operator shall pay the department a fee of \$13,000.00. If the anniversary of the issuance of the operating license falls on a legal holiday, the annual fee shall be paid on the next business day.

(11) An application for an operating license by a coal ash impoundment shall be accompanied by a fee of \$13,000.00. On the anniversary of the issuance of the operating license, while the operating license remains in effect, the coal ash impoundment owner or operator shall pay the department a fee of \$13,000.00. If the anniversary of the issuance of the operating license falls on a legal holiday, the annual fee shall be paid on the next business day.

(12) The department shall deposit the fees collected under subsections (10) and (11) in the coal ash care fund established in section 11550.

(13) Upon receipt of a license application for either a coal ash impoundment or a coal ash landfill, the department shall do all of the following:

(a) Immediately send notice to the clerk of the municipality where the disposal area is located and the designated regional solid waste management planning agency.

(b) Publish a notice in a newspaper having major circulation in the vicinity of the disposal area.

(14) The notices under subsection (13) shall meet all of the following requirements:

(a) Include a map indicating the location of the disposal area and a description of the disposal area.

(b) Specify the location where the complete application package may be reviewed and where copies may be obtained.

(c) Indicate that the department will accept comments for 45 days after the date of publication of the notice.

(d) Indicate that the department shall hold a public meeting in the area of the disposal area if, within 15 days after the date of publication of the notice, any of the following occur:

(i) A written request for a public meeting is submitted to the department by the applicant or a municipality.

(ii) The department determines that there is a significant public interest in or known public controversy over the application or that for any other reason a public meeting is appropriate.

(15) A public meeting referred to in subsection (14)(d) shall be held after the department makes a preliminary review of the application and all pertinent data and before an operating license is issued or denied. During its review, the department shall consider input provided at the public meeting.

(16) If an application is returned to the applicant as administratively incomplete, the department shall

refund the entire fee. An applicant for a license, within 12 months after a license denial or withdrawal of a license application, may resubmit the application with the additional information as needed to address the reasons for denial, without being required to pay an additional application fee.

(17) The operating license application for a solid waste processing plant, solid waste transfer facility, other disposal area, or combination of these entities shall be accompanied by a fee equal to \$500.00.

(18) Except as provided in subsection (12), the department shall deposit operating license application fees collected under this section in the perpetual care account of the solid waste management fund established in section 11550.

(19) A person who applies for an operating license for more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable application fees listed in this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11512a Issuance of license for coal ash landfill or a coal ash impoundment; requirements.**

Sec. 11512a. (1) The department shall not issue a license to a coal ash landfill or a coal ash impoundment unless the applicant has provided to the department both of the following:

(a) An approved hydrogeological monitoring program that does both of the following:

(i) Complies with R 299.4440 to R 299.4445, if applicable, and R 299.4905 to R 299.4908 of the part 115 rules.

(ii) Includes a detection monitoring program that meets the requirements of section 11511a(3).

(b) All reports and other information required under 40 CFR 257.90 for the preceding 5 years, as applicable. Based on this information, the department shall determine whether any additional licensing requirements are necessary for the coal ash landfill or coal ash impoundment. Any report or other information available on the applicant's website or already submitted to the department is not required to be provided with the application.

(2) The department shall not issue a license to a coal ash landfill unless the applicant has provided to the department a run-on and run-off control system plan that complies with 40 CFR 257.81(c)(1) and was prepared and certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This plan shall be revised every 5 years in compliance with 40 CFR 257.81(c)(4).

(3) The department shall not issue a license to a coal ash impoundment unless the applicant has provided to the department an inflow design flood control system plan that complies with 40 CFR 257.82(c)(1) and was prepared and certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This plan shall be revised every 5 years in compliance with 40 CFR 257.82(c)(4).

(4) The department shall not issue a license to a coal ash landfill or a coal ash impoundment unless that landfill or impoundment complies with section 11511a(3) and, if applicable, section 11519b(4) or a schedule, approved by the department, of remedial measures, including a sequence of actions or operations, that leads to compliance with this part within a reasonable time period but not more than 2 years after the effective date of the amendatory act that added this subsection.

(5) The department shall not issue a license for a coal ash impoundment that is not a low-hazard-potential coal ash impoundment unless the applicant has provided to the department an emergency action plan that complies with 40 CFR 257.74(a)(3) and was prepared and certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules.

**History:** Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11513 Acceptance of solid waste or municipal solid waste incinerator ash for disposal; applicability of subsection (1) to coal ash; enforcement.**

Sec. 11513. (1) A person shall not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the county is explicitly authorized in the approved county solid waste management plan.

(2) Subsection (1) does not apply to coal ash that is accepted for disposal at a captive facility that, after the effective date of the amendatory act that added this subsection, accepts only nonhazardous industrial waste generated only by the owner of the landfill or coal ash impoundment or its corporate affiliates.

(3) The department shall take action to enforce this section within 30 days of obtaining knowledge of a violation of this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11514 Promotion of recycling and reuse of materials; electronics recycling; materials prohibited from disposal in landfill; disposal of yard clippings; report.**

Sec. 11514. (1) Optimizing recycling opportunities, including electronics recycling opportunities, and the reuse of materials shall be a principal objective of the state's solid waste management plan. Recycling and reuse of materials, including the reuse of materials from electronic devices, are in the best interest of promoting the public health and welfare. The state shall develop policies and practices that promote recycling and reuse of materials and, to the extent practical, minimize the use of landfilling as a method for disposal of its waste. Policies and practices that promote recycling and reuse of materials, including materials from electronic devices, will conserve raw materials, conserve landfill space, and avoid the contamination of soil and groundwater from heavy metals and other pollutants.

(2) A person shall not knowingly deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, knowingly permit disposal in the landfill of, any of the following:

(a) Medical waste, unless that medical waste has been decontaminated or is not required to be decontaminated but is packaged in the manner required under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(b) More than a de minimis amount of open, empty, or otherwise used beverage containers.

(c) More than a de minimis number of whole motor vehicle tires.

(d) More than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i).

(3) A person shall not deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, permit disposal in the landfill of, any of the following:

(a) Used oil as defined in section 16701.

(b) A lead acid battery as defined in section 17101.

(c) Low-level radioactive waste as defined in section 2 of the low-level radioactive waste authority act, 1987 PA 204, MCL 333.26202.

(d) Regulated hazardous waste as defined in R 299.4104 of the Michigan administrative code.

(e) Bulk or noncontainerized liquid waste or waste that contains free liquids, unless the waste is 1 of the following:

(i) Household waste other than septage waste.

(ii) Leachate or gas condensate that is approved for recirculation.

(iii) Septage waste or other liquids approved for beneficial addition under section 11511b.

(f) Sewage.

(g) PCBs as defined in 40 CFR 761.3.

(h) Asbestos waste, unless the landfill complies with 40 CFR 61.154.

(4) A person shall not knowingly deliver to a municipal solid waste incinerator for disposal, or, if the person is an owner or operator of a municipal solid waste incinerator, knowingly permit disposal in the incinerator of, more than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i). The department shall post, and a solid waste hauler that disposes of solid waste in a municipal solid waste incinerator shall provide its customers with, notice of the prohibitions of this subsection in the same manner as provided in section 11527a.

(5) If the department determines that a safe, sanitary, and feasible alternative does not exist for the disposal in a landfill or municipal solid waste incinerator of any items described in subsection (2) or (4), respectively, the department shall submit a report setting forth that determination and the basis for the determination to the standing committees of the senate and house of representatives with primary responsibility for solid waste issues.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 34, Imd. Eff. Mar. 29, 2004;—Am. 2005, Act 243, Imd. Eff. Nov. 22, 2005;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11514b Disposal of certain technologically enhanced naturally occurring radioactive material (TENORM) in type II landfill prohibited; annual report; disposal requirements; TENORM defined.**

Sec. 11514b. (1) A person shall not deliver to a type II landfill in this state for disposal and the owner or operator of a type II landfill shall not permit disposal in the landfill of technologically enhanced naturally occurring radioactive material with any of the following:

(a) A concentration of radium-226 more than 50 picocuries per gram.

(b) A concentration of radium-228 more than 50 picocuries per gram.

(c) A concentration of lead-210 more than 260 picocuries per gram.

(2) The owner or operator of a type II landfill shall not permit a delivery of TENORM for disposal at the landfill unless the generator has provided the following information in writing to the owner or operator of the landfill:

(a) The concentrations of radium-226, radium-228, lead-210, and any other radionuclide identified using gamma spectroscopy, or an equivalent analytical method, in the TENORM based on techniques for representative sampling and waste characterization approved by the department.

(b) An estimate of the total mass of the TENORM.

(c) An estimate of the total radium-226 activity, the total radium-228 activity, and the total lead-210 activity of the TENORM.

(d) The proposed date of delivery.

(3) The department may test TENORM proposed to be delivered to a landfill.

(4) The owner or operator of a type II landfill shall submit to the department an annual report that summarizes the information obtained under subsection (2) for all TENORM disposed at the landfill during the previous state fiscal year.

(5) The owner or operator of a type II landfill that disposes of TENORM with a concentration of radium-226 more than 25 picocuries per gram, a concentration of radium-228 more than 25 picocuries per gram, or a concentration of lead-210 more than 25 picocuries per gram shall do all of the following:

(a) Ensure that all TENORM is deposited at least 10 feet below the bottom of the future landfill cap.

(b) Maintain records of the location and elevation of TENORM disposed of at the landfill.

(c) Conduct a monitoring program that complies with all of the following:

(i) Radiological monitoring of site workers and at the landfill property boundary are conducted as specified in the license.

(ii) Radium-226, radium-228, and lead-210 are included among the parameters analyzed in leachate and groundwater at the frequency specified in the license.

(iii) Results of all monitoring required under this subsection are included in the environmental monitoring reports required under rules promulgated under this part and the facility operating license.

(6) As used in this section, "technologically enhanced naturally occurring radioactive material" or "TENORM" means naturally occurring radioactive material whose radionuclide concentrations have been increased as a result of human practices. TENORM does not include any of the following:

(a) Source material, as defined in section 11 of the atomic energy act of 1954, 42 USC 2014, and its progeny in equilibrium.

(b) Material with concentrations of radium-226, radium-228, and lead-210 each less than 5 picocuries per gram.

**History:** Add. 2018, Act 688, Eff. Mar. 28, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11515 Inspection of site; compliance; hydrogeologic monitoring program as condition to licensing landfill facility; determining course of action; revocation or denial of license; issuance of timetable or schedule.**

Sec. 11515. (1) Upon receipt of a license application, the department or a health officer or an authorized representative of a health officer shall inspect the site and determine if the proposed operation complies with this part and the rules promulgated under this part.

(2) The department shall not license a landfill facility or coal ash impoundment operating without an

approved hydrogeologic monitoring program until the department receives a hydrogeologic monitoring program and the results of the program. The department shall use this information in conjunction with other information required by this part or the rules promulgated under this part to determine a course of action regarding licensing of the facility consistent with section 4005 of subtitle D of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6945, and with this part and the rules promulgated pursuant to this part. In deciding a course of action, the department shall consider, at a minimum, the health hazards, environmental degradation, and other public or private alternatives. The department may do any of the following:

- (a) Revoke a license.
- (b) Deny a license to a coal ash impoundment that has not been previously licensed under this part.
- (c) Issue a timetable or schedule to provide for compliance for the landfill or coal ash impoundment, specifying a schedule of remedial measures, including a sequence of actions or operations, which leads to compliance with this part within a reasonable time period but not more than 1 year.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11516 Final decision on license application; time; effect of failure to make final decision; expiration and renewal of operating license; fee; entry on private or public property; inspection or investigation; conditions to issuance of operating license for new disposal area; issuance of license as authority to accept waste for disposal.**

Sec. 11516. (1) The department shall conduct a consistency review before making a final decision on a license application. The department shall notify the clerk of the municipality in which the disposal area is located and the applicant of its approval or denial of a license application within 10 days after the final decision is made.

(2) An operating license shall expire 5 years after the date of issuance. An operating license may be renewed before expiration upon payment of a renewal application fee specified in section 11512(8) if the licensee is in compliance with this part and the rules promulgated under this part.

(3) The issuance of the operating license under this part empowers the department or a health officer or an authorized representative of a health officer to enter at any reasonable time, pursuant to law, in or upon private or public property licensed under this part for the purpose of inspecting or investigating conditions relating to the storage, processing, or disposal of any material.

(4) Except as otherwise provided in this subsection, the department shall not issue an operating license for a new disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. This subsection does not prohibit the issuance of a license for a captive facility that is a coal ash impoundment or a coal ash landfill in the absence of an approved county solid waste management plan, upon receipt of a letter of approval from whichever county or counties, group of municipalities, or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

(5) Issuance of an operating license by the department authorizes the licensee to accept waste for disposal in certified portions of the disposal area for which a bond was established under section 11523 and, for type II landfills, for which financial assurance was demonstrated under section 11523a. If the construction of a portion of a landfill licensed under this section is not complete at the time of license application, the owner or operator of the landfill shall submit a certification under the seal of a licensed professional engineer verifying that the construction of that portion of the landfill has proceeded according to the approved plans at least 60 days prior to the anticipated date of waste disposal in that portion of the landfill. If the department does not deny the certification within 60 days of receipt, the owner or operator may accept waste for disposal in the certified portion. In the case of a denial, the department shall issue a written statement stating the reasons why the construction or certification is not consistent with this part or rules promulgated under this part or the approved plans.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11517 Plan for program reducing incineration of noncombustible materials and dangerous combustible materials and other hazardous by-products; approval or disapproval; considerations; modifications; revised plan; implementation; operation without approved plan.**

Sec. 11517. (1) Within 9 months after the completion of construction of a municipal solid waste incinerator, the owner or operator of a municipal solid waste incinerator shall submit a plan to the department for a program that, to the extent practicable, reduces the incineration of noncombustible materials and dangerous combustible materials and their hazardous by-products at the incinerator. The department shall approve or disapprove the plan submitted under this subsection within 30 days after receiving it. In reviewing the plan, the department shall consider the current county solid waste management plan, available markets for separated materials, disposal alternatives for the separated materials, and collection practices for handling such separated materials. If the department disapproves a plan, the department shall notify the owner or operator submitting the plan of this fact, and shall provide modifications that, if included, would result in the plan's approval. If the department disapproves a plan, the owner or operator of a municipal solid waste incinerator shall within 30 days after receipt of the department's disapproval submit a revised plan that addresses all of the modifications provided by the department. The department shall approve or disapprove the revised plan within 30 days after receiving it, and approval of the revised plan shall not be unreasonably withheld.

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

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11518 Sanitary landfill; coal ash impoundment; instrument imposing restrictive covenant on land; filing; contents of covenant; authorization; special exemption; construction of part.**

Sec. 11518. (1) At the time a disposal area that is a sanitary landfill is licensed, an instrument that imposes a restrictive covenant upon the land involved shall be executed by all of the owners of the tract of land upon which the landfill is to be located and the department. If the land involved is state owned, the state administrative board shall execute the covenant on behalf of the state. The instrument imposing the restrictive covenant shall be filed for record by the department or a health officer in the office of the register of deeds of the county, or counties, in which the facility is located. The covenant shall state that the land described in the covenant has been or will be used as a landfill and that neither the property owners, their servants, agents, or employees, nor any of their heirs, successors, lessees, or assigns shall engage in filling, grading, excavating, drilling, or mining on the property during the first 50 years following completion of the landfill without authorization of the department. In giving authorization, the department shall consider the original design, type of operation, material deposited, and the stage of decomposition of the fill. Special exemption from this section may be granted by the department if the lands involved are federal lands or if contracts existing between the landowner and the licensee on January 11, 1979 are not renegotiable.

(2) This part does not prohibit the department from conveying, leasing, or permitting the use of state land for a solid waste disposal area or a resource recovery facility as provided by applicable state law.

(3) When a disposal area that is a coal ash impoundment is licensed under this part, an instrument that imposes a restrictive covenant upon the land involved shall be executed by all of the owners of the tract of land upon which the impoundment is located or is to be located and the department. If the land involved is owned by this state, the state administrative board shall execute the covenant on behalf of this state. The instrument imposing the restrictive covenant shall be filed for record by the department or a health officer in the office of the register of deeds of the county, or counties, in which the disposal area is located. The covenant shall state that the land described in the covenant has been or will be used as a coal ash impoundment and that neither the property owners, their servants, agents, or employees, nor any of their heirs, successors, lessees, or assigns shall engage in filling, grading, excavating, drilling, or mining on the property during the first 50 years following completion of the impoundment without authorization of the department. In giving authorization, the department shall consider the original design, type of operation, material

deposited, and any removal of the materials as part of the closure of the impoundment.

(4) An industrial waste landfill may accept industrial waste of different types and from different generators, but shall not accept hazardous waste generated by conditionally exempt small quantity generators.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11519 Specifying reasons for denial of construction permit or operating license; cease and desist order; grounds for order revoking, suspending, or restricting permit or license; contested case hearing; judicial review; inspection; report; copies; violation of part or rules; summary suspension of permit or license.**

Sec. 11519. (1) The department shall specify, in writing, the reasons for denial of a construction permit or an operating license, further specifying those particular sections of this part or rules promulgated under this part that may be violated by granting the application and the manner in which the violation may occur.

(2) The health officer or department may issue a cease and desist order specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part or may establish a consent agreement specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part to a person who establishes, constructs, conducts, manages, maintains, or operates a disposal area without a permit or license or to a person who holds a permit or license but establishes, constructs, conducts, manages, maintains, or operates a disposal area contrary to an approved solid waste management plan or contrary to the permit or license issued under this part.

(3) The department may issue a final order revoking, suspending, or restricting a permit or license after a contested case hearing as provided in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, if the department finds that the disposal area is not being constructed or operated in accordance with the approved plans, the conditions of a permit or license, this part, or the rules promulgated under this part. A final order issued pursuant to this section is subject to judicial review as provided in Act No. 306 of the Public Acts of 1969. The department or a health officer shall inspect and file a written report not less than 4 times per year for each licensed disposal area. The department or the health officer shall provide the municipality in which the licensed disposal area is located with a copy of each written inspection report if the municipality arranges with the department or the health officer to bear the expense of duplicating and mailing the reports.

(4) The department may issue an order summarily suspending a permit or license if the department determines that a violation of this part or rules promulgated under this part has occurred which, in the department's opinion, constitutes an emergency or poses an imminent risk of injury to the public health or the environment. A determination that a violation poses an imminent risk of injury to the public health shall be made by the department. Summary suspension may be ordered effective on the date specified in the order or upon service of a certified copy of the order on the licensee, whichever is later, and shall remain effective during the proceedings. The proceedings shall be commenced within 7 days of the issuance of the order and shall be promptly determined.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11519a Duties of owner or operator of a coal ash impoundment or a coal ash landfill; compliance with federal regulations; assessment.**

Sec. 11519a. (1) The owner or operator of an existing coal ash impoundment or a coal ash impoundment licensed under this part shall do all of the following:

(a) Comply with R 299.4311 of the part 115 rules.

(b) Ensure that the impoundment is not in violation of part 31 or part 55 and does not create a nuisance.

(c) Comply with the requirements of 40 CFR 257.83, as applicable. The inspection report required by 40 CFR 257.83(b)(2) shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules.

(d) Comply with the requirements of 40 CFR 257.74(a)(2). The hazard potential classification assessment reports shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This assessment shall be revised every 5 years pursuant to 40 CFR 257.74(f)(2).



(e) Maintain in the operating record a history of construction that complies with 40 CFR 257.74(c)(1)(i) to (xi).

(f) Comply with 40 CFR 257.74(d). The periodic structural stability assessment reports shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This assessment shall be revised every 5 years pursuant to 40 CFR 257.74(f)(2).

(g) Comply with 40 CFR 257.74(e). The periodic safety factor assessment reports shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This assessment shall be revised every 5 years pursuant to 40 CFR 257.74(f)(2).

(h) Implement the detection monitoring program required in sections 11511a(3) and 11512a(1)(a).

(i) Comply with requirements of 40 CFR 257.82, as applicable. The inflow design flood control plan shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This plan shall be revised at least every 5 years pursuant to 40 CFR 257.82(c)(4).

(2) The owner or operator of an existing coal ash landfill or coal ash impoundment or a coal ash landfill or impoundment licensed under this part shall do all of the following:

(a) Maintain a fugitive dust control plan that complies with 40 CFR 257.80(b) and is certified by a registered professional engineer pursuant to R 299.4910(9) of the part 115 rules. An annual fugitive dust control report shall be prepared and completed in compliance with 40 CFR 257.80(c).

(b) Maintain an up-to-date operating record in compliance with 40 CFR 257.105.

(c) Maintain an up-to-date publicly accessible internet site in compliance with 40 CFR 257.107.

(3) The owner or operator of an existing coal ash landfill or a coal ash landfill licensed under this part shall comply with both of the following:

(a) The requirements of 40 CFR 257.84, as applicable. The inspection report required by 40 CFR 257.84(b)(2) shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules.

(b) The requirements of 40 CFR 257.81, as applicable. The run-on and run-off control system plan shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This plan shall be revised every 5 years pursuant to 40 CFR 257.81(c)(4).

(4) Within 1 year after the effective date of the amendatory act that added this subsection, the owner or operator of an existing coal ash landfill or existing coal ash impoundment shall assess whether the landfill or impoundment is located in an unstable area as defined in R 299.4409 of the part 115 rules. If the owner or operator determines that the landfill, the impoundment, or a unit thereof is located in an unstable area, the owner or operator shall cease placing coal ash into the landfill, impoundment, or unit and proceed to close the landfill, impoundment, or unit in compliance with this part and the rules promulgated under this part.

**History:** Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11519b Placement of coal ash and associated liquids; assessment monitoring program; response action plan; closure of facility.**

Sec. 11519b. (1) Placement of coal ash and associated liquids into an existing coal ash impoundment or coal ash impoundment licensed under this part is permitted and shall be conducted consistent with good management practices as defined in section 11519a and this section.

(2) If the detection monitoring required in sections 11511a(3), 11512a(1), and 11519a(1)(h) confirms a statistically significant increase over background for 1 or more of the constituents listed in section 11511a(3), the owner and operator of a coal ash landfill or coal ash impoundment shall comply with R 299.4440 and 299.4441 of the part 115 rules, including, as applicable, conducting assessment monitoring and preparation of a response action plan in compliance with R 299.4442 of the part 115 rules. The constituents to be monitored in the assessment monitoring program shall include those listed in section 11511a(3) and all of the following:

(a) Antimony.

(b) Arsenic.

(c) Barium.

(d) Beryllium.

(e) Cadmium.

(f) Chromium.

(g) Cobalt.

(h) Copper.

(i) Lead.

- (j) Lithium.
- (k) Nickel.
- (l) Mercury.
- (m) Molybdenum.
- (n) Selenium.
- (o) Silver.
- (p) Thallium.
- (q) Vanadium.
- (r) Zinc.
- (s) Radium 226 and 228 combined.

(3) The constituents listed in this section shall be analyzed by methods specified in "Standard Methods for the Examination of Water and Wastewater, 19th edition", published by the United States Environmental Protection Agency, or by other methods approved by the director or his or her designee.

(4) If the owner or operator of a coal ash landfill or coal ash impoundment is obligated to prepare a response action plan, the owner or operator shall comply with R 299.4442 to R 299.4445 of the part 115 rules, as applicable.

(5) The owner or operator of a coal ash landfill shall place landfill cover materials that are described in R 299.4304 of the part 115 rules over the entire surface of each portion of the final lift not more than 6 months after the final placement of coal ash within the landfill or landfill unit.

(6) The owner or operator of a coal ash impoundment shall begin to implement closure as described in R 299.4309(7) of the part 115 rules not more than 6 months after the final placement of coal ash within the impoundment and shall diligently pursue the closure. The closure shall be completed in compliance with 40 CFR 257.102(f)(1) and (2).

(7) Coal ash impoundments or coal ash landfills may be closed as a type III landfill pursuant to the applicable rules or by removal of coal ash from the impoundment as described in this part.

(8) If a coal ash impoundment is closed by the date that is 2 years after the effective date of the amendatory act that added this section and the department accepts the certification of the closure, the owner is not required to provide financial assurance under section 11523 or pay into a perpetual care fund under section 11525.

(9) Closure by removal of coal ash under subsection (7) is complete when either of the following requirements are met:

(a) The owner or operator certifies compliance with the requirements of 40 CFR 257.102(c).

(b) The owner or operator certifies that testing confirms that constituent concentrations remaining in the coal ash impoundment or landfill unit and any concentrations of soil or groundwater affected by releases therefrom do not exceed the lesser of the applicable standards adopted by the department pursuant to section 20120a or the groundwater protection standards established pursuant to 40 CFR 257.95(h) and the department accepts the certification or, if the constituent concentrations do exceed those standards, the department has approved a remedy consistent with R 299.4444 and R 299.4445 of the part 115 rules.

(10) Upon completion of the closure by removal under subsection (9), the financial assurance under section 11523 and perpetual care fund under section 11525 shall be terminated, the owner or operator is not required to provide financial assurance or contribute to a perpetual care fund, and any claim to the assurance or fund by the department is terminated and released. The termination and release do not impair the department's authority to require, whether upon completion of closure under subsection (9)(b) or subsequently, financial assurance for corrective action as provided under this act.

**History:** Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11519c Groundwater contamination in unlined coal ash impound; owner or operator duties; "unlined coal ash impoundment" defined.**

Sec. 11519c. (1) If assessment monitoring of an unlined coal ash impoundment confirms the presence of groundwater contamination in excess of maximum contaminant levels in effect as provided in section 6 of the safe drinking water act, 1976 PA 399, MCL 325.1006, or a groundwater protection standard established under 40 CFR 257.95(h), the owner or operator of the coal ash impoundment shall do all of the following:

(a) Notify the department of the confirmation within 14 days.

(b) Cease acceptance of coal ash at the impoundment within 180 days after the confirmation.

(c) Begin to implement closure as described in R 299.4309(7) of the part 115 rules not more than 180 days

after such confirmation and diligently pursue the closure. The closure shall be completed in compliance with 40 CFR 257.102(c), with 40 CFR 257.102(f)(1) and (2), or with 40 CFR 257.103.

(d) Prepare a response action plan in compliance with R 299.4442 of the part 115 rules and submit the response action plan to the department for review and approval. Upon receipt of department approval, the owner or operator shall implement and diligently pursue the response action plan and shall comply with R 299.4443 to 299.4445 of the part 115 rules.

(2) For purposes of this section, "unlined coal ash impoundment" means a coal ash impoundment without a liner as described in 40 CFR 257.70(b) or another construction or system in place that is determined by the department to be as protective as a liner as described in 40 CFR 257.70(b).

**History:** Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11520 Disposition of fees; special fund; disposition of solid waste on private property.**

Sec. 11520. (1) Fees collected by a health officer under this part shall be deposited with the city or county treasurer, who shall keep the deposits in a special fund designated for use in implementing this part. If there is an ordinance or charter provision that prohibits a health officer from maintaining a special fund, the fees shall be deposited and used in accordance with the ordinance or charter provision. Fees collected by the department under this part shall be credited to the general fund of the state.

(2) This part does not prohibit an individual from disposing of solid waste from the individual's own household upon the individual's own land as long as the disposal does not create a nuisance or hazard to health. Solid waste accumulated as a part of an improvement or the planting of privately owned farmland may be disposed of on the property if the method used is not injurious to human life or property and does not unreasonably interfere with the enjoyment of life or property.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11521 Yard clippings; management; means; temporary accumulation; requirements; composting on farm; qualification as registered composting facility; site at which yard clippings are managed.**

Sec. 11521. (1) Yard clippings shall be managed by 1 of the following means:

(a) Composted on the property where the yard clippings are generated.

(b) Temporarily accumulated under subsection (2).

(c) Composted at a composting facility containing not more than 200 cubic yards of yard clippings if decomposition occurs without creating a nuisance.

(d) Composted on a farm as described by subsection (3).

(e) Composted at site that qualifies as a registered composting facility under subsection (4).

(f) Decomposed in a controlled manner using a closed container to create and maintain anaerobic conditions if in compliance with part 55 and otherwise approved by the director under this part.

(g) Composted and used as part of normal operations by a municipal solid waste landfill if the composting and use meet all of the following requirements:

(i) Take place on property described in the landfill construction permit.

(ii) Are described in and consistent with the landfill operation plans.

(iii) Are otherwise in compliance with this act.

(h) Processed at a processing plant in accordance with this part and the rules promulgated under this part.

(i) Disposed of in a landfill or an incinerator, but only if the yard clippings are diseased or infested or are composed of invasive plants, such as garlic mustard, purple loosestrife, or spotted knapweed, that were collected through an eradication or control program, include no more than a de minimis amount of other yard clippings, and are inappropriate to compost.

(2) A person may temporarily accumulate yard clippings at a site not designed for composting if all of the following requirements are met:

(a) The accumulation does not create a nuisance or otherwise result in a violation of this act.

(b) The yard clippings are not mixed with other compostable materials.

(c) No more than 1,000 cubic yards are placed on site unless a greater volume is approved by the

department.

(d) Yard clippings placed on site on or after April 1 but before December 1 are moved to another location and managed as provided in subsection (1) within 30 days after being placed on site. The director may approve a longer time period based on a demonstration that additional time is necessary.

(e) Yard clippings placed on site on or after December 1 but before the next April 1 are moved to another location and managed as provided in subsection (1) by the next April 10 after the yard clippings are placed on site.

(f) The owner or operator of the site maintains and makes available to the department records necessary to demonstrate that the requirements of this subsection are met.

(3) A person may compost yard clippings on a farm if composting does not otherwise result in a violation of this act and is done in accordance with generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474, and if 1 or more of the following apply:

(a) Only yard clippings generated on the farm are composted.

(b) There are not more than 5,000 cubic yards of yard clippings on the farm.

(c) If there are more than 5,000 cubic yards of yard clippings on the farm at any time, all of the following requirements are met:

(i) The farm operation accepts yard clippings generated at a location other than the farm only to assist in management of waste material generated by the farm operation.

(ii) The farm operation does not accept yard clippings generated at a location other than the farm for monetary or other valuable consideration.

(iii) The owner or operator of the farm registers with the department of agriculture on a form provided by the department of agriculture and certifies that the farm operation meets and will continue to meet the requirements of subparagraphs (i) and (ii).

(4) A site qualifies as a registered composting facility if all of the following requirements are met:

(a) The owner or operator of the site registers as a composting facility with the department and reports to the department within 30 days after the end of each state fiscal year the amount of yard clippings and other compostable material composted in the previous state fiscal year. The registration and reporting shall be done on forms provided by the department. The registration shall be accompanied by a fee of \$600.00. The registration is for a term of 3 years. Registration fees collected under this subdivision shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

(b) The site is operated in compliance with the following location restrictions:

(i) If the site is in operation on December 1, 2007, the management or storage of yard clippings, compost, and residuals does not expand from its location on that date to an area that is within the following distances from any of the following features:

(A) 50 feet from a property line.

(B) 200 feet from a residence.

(C) 100 feet from a body of surface water, including a lake, stream, or wetland.

(ii) If the site begins operation after December 1, 2007, the management or storage of yard clippings, compost, and residuals occurs in an area that is not in the 100-year floodplain and is at least the following distances from each of the following features:

(A) 50 feet from a property line.

(B) 200 feet from a residence.

(C) 100 feet from a body of surface water, including a lake, stream, or wetland.

(D) 2,000 feet from a type I or type IIA water supply well.

(E) 800 feet from a type IIB or type III water supply well.

(F) 500 feet from a church or other house of worship, hospital, nursing home, licensed day care center, or school, other than a home school.

(G) 4 feet above groundwater.

(c) Composting and management of the site occurs in a manner that meets all of the following requirements:

(i) Does not violate this act or create a facility as defined in section 20101.

(ii) Unless approved by the department, does not result in more than 5,000 cubic yards of yard clippings and other compostable material, compost, and residuals present on any acre of property at the site.

(iii) Does not result in an accumulation of yard clippings for a period of over 3 years unless the site has the capacity to compost the yard clippings and the owner or operator of the site can demonstrate, beginning in the third year of operation and each year thereafter, unless a longer time is approved by the director, that the amount of yard clippings and compost that is transferred off-site in a calendar year is not less than 75% by

weight or volume, accounting for natural volume reduction, of the amount of yard clippings and compost that was on-site at the beginning of the calendar year.

(iv) Results in finished compost with not more than 1%, by weight, of foreign matter that will remain on a 4 millimeter screen.

(v) If yard clippings are collected in bags other than paper bags, debags the yard clippings by the end of each business day.

(vi) Prevents the pooling of water by maintaining proper slopes and grades.

(vii) Properly manages storm water runoff.

(viii) Does not attract or harbor rodents or other vectors.

(d) The owner or operator maintains, and makes available to the department, all of the following records:

(i) Records identifying the volume of yard clippings and other compostable material accepted by the facility and the volume of yard clippings and other compostable material and of compost transferred off-site each month.

(ii) Records demonstrating that the composting operation is being performed in a manner that prevents nuisances and minimizes anaerobic conditions. Unless other records are approved by the department, these records shall include records of carbon-to-nitrogen ratios, the amount of leaves and the amount of grass in tons or cubic yards, temperature readings, moisture content readings, and lab analysis of finished products.

(5) A site at which yard clippings are managed in accordance with this section, other than a site described in subsection (1)(g), (h) or (i), is not a disposal area, notwithstanding section 11503(5).

(6) Except with respect to subsection (1)(h) and (i), management of yard clippings in accordance with this section is not considered disposal for purposes of section 11538(6).

**History:** Add. 2007, Act 212, Eff. Mar. 26, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11521b Operator of waste diversion center; duties; requirements; disposal; rejection of diverted waste.**

Sec. 11521b. (1) The operator of a waste diversion center shall comply with all of the following requirements:

(a) At least 90%, by volume, of the material collected at the waste diversion center shall consist of diverted waste to be managed at the waste diversion center.

(b) The waste diversion center shall be operated by personnel who are knowledgeable about the safe management of the types of diverted waste that are accepted at the waste diversion center.

(c) The operator shall manage the diverted waste in a manner that prevents the release of any diverted waste or component of diverted waste to the environment.

(d) The operator shall not store diverted waste overnight at the waste diversion center except in a secure location and with adequate containment to prevent any release of diverted wastes.

(e) Within 1 year after diverted waste is collected by the waste diversion center, that diverted waste shall be transported from the waste diversion center to a waste diversion center, recycling facility, or disposal facility that is in compliance with this act, for processing, recycling, or disposal.

(f) The operator shall not process diverted waste except to the extent necessary for the safe and efficient transportation of the diverted waste.

(g) The operator shall record the types and quantities of diverted wastes collected, the period of storage, and where the diverted wastes were transferred, processed, recycled, or disposed of. The operator shall maintain the records for at least 3 years and shall make the records available to the department upon request.

(h) Access to the waste diversion center shall be limited to a time when a responsible individual is on duty.

(i) The area where the diverted waste is accumulated shall be protected, as appropriate for the type of waste, from weather, fire, physical damage, and vandals.

(j) The waste diversion center shall be kept clean and free of litter.

(2) Management of diverted wastes as required by this section is not considered disposal for the purposes of section 11538(6).

(3) The operator of a waste diversion center may reject any diverted waste.

**History:** Add. 2014, Act 24, Imd. Eff. Mar. 4, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11522 Open burning of grass clippings or leaves; open burning of household waste; materials; violation; extension of prohibition to materials not listed in subsection (3); open burning of wooden fruit or vegetable storage bins constructed from untreated lumber; requirements; effect of local ordinance; burning of United States flag.**

Sec. 11522. (1) The open burning of grass clippings or leaves is prohibited in any municipality having a population of 7,500 or more, unless specifically authorized by local ordinance, which ordinance shall be reported to the department of natural resources within 30 days of enactment.

(2) Subsection (1) does not permit a county or municipality to authorize open burning of grass clippings or leaves by an ordinance that would otherwise be prohibited under part 55 or rules promulgated under that part.

(3) Beginning 180 days after the effective date of the amendatory act that added this subsection, a person shall not conduct open burning of household waste that contains plastic, rubber, foam, chemically treated wood, textiles, electronics, chemicals, or hazardous materials.

(4) Sections 11546 and 11549 do not apply to an individual who violates subsection (3) by open burning of waste from that individual's household. Such an individual is responsible for a state civil infraction and is subject to the following:

(a) For a first offense within a 3-year period, a warning by the judge or magistrate.

(b) For a second offense within a 3-year period, a civil fine of not more than \$75.00.

(c) For a third offense within a 3-year period, a civil fine of not more than \$150.00.

(d) For a fourth or subsequent offense within a 3-year period, a civil fine of not more than \$300.00.

(5) Notwithstanding section 5512, the department shall not promulgate or enforce a rule that extends the prohibition under subsection (3) to materials not listed in subsection (3).

(6) This part, part 55, or rules promulgated under this part or part 55 do not prohibit a person from conducting open burning of wooden fruit or vegetable storage bins constructed from untreated lumber if all of the following requirements are met:

(a) The burning is conducted for disease or pest control.

(b) The burning is not conducted at any of the following locations:

(i) Within a priority I area as listed in table 33 or a priority II area as listed in table 34 of R 336.1310 of the Michigan administrative code.

(ii) In a city or village.

(iii) Within 1,400 feet outside the boundary of a city or village.

(7) Subsections (5) and (6) do not authorize open burning that is prohibited by a local ordinance.

(8) A congressionally chartered patriotic organization that disposes of an unserviceable flag of the United States by burning that flag is not subject to regulation or penalty for violating a state law or local ordinance pertaining to open burning of materials or substances.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 102, Imd. Eff. Apr. 19, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11523 Financial assurance; cash bond; interest; reduction in bond; termination; noncompliance with closure and postclosure monitoring and maintenance requirements; expiration or cancellation notice; effect of bankruptcy action; perpetual care fund; alternate financial assurance.**

Sec. 11523. (1) The department shall not issue a license to operate a disposal area unless the applicant has filed, as a part of the application for a license, evidence of the following financial assurance:

(a) Financial assurance established for a type III landfill or a preexisting unit at a type II landfill and until April 9, 1997, existing and new type II landfills shall be in the form of a bond in an amount equal to \$20,000.00 per acre of licensed landfill within the solid waste boundary. However, the amount of the bond shall not be less than \$20,000.00 or more than \$1,000,000.00. Each bond shall provide assurance for the maintenance of the finished landfill site for a period of 30 years after the landfill or any approved portion is completed. In addition to this bond, a perpetual care fund shall be maintained under section 11525.

(b) Financial assurance for a type II landfill that is an existing unit or a new unit shall be in an amount equal to the cost, in current dollars, of hiring a third party, to conduct closure, postclosure maintenance and monitoring, and if necessary, corrective action. An application for a type II landfill that is an existing unit or new unit shall demonstrate financial assurance in accordance with section 11523a.

(c) Financial assurance established for an existing coal ash impoundment shall be in the form of a bond in

an amount equal to \$20,000.00 per acre within the impoundment boundary. However, the amount of the bond shall not be less than \$20,000.00 or more than \$1,000,000.00. The bond shall provide assurance for the maintenance of the finished coal ash impoundment for a period of 30 years after the coal ash impoundment or any approved portion is completed. In addition to the bond, a perpetual care fund shall be maintained under section 11525. For applications for a license to operate submitted to the department after the date that is 2 years after the effective date of the amendatory act that added section 11511a, an applicant that demonstrates that it meets the requirements of R 299.9709 of the Michigan Administrative Code may utilize the financial test under that rule for an amount not exceeding 95% of the closure, postclosure, and corrective action cost estimate.

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

(2) The owner or operator of a landfill may post a cash bond with the department instead of other bonding mechanisms to fulfill the remaining financial assurance requirements of this section. An owner or operator of a disposal area who elects to post cash as a bond shall accrue interest on that bond at the annual rate of 6%, to be accrued quarterly, except that the interest rate payable to an owner or operator shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the owner or operator upon release of the bond by the department. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund and shall be appropriated to the department to be used by the department for administration of this part.

(3) An owner or operator of a disposal area that is not a landfill who has accomplished closure in a manner approved by the department and in accordance with this part and the rules promulgated under this part, may request a 50% reduction in the bond during the 2-year period after closure. At the end of the 2-year period, the owner or operator may request that the department terminate the bond. The department shall approve termination of the bond within 60 days after the request is made if all waste and waste residues have been removed from the disposal area and closure is certified.

(4) The department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the owner or operator fails to comply with the closure and postclosure monitoring and maintenance requirements of this part and the rules promulgated under this part to the extent necessary to correct such violations. At least 7 days before utilizing the bond, the department shall issue a notice of violation or other order that alleges violation of this part or rules promulgated under this part and provide an opportunity for a hearing. This subsection does not apply to a perpetual care fund bond.

(5) Under the terms of a surety bond, letter of credit, insurance policy, or perpetual care fund bond, the issuing institution shall notify both the department and the owner or operator at least 120 days before the expiration date or any cancellation of the bond. If the owner or operator does not extend the effective date of the bond, or establish alternate financial assurance within 90 days after receipt of an expiration or cancellation notice from the issuing institution, all of the following apply:

(a) The department may draw on the bond.

(b) In the case of a perpetual care fund bond, the issuing institution shall deposit the proceeds into the standby trust or escrow account unless the department agrees to the expiration or cancellation of the perpetual care fund bond.

(6) The department shall not issue a construction permit or a new license to operate a disposal area to an applicant that is the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 USC 101 to 1532, or any other predecessor or successor statute.

(7) A person required under this section to provide financial assurance in the form of a bond for a landfill may request a reduction in the bond based upon the amount of the perpetual care fund established under section 11525. A person requesting a bond reduction shall do so on a form consistent with this part and provided by the department. The department shall grant this request unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the bond within 60 days after the request is made. If the department grants a request for a reduced bond, the department shall require a bond in an amount such that for type III landfills, and type II landfills that are preexisting units, the amount of the perpetual care fund plus the amount of the reduced bond equals the maximum amount required in a perpetual care fund in section 11525(2).

(8) The department shall release the bond required by this section if the amount of the perpetual care fund exceeds the amount of the financial assurance required under subsection (1).

(9) Prior to closure of a landfill, if money is disbursed from the perpetual care fund, then the department may require a corresponding increase in the amount of bonding required to be provided if necessary to meet

the requirements of this section.

(10) If an owner or operator of a disposal area fulfills the financial assurance requirements of this part by obtaining a bond, including, but not limited to, a perpetual care fund bond, and the surety company, insurer, trustee, bank, or financial or other institution that issued or holds the bond becomes the subject of a bankruptcy action or has its authority to issue or hold the bond or to act as an escrow agent or trustee suspended or revoked, the owner or operator shall, within 60 days after receiving notice of that event, establish alternate financial assurance under this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11523a Operation of type II landfill.**

Sec. 11523a. (1) Effective April 9, 1997, the department shall not issue a license to operate a type II landfill unless the applicant demonstrates that for any new unit or existing unit at the facility, the combination of the perpetual care fund established under section 11525, bonds, and the financial capability of the applicant as evidenced by a financial test, provides financial assurance in an amount not less than that required by this section. An applicant may utilize a financial test for an amount up to, but not exceeding, 70% of the closure, postclosure, and corrective action cost estimate.

(2) An applicant may demonstrate compliance with this section by submitting evidence, with a form consistent with this part and provided by the department, that the applicant has financial assurance for any existing unit or new unit in an amount equal to or greater than the sum of the following standardized costs:

(a) A standard closure cost estimate. The standard closure cost estimate shall be based upon the sum of the following costs in 1996 dollars, adjusted for inflation and partial closures, if any, as specified in subsections (4) and (5):

(i) A base cost of \$20,000.00 per acre to construct a compacted soil final cover using on-site material.

(ii) A supplemental cost of \$20,000.00 per acre, to install a synthetic cover liner, if required by rules under this part.

(iii) A supplemental cost of \$5,000.00 per acre, if low permeability soil must be transported from off-site to construct the final cover or if a bentonite geocomposite liner is used instead of low permeability soil in a composite cover.

(iv) A supplemental cost of \$5,000.00 per acre, to construct a passive gas collection system in the final cover, unless an active gas collection system has been installed at the facility.

(b) A standard postclosure cost estimate. The standard postclosure cost estimate shall be based upon the sum of the following costs, adjusted for inflation as specified in section 11525(2):

(i) A final cover maintenance cost of \$200.00 per acre per year.

(ii) A leachate disposal cost of \$100.00 per acre per year.

(iii) A leachate transportation cost of \$1,000.00 per acre per year, if leachate is required to be transported off-site for treatment.

(iv) A groundwater monitoring cost of \$1,000.00 per monitoring well per year.

(v) A gas monitoring cost of \$100.00 per monitoring point per year, for monitoring points used to detect landfill gas at or beyond the facility property boundary.

(c) The corrective action cost estimate, if any. The corrective action cost estimate shall be a detailed written estimate, in current dollars, of the cost of hiring a third party to perform corrective action in accordance with this part.

(3) Instead of using some or all of the standardized costs specified in subsection (2), an applicant may estimate the site specific costs of closure or postclosure maintenance and monitoring. A site specific cost estimate shall be a written estimate, in current dollars, of the cost of hiring a third party to perform the activity. For the purposes of this subsection, a parent corporation or a subsidiary of the owner or operator is not a third party. Site specific cost estimates shall be based on the following:

(a) For closure, the cost to close the largest area of the landfill ever requiring a final cover at any time during the active life, when the extent and manner of its operation would make closure the most expensive, in accordance with the approved closure plan. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of structures, land, equipment, or other assets associated with the facility at the time of final closure.

(b) For postclosure, the cost to conduct postclosure maintenance and monitoring in accordance with the



approved postclosure plan for the entire postclosure period.

(4) The owner or operator of a landfill subject to this section shall, during the active life of the landfill and during the postclosure care period, annually adjust the financial assurance cost estimates and corresponding amount of financial assurance for inflation. Cost estimates shall be adjusted for inflation by multiplying the cost estimate by an inflation factor derived from the most recent United States Department of the Interior, Bureau of Reclamation composite index published by the United States Department of Commerce or another index that is more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department. The owner or operator shall document the adjustment on a form consistent with this part as prepared by the department and shall place the documentation in the operating record of the facility.

(5) The owner or operator of a landfill subject to this section may request that the department authorize a reduction in the approved cost estimates and corresponding financial assurance for the landfill by submitting a form consistent with this part and provided by the department certifying completion of any of the following activities:

(a) Partial closure of the landfill. The current closure cost estimate for partially closed portions of a landfill unit may be reduced by 80%, if the maximum waste slope on the unclosed portions of the unit does not exceed 25%. The percentage of the cost estimate reduction approved by the department for the partially closed portion shall be reduced 1% for every 1% increase in the slope of waste over 25% in the active portion. An owner or operator requesting a reduction in financial assurance for partial closure shall enclose with the request a certification under the seal of a licensed professional engineer that certifies both of the following:

(i) That a portion of the licensed landfill unit has reached final grades and has had a final cover installed in compliance with the approved closure plan and rules promulgated under this part.

(ii) The maximum slope of waste in the active portion of the landfill unit at the time of partial closure.

(b) Final closure of the landfill. An owner or operator requesting a cost estimate reduction for final closure shall submit a certification under the seal of a licensed professional engineer that closure of that landfill unit has been fully completed in accordance with the approved closure plan for the landfill. Within 60 days of receiving a certification under this subsection, the department shall perform a consistency review of the submitted certification and do 1 of the following:

(i) Approve the certification and notify the owner or operator that he or she may reduce the closure cost estimate to zero.

(ii) Disapprove the certification and provide the owner or operator with a detailed written statement of the reasons why the department has determined that closure certification has not been conducted in accordance with this part, the rules promulgated under this part, or an approved closure plan.

(c) Postclosure maintenance and monitoring. The owner or operator of a landfill unit who has completed final closure of the unit may request a reduction in the postclosure cost estimate and corresponding financial assurance for 1 year or more of postclosure maintenance and monitoring if the landfill has been monitored and maintained in accordance with the approved postclosure plan. The department shall, within 60 days of receiving a cost estimate reduction request grant written approval or issue a written denial stating the reason for denial. The department shall grant the request and the owner or operator may reduce the postclosure cost estimate to reflect the number of years remaining in the postclosure period unless the department denies the request and the written denial states that the owner or operator has not performed the specific tasks consistent with this part, rules promulgated under this part, and an approved plan.

(6) The owner or operator of a landfill subject to this section may request a reduction in the amount of one or more of the financial assurance mechanisms in place. If the combined value of the remaining financial assurance mechanisms equals the amount required under this section, the department shall approve the request.

(7) An owner or operator requesting that the department approve a financial assurance reduction under subsection (5) or (6) shall do so on a form consistent with this part and provided by the department. The department shall grant written approval or, within 60 days of receiving a financial assurance reduction request, issue a written denial stating the reason for the denial.

**History:** Add. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11523b Trust fund or escrow account.**

Sec. 11523b. (1) The owner or operator of a landfill or coal ash impoundment may establish a trust fund or

escrow account to fulfill the requirements of sections 11523 and 11523a. The trust fund or escrow account shall be executed on a form provided by the department.

(2) Payments into a trust fund or escrow account shall be made annually over the term of the first operating license issued after the effective date of this section. The first payment into a trust fund or escrow account shall be made prior to licensure and shall be at least equal to the portion of the financial assurance requirement to be covered by the trust fund or escrow account divided by the term of the operating license. Subsequent payments shall be equal to the remaining financial assurance requirement divided by the number of years remaining until the license expires.

(3) If the owner or operator of a landfill or coal ash impoundment establishes a trust fund or escrow account after having used one or more alternate forms of financial assurance, the initial payment into the trust fund or escrow account shall be at least the amount the fund would contain if the fund were established initially and annual payments made according to subsection (2).

(4) All earnings and interest from a trust fund or escrow account shall be credited to the fund or account. However, the custodian may be compensated for reasonable fees and costs for his or her responsibilities as custodian. The custodian shall ensure the filing of all required tax returns for which the trust fund or escrow account is liable and shall disburse funds from earnings to pay lawfully due taxes owed by the trust fund or escrow account, without permission of the department.

(5) The custodian shall annually, 30 days preceding the anniversary date of establishment of the fund, furnish to the owner or operator and to the department a statement confirming the value of the fund or account as of the end of that month.

(6) The owner or operator may request that the department authorize the release of funds from a trust fund or escrow account. The department shall grant the request if the owner or operator demonstrates that the value of the fund or account exceeds the owner's or operator's financial assurance obligation. A payment or disbursement from the fund or account shall not be made without the prior written approval of the department.

(7) The owner or operator shall receive all interest or earnings from a trust fund or escrow account upon its termination.

(8) As used in this section, "custodian" means the trustee of a trust fund or escrow agent of an escrow account.

**History:** Add. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11524 Repealed. 2013, Act 250, Imd. Eff. Dec. 26, 2013.**

**Compiler's note:** The repealed section pertained to request for reduction in amount of financial assurance.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11525 Perpetual care fund.**

Sec. 11525. (1) The owner or operator of a landfill or coal ash impoundment shall establish and maintain a perpetual care fund for a period of 30 years after final closure of the landfill or coal ash impoundment as specified in this section. A perpetual care fund may be established as a trust, an escrow account, or a perpetual care fund bond and may be used to demonstrate financial assurance for type II and type III landfills and coal ash impoundments under sections 11523 and 11523a.

(2) Except as otherwise provided in this section, the owner or operator of a landfill shall increase the amount of his or her perpetual care fund 75 cents for each ton or portion of a ton or 25 cents for each cubic yard or portion of a cubic yard of solid waste that is disposed of in the landfill after June 17, 1990 until the fund reaches the maximum required fund amount. As of July 1, 1996, the maximum required fund amount for a landfill or coal ash impoundment is \$1,156,000.00. This amount shall be annually adjusted for inflation and rounded to the nearest thousand. The department shall adjust the maximum required fund amount for inflation annually by multiplying the amount by an inflation factor derived from the most recent United States Department of the Interior, Bureau of Reclamation composite index published by the United States Department of Commerce or another index more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department. Increases to the amount of a perpetual care fund required under this subsection shall be calculated based on solid waste disposed of in the landfill as of the end of the state fiscal year and shall be made within 30 days after the end of each state fiscal

year.

(3) The owner or operator of a landfill or coal ash impoundment that is used for the disposal of the following materials shall increase the amount of the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of the following materials that are disposed of in the landfill or coal ash impoundment after the effective date of the amendatory act that added section 11511a until the fund reaches the maximum required fund amount under subsection (2):

(a) Coal ash, wood ash, or cement kiln dust that is disposed of in a landfill that is used only for the disposal of coal ash, wood ash, or cement kiln dust, or a combination of these materials, or that is permanently segregated in a landfill.

(b) Wastewater treatment sludge or sediments from wood pulp or paper producing industries that is disposed of in a landfill that is used only for the disposal of wastewater treatment sludge and sediments from wood pulp or paper producing industries, or that is permanently segregated in a landfill.

(c) Foundry sand or other material that is approved by the department for use as daily cover at an operating landfill, that is disposed of in a landfill that is used only for the disposal of foundry sand, or that is permanently segregated in a landfill.

(4) The owner or operator of a landfill that is used only for the disposal of a mixture of 2 or more of the materials described in subsection (3)(a) to (c) or in which a mixture of 2 or more of these materials are permanently segregated shall increase the amount of the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of these materials that are disposed of in the landfill after July 1, 1996.

(5) The amount of a perpetual care fund is not required to be increased for materials that are regulated under part 631.

(6) The owner or operator of a landfill may increase the amount of the perpetual care fund above the amount otherwise required by this section at his or her discretion.

(7) The custodian of a perpetual care fund trust or escrow account shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Until the perpetual care fund trust or escrow account reaches the maximum required fund amount, the custodian of a perpetual care fund trust or escrow account shall credit any interest and earnings of the perpetual care fund trust or escrow account to the perpetual care fund trust or escrow account. After the perpetual care fund trust or escrow account reaches the maximum required fund amount, any interest and earnings shall be distributed as directed by the owner or operator. The agreement governing the operation of the perpetual care fund trust or escrow account shall be executed on a form consistent with this part and provided by the department. The custodian may be compensated from the fund for reasonable fees and costs incurred for his or her responsibilities as custodian. The custodian of a perpetual care fund trust or escrow account shall make an accounting to the department within 30 days following the close of each state fiscal year.

(8) The custodian of a perpetual care fund shall not disburse any funds to the owner or operator of a landfill or coal ash impoundment for the purposes of the perpetual care fund except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the perpetual care fund is liable and shall disburse funds to pay lawfully due taxes owed by the perpetual care fund without permission of the department. The owner or operator of the landfill or coal ash impoundment shall provide notice of requests for disbursement and denials and approvals to the custodian of the perpetual care fund. Requests for disbursement from a perpetual care fund shall be submitted not more frequently than semiannually. The owner or operator of a landfill or coal ash impoundment may request disbursement of funds from a perpetual care fund whenever the amount of money in the fund exceeds the maximum required fund amount. The department shall approve the disbursement if the total amount of financial assurance maintained meets the requirements of sections 11523 and 11523a. As used in this subsection, "maximum required fund amount" means:

(a) For those landfills or coal ash impoundments containing only those materials specified in subsection (3), an amount equal to 1/2 of the maximum required fund amount specified in subsection (2).

(b) For all other landfills, an amount equal to the maximum required fund amount specified in subsection (2).

(9) If the owner or operator of a landfill or coal ash impoundment refuses or fails to conduct closure, postclosure monitoring and maintenance, or corrective action as necessary to protect the public health, safety, or welfare, or the environment or fails to request the disbursement of money from a perpetual care fund when necessary to protect the public health, safety, or welfare, or the environment, or fails to pay the solid waste management program administration fee or the surcharge required under section 11525a, then the department may draw on the perpetual care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action, as necessary. The department may draw on a perpetual care fund for

administrative costs associated with actions taken under this subsection.

(10) Upon approval by the department of a request to terminate financial assurance for a landfill or coal ash impoundment under section 11525b, any money in the perpetual care fund for that landfill or coal ash impoundment shall be disbursed by the custodian to the owner of the landfill or coal ash impoundment unless a contract between the owner and the operator provides otherwise.

(11) The owner of a landfill or coal ash impoundment shall provide notice to the custodian of the perpetual care fund for that landfill or coal ash impoundment if there is a change of ownership of the landfill. The custodian shall maintain records of ownership of a landfill or coal ash impoundment during the period of existence of the perpetual care fund.

(12) This section does not relieve an owner or operator of a landfill or coal ash impoundment of any liability that he or she may have under this part or as otherwise provided by law.

(13) This section does not create a cause of action at law or in equity against a custodian of a perpetual care fund other than for errors or omissions related to investments, accountings, disbursements, filings of required tax returns, and maintenance of records required by this section or the applicable perpetual care fund.

(14) As used in this section, "custodian" means the trustee or escrow agent of any of the following:

(a) A perpetual care fund that is established as a trust or escrow account.

(b) A standby trust or escrow account for a perpetual care fund bond.

(15) A perpetual care fund that is established as a trust or escrow account may be replaced with a perpetual care fund that is established as a perpetual care fund bond that complies with this section. Upon such replacement, the director shall authorize the custodian of the trust or escrow account to disburse the money in the trust or escrow account to the owner of the landfill or coal ash impoundment unless a contract between the owner and operator specifies otherwise.

(16) An owner or operator of a landfill or coal ash impoundment who uses a perpetual care fund bond to satisfy the requirements of this section shall also establish a standby trust or escrow account. All payments made under the terms of the perpetual care fund bond shall be deposited by the custodian directly into the standby trust or escrow account in accordance with instructions from the director. The standby trust or escrow account must meet the requirements for a trust or escrow account established as a perpetual care fund under subsection (1), except that until the standby trust or escrow account is funded pursuant to the requirements of this subsection, the following are not required:

(a) Payments into the standby trust or escrow account as specified in subsection (2).

(b) Annual accounting valuations as required in subsection (7).

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 1996, Act 506, Imd. Eff. Jan. 9, 1997;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11525a Owner or operator of landfill or coal ash impoundment; surcharge; payment of surcharge; deposit.**

Sec. 11525a. (1) The owner or operator of a landfill or coal ash impoundment shall pay a surcharge as follows:

(a) For a landfill or coal ash impoundment that is not a captive facility, 12 cents for each cubic yard or portion of a cubic yard of solid waste or municipal solid waste incinerator ash that is disposed of in the landfill or coal ash impoundment before October 1, 2019.

(b) For a type III landfill or coal ash impoundment that is a captive facility, the following annual amounts:

(i) For a captive facility that receives 100,000 or more cubic yards of waste, \$3,000.00.

(ii) For a captive facility that receives 75,000 or more but less than 100,000 cubic yards of waste, \$2,500.00.

(iii) For a captive facility that receives 50,000 or more but less than 75,000 cubic yards of waste, \$2,000.00.

(iv) For a captive facility that receives 25,000 or more but less than 50,000 cubic yards of waste, \$1,000.00.

(v) For a captive facility that receives less than 25,000 cubic yards of waste, \$500.00.

(2) The owner or operator of a landfill or coal ash impoundment that is not a captive facility shall pay the surcharge under subsection (1)(a) within 30 days after the end of each quarter of the state fiscal year. The owner or operator of a type III landfill or coal ash impoundment that is a captive facility shall pay the surcharge under subsection (1)(b) by January 31 of each year.

(3) The owner or operator of a landfill or coal ash impoundment who is required to pay the surcharge under subsection (1) shall pass through and collect the surcharge from any person who generated the solid waste or who arranged for its delivery to the solid waste hauler or transfer facility notwithstanding the provisions of any contract or agreement to the contrary or the absence of any contract or agreement.

(4) Surcharges collected under this section shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

**History:** Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 149, Imd. Eff. Sept. 21, 2011;—Am. 2013, Act 72, Imd. Eff. June 25, 2013;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11525b Continuous financial assurance coverage required; request for termination of financial assurance requirements.**

Sec. 11525b. (1) The owner or operator of a disposal area shall provide continuous financial assurance coverage until released from these requirements by the department under the provisions of this part.

(2) The owner or operator of a landfill or coal ash impoundment who has completed postclosure maintenance and monitoring in accordance with this part, rules promulgated under this part, and approved postclosure plan may request that financial assurance required by sections 11523 and 11523a be terminated. A person requesting termination of bonding and financial assurance shall submit to the department a statement that the landfill or coal ash impoundment has been monitored and maintained in accordance with this part, rules promulgated under this part, and the approved postclosure plan for the postclosure period specified in section 11523 and shall certify that the landfill or coal ash impoundment is not subject to corrective action under section 11515. Within 60 days of receiving a statement under this subsection, the department shall perform a consistency review of the submitted statement and do 1 of the following:

(a) Approve the statement, notify the owner or operator that he or she is no longer required to maintain financial assurance, return or release all financial assurance mechanisms, and, if the perpetual care fund is established as a trust or escrow account, notify the custodian of the perpetual care fund that money from the fund shall be disbursed as provided in section 11525(10).

(b) Disapprove the statement and provide the owner or operator with a detailed written statement of the reasons why the department has determined that postclosure maintenance and monitoring and corrective action, if any, have not been conducted in accordance with this part, the rules promulgated under this part, or an approved postclosure plan.

**History:** Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526 Inspection of solid waste transporting unit; determination; administration; inspections.**

Sec. 11526. (1) The department, a health officer, or a law enforcement officer of competent jurisdiction may inspect a solid waste transporting unit that is being used to transport solid waste along a public road to determine if the solid waste transporting unit is designed, maintained, and operated in a manner to prevent littering or to determine if the owner or operator of the solid waste transporting unit is performing in compliance with this part and the rules promulgated under this part.

(2) In order to protect the public health, safety, and welfare and the environment of this state from items and substances being illegally disposed of in landfills in this state, the department, in conjunction with the department of state police, shall administer this part so as to do all of the following:

(a) Ensure that all disposal areas are in full compliance with this part and the rules promulgated under this part.

(b) Provide for the inspection of each solid waste disposal area for compliance with this part and the rules promulgated under this part at least 4 times per year.

(c) Ensure that all persons disposing of solid waste are doing so in compliance with this part and the rules promulgated under this part.

(3) The department and the department of state police may conduct regular, random inspections of waste

being transported for disposal at disposal areas in this state. Inspections under this subsection may be conducted at disposal areas at the end original destination.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 43, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526a Solid waste generated out of state; acceptance by owner or operator of landfill prohibited; exceptions; disposal capacity.**

Sec. 11526a. (1) Beginning October 1, 2004, in order to protect the public health, safety, and welfare and the environment of this state from the improper disposal of waste that is prohibited from disposal in a landfill, and in recognition that the nature of solid waste collection and transport limits the ability of the state to conduct cost effective inspections to ensure compliance with state law, the owner or operator of a landfill shall not accept for disposal in this state solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of this state unless 1 or more of the following are met:

(a) The solid waste is composed of a uniform type of item, material, or substance, other than municipal solid waste incinerator ash, that meets the requirements for disposal in a landfill under this part and the rules promulgated under this part.

(b) The solid waste was received through a material recovery facility, a transfer station, or other facility that has documented that it has removed from the solid waste being delivered to the landfill those items that are prohibited from disposal in a landfill.

(c) The country, state, province, or local jurisdiction in which the solid waste was generated is approved by the department for inclusion on the list compiled by the department under section 11526b.

(2) Notwithstanding section 11538 or any other provision of this part, if there is sufficient disposal capacity for a county's disposal needs in or within 150 miles of the county, all of the following apply:

(a) The county is not required to identify a site for a new landfill in its solid waste management plan.

(b) An interim siting mechanism shall not become operative in the county unless the county board of commissioners determines otherwise.

(c) The department is not required to issue a construction permit for a new landfill in the county.

**History:** Add. 2004, Act 40, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526b Compliance with MCL 324.11526b required; notice requirements; compilation of list; documentation.**

Sec. 11526b. (1) Not later than October 1, 2004, the department shall do all of the following:

(a) Notify each state, the country of Canada, and each province in Canada that landfills in this state will not accept for disposal solid waste that does not comply with section 11526a.

(b) Compile a list of countries, states, provinces, and local jurisdictions that prohibit from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that prevent from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part.

(c) Prepare and provide to each landfill in the state a copy of a list of the countries, states, provinces, and local jurisdictions compiled under subdivision (b).

(2) The department shall include a country, state, province, or local jurisdiction on the list described in subsection (1) if the country, state, province, or local jurisdiction, or another person, provides the department with documentation that the country, state, province, or local jurisdiction prohibits from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that it prevents from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part. Such documentation shall include all pertinent statutes, administrative regulations, and ordinances.

**History:** Add. 2004, Act 37, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526c Order restricting or prohibiting solid waste transportation or disposal in this state.**

Sec. 11526c. (1) The director may issue an order restricting or prohibiting the transportation or disposal in this state of solid waste originating within or outside of this state if both of the following apply:

(a) The director, after consultation with appropriate officials, has determined that the transportation or disposal of the solid waste poses a substantial threat to the public health or safety or to the environment.

(b) The director determines that the restriction or prohibition on the transportation or disposal of the solid waste is necessary to minimize or eliminate the substantial threat to public health or safety or to the environment.

(2) At least 30 days before the director issues an order under subsection (1), the department shall post the proposed order and its effective date on its website with information on how a member of the public can comment on the proposed order and shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment. Before issuing the order, the director shall consider comments received on the proposed order. The department shall post the final order on its website beginning not later than the final order's effective date. This subsection does not apply in an emergency situation described in subsection (3).

(3) In an emergency situation posing an imminent and substantial threat to public health or safety or to the environment, the director, before issuing an order under subsection (1), shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment and publicize the proposed order in any manner appropriate to help ensure that interested parties are provided notice of the proposed order and its effective date. The department shall post the final order on its website as soon as practicable.

(4) An order issued pursuant to this section shall expire 60 days after it takes effect, unless the order provides for an earlier expiration date.

(5) Subsections (2) and (3) do not apply to the reissuance of an order if the reissued order takes effect upon the expiration of the identical order it replaces. However, the department shall post the reissued order on its website beginning not later than the reissued order's effective date.

(6) A person may seek judicial review of an order issued under this section as provided in section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(7) The director shall rescind an order issued under this section when the director determines that the threat upon which the order was based no longer exists.

**History:** Add. 2004, Act 36, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11526e Disposal of municipal solid waste generated outside of United States; applicability of subsections (1) and (2).**

Sec. 11526e. (1) Subject to subsection (3), a person shall not deliver for disposal, in a landfill or incinerator in this state, municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(2) Subject to subsection (3), the owner or operator of a landfill or incinerator in this state shall not accept for disposal municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(3) Subsections (1) and (2) apply notwithstanding any other provision of this part. However, subsections (1) and (2) do not apply unless congress enacts legislation under clause 3 of section 8 of article I of the constitution of the United States authorizing such prohibitions. Subsections (1) and (2) do not apply until 90 days after the effective date of such federal legislation or 90 days after the effective date of the amendatory act that added this section, whichever is later.

**History:** Add. 2006, Act 57, Imd. Eff. Mar. 13, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11527 Delivery of waste to licensed disposal area or solid waste transfer facility; vehicle or container; violation; penalty.**

Sec. 11527. (1) A solid waste hauler transporting solid waste over a public road in this state shall deliver

all waste to a disposal area or solid waste transfer facility licensed under this part and shall use only a vehicle or container that does not contribute to littering and that conforms to the rules promulgated by the department.

(2) A solid waste hauler who violates this part or a rule promulgated under this part, or who is responsible for a vehicle that has in part contributed to a violation of this part or a rule promulgated under this part, is subject to a penalty as provided in section 11549.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11527a Website listing materials prohibited from disposal; notice to customers.**

Sec. 11527a. (1) The department shall post on its website a list of materials prohibited from disposal in a landfill under section 11514 and appropriate disposal options for those materials.

(2) A solid waste hauler that disposes of solid waste in a landfill shall annually notify each of its customers of each of the following:

(a) The materials that are prohibited from disposal in a landfill under section 11514.

(b) The appropriate disposal options for those materials as described on the department's website.

(c) The department's website address where the disposal options are described.

**History:** Add. 2004, Act 42, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11528 Solid waste transporting unit; watertight; construction, maintenance, and operation; violation; penalties; ordering unit out of service.**

Sec. 11528. (1) A solid waste transporting unit used for garbage, industrial or domestic sludges, or other moisture laden materials not specifically covered by part 121 shall be watertight and constructed, maintained, and operated to prevent littering. Solid waste transporting units used for hauling other solid waste shall be designed and operated to prevent littering or any other nuisance.

(2) A solid waste hauler who violates this part or the rules promulgated under this part is subject to the penalties provided in this part.

(3) The department, a health officer, or a law enforcement officer may order a solid waste transporting unit out of service if the unit does not comply with the requirements of this part or the rules promulgated under this part. Continued use of a solid waste transporting unit ordered out of service is a violation of this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11529 Exemptions.**

Sec. 11529. (1) A disposal area that is a solid waste transfer facility is not subject to the construction permit and operating license requirements of this part if either of the following circumstances exists:

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

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

(2) A solid waste transfer facility that is exempt from the construction permit and operating license requirements of this part under subsection (1) shall comply with the operating requirements of this part and the rules promulgated under this part.

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

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

(b) The incinerator has a permit issued under part 55.

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



located.

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

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11530 Collection center for junk motor vehicles and farm implements; competitive bidding; bonds; “collect” defined.**

Sec. 11530. (1) A municipality or county may establish and operate a collection center for junk motor vehicles and farm implements.

(2) A municipality or county may collect junk motor vehicles and farm implements and dispose of them through its collection center through the process of competitive bidding.

(3) A municipality or county may issue bonds as necessary pursuant to Act No. 342 of the Public Acts of 1969, being sections 141.151 to 141.153 of the Michigan Compiled Laws, to finance the cost of constructing or operating facilities to collect junk motor vehicles or farm implements. The bonds shall be general obligation bonds and shall be backed by the full faith and credit of the municipality or county.

(4) As used in this section, “collect” means to obtain a vehicle pursuant to section 252 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.252 of the Michigan Compiled Laws, or to obtain a vehicle or farm implement and its title pursuant to a transfer from the owner.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11531 Solid waste removal; frequency; disposal; ordinance.**

Sec. 11531. (1) A municipality or county shall assure that all solid waste is removed from the site of generation frequently enough to protect the public health, and is delivered to licensed disposal areas, except waste that is permitted by state law or rules promulgated by the department to be disposed of at the site of generation.

(2) An ordinance enacted before February 8, 1988 by a county or municipality incidental to the financing of a publicly owned disposal area or areas under construction that directs that all or part of the solid waste generated in that county or municipality be directed to the disposal area or areas is an acceptable means of compliance with subsection (1), notwithstanding that the ordinance, in the case of a county, has not been approved by the governor. This subsection applies only to ordinances adopted by the governing body of a county or municipality before February 8, 1988, and does not validate or invalidate an ordinance adopted after February 8, 1988 as an acceptable means of compliance with subsection (1).

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11532 Impact fees; agreement; collection, payment, and disposition; reduction; use of revenue; trust fund; board of trustees; membership and terms; expenditures from trust fund.**

Sec. 11532. (1) Except as provided in subsection (3), a municipality may impose an impact fee of not more than 10 cents per cubic yard on solid waste that is disposed of in a landfill located within the municipality that is utilized by the public and utilized to dispose of solid waste collected from 2 or more persons. However, if the landfill is located within a village, the impact fee provided for in this subsection shall be imposed by the township in agreement with the village. The impact fee shall be assessed uniformly on all wastes accepted for disposal.

(2) Except as provided in subsection (3), a municipality may impose an impact fee of not more than 10 cents per cubic yard on municipal solid waste incinerator ash that is disposed of in a landfill located within the municipality that is utilized to dispose of municipal solid waste incinerator ash. However, if the landfill is located within a village, the impact fee provided for in this subsection shall be imposed by the township in agreement with the village.

(3) A municipality may enter into an agreement with the owner or operator of a landfill to establish a higher impact fee than those provided for in subsections (1) and (2).

(4) The impact fees imposed under this section shall be collected by the owner or operator of a landfill and shall be paid to the municipality quarterly by the thirtieth day after the end of each calendar quarter. However, the impact fees allowed to be assessed to each landfill under this section shall be reduced by any amount of revenue paid to or available to the municipality from the landfill under the terms of any preexisting agreements, including, but not limited to, contracts, special use permit conditions, court settlement agreement conditions, and trusts.

(5) Unless a trust fund is established by a municipality pursuant to subsection (6), the revenue collected by a municipality under subsections (1) and (2) shall be deposited in its general fund to be used for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality. However, revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

(6) The municipality may establish a trust fund to receive revenue collected pursuant to this section. The trust fund shall be administered by a board of trustees. The board of trustees shall consist of the following members:

(a) The chief elected official of the municipality creating the trust fund.

(b) An individual from the municipality appointed by the governing board of the municipality.

(c) An individual approved by the owners or operators of the landfills within the municipality and appointed by the governing board of the municipality.

(7) Individuals appointed to serve on the board of trustees under subsection (6)(b) and (c) shall serve for terms of 2 years.

(8) Money in the trust fund may be expended, pursuant to a majority vote of the board of trustees, for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality. However, revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11533 Initial solid waste management plan; contents; submission; review and update; amendment; scope of plan; minimum compliance; consultation with regional planning agency; filing, form, and contents of notice of intent; effect of failure to file notice of intent; vote; preparation of plan by regional solid waste management planning agency or by department; progress report.**

Sec. 11533. (1) Each solid waste management plan shall include an enforceable program and process to assure that the nonhazardous solid waste generated or to be generated in the planning area for a period of 10 years or more is collected and recovered, processed, or disposed of at disposal areas that comply with state law and rules promulgated by the department governing location, design, and operation of the disposal areas. Each solid waste management plan may include an enforceable program and process to assure that only items authorized for disposal in a disposal area under this part and the rules promulgated under this part are disposed of in the disposal area.

(2) An initial solid waste management plan shall be prepared and approved under this section and shall be submitted to the director not later than January 5, 1984. Following submittal of the initial plan, the solid waste management plan shall be reviewed and updated every 5 years. An updated solid waste management plan and an amendment to a solid waste management plan shall be prepared and approved as provided in this section and sections 11534, 11535, 11536, 11537, and 11537a. The solid waste management plan shall encompass all municipalities within the county. The solid waste management plan shall at a minimum comply with the requirements of sections 11537a and 11538. The solid waste management plan shall take into consideration solid waste management plans in contiguous counties and existing local approved solid waste management plans as they relate to the county's needs. At a minimum, a county preparing a solid waste management plan shall consult with the regional planning agency from the beginning to the completion of the plan.

(3) Not later than July 1, 1981, each county shall file with the department and with each municipality within the county on a form provided by the department, a notice of intent, indicating the county's intent to

prepare a solid waste management plan or to upgrade an existing solid waste management plan. The notice shall identify the designated agency which shall be responsible for preparing the solid waste management plan.

(4) If the county fails to file a notice of intent with the department within the prescribed time, the department immediately shall notify each municipality within the county and shall request those municipalities to prepare a solid waste management plan for the county and shall convene a meeting to discuss the plan preparation. Within 4 months following notification by the department, the municipalities shall decide by a majority vote of the municipalities in the county whether or not to file a notice of intent to prepare the solid waste management plan. Each municipality in the county shall have 1 vote. If a majority does not agree, then a notice of intent shall not be filed. The notice shall identify the designated agency which is responsible for preparing the solid waste management plan.

(5) If the municipalities fail to file a notice of intent to prepare a solid waste management plan with the department within the prescribed time, the department shall request the appropriate regional solid waste management planning agency to prepare the solid waste management plan. The regional solid waste management planning agency shall respond within 90 days after the date of the request.

(6) If the regional solid waste management planning agency declines to prepare a solid waste management plan, the department shall prepare a solid waste management plan for the county and that plan shall be final.

(7) A solid waste management planning agency, upon request of the department, shall submit a progress report in preparing its solid waste management plan.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 44, Imd. Eff. Mar. 29, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11534 Planning committee; purpose; appointment, qualifications, and terms of members; approval of appointment; reappointment; vacancy; removal; chairperson; procedures.**

Sec. 11534. (1) The county executive of a charter county that elects a county executive and that chooses to prepare a solid waste management plan under section 11533 or the county board of commissioners in all other counties choosing to prepare an initial solid waste management plan under section 11533, or the municipalities preparing an initial solid waste management plan under section 11533(4), shall appoint a planning committee to assist the agency designated to prepare the plan under section 11533. If the county charter provides procedures for approval by the county board of commissioners of appointments by the county executive, an appointment under this subsection shall be subject to that approval. A planning committee appointed pursuant to this subsection shall be appointed for terms of 2 years. A planning committee appointed pursuant to this subsection may be reappointed for the purpose of completing the preparation of the initial solid waste management plan or overseeing the implementation of the initial plan. Reappointed members of a planning committee shall serve for terms not to exceed 2 years as determined by the appointing authority. An initial solid waste management plan shall only be approved by a majority of the members appointed and serving.

(2) A planning committee appointed pursuant to this section shall consist of 14 members. Of the members appointed, 4 shall represent the solid waste management industry, 2 shall represent environmental interest groups, 1 shall represent county government, 1 shall represent city government, 1 shall represent township government, 1 shall represent the regional solid waste planning agency, 1 shall represent industrial waste generators, and 3 shall represent the general public. A member appointed to represent a county, city, or township government shall be an elected official of that government or the designee of that elected official. Vacancies shall be filled in the same manner as the original appointments. A member may be removed for nonperformance of duty.

(3) A planning committee appointed pursuant to this section shall annually elect a chairperson and shall establish procedures for conducting the committee's activities and for reviewing the matters to be considered by the committee.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11535 County or regional solid waste management planning agency; duties.**

Sec. 11535. A county or regional solid waste management planning agency preparing a solid waste management plan shall do all of the following:

(a) Solicit the advice of and consult periodically during the preparation of the plan with the municipalities, appropriate organizations, and the private sector in the county under section 11538(1) and solicit the advice of and consult with the appropriate county or regional solid waste management planning agency and adjacent counties and municipalities in adjacent counties which may be significantly affected by the solid waste management plan for a county.

(b) If a planning committee has been appointed under section 11534, prepare the plan with the advice, consultation, and assistance of the planning committee.

(c) Notify by letter the chief elected official of each municipality within the county and any other person within the county so requesting, not less than 10 days before each public meeting of the planning agency designated by the county, if that planning agency plans to discuss the county plan. The letter shall indicate as precisely as possible the subject matter being discussed.

(d) Submit for review a copy of the proposed county or regional solid waste management plan to the department, to each municipality within the affected county, and to adjacent counties and municipalities that may be affected by the plan or that have requested the opportunity to review the plan. The county plan shall be submitted for review to the designated regional solid waste management planning agency for that county. Reviewing agencies shall be allowed an opportunity of not less than 3 months to review and comment on the plan before adoption of the plan by the county or a designated regional solid waste management planning agency. The comments of a reviewing agency shall be submitted with the plan to the county board of commissioners or to the regional solid waste management planning agency.

(e) Publish a notice, at the time the plan is submitted for review under subdivision (d), of the availability of the plan for inspection or copying, at cost, by an interested person.

(f) Conduct a public hearing on the proposed county solid waste management plan before formal adoption. A notice shall be published not less than 30 days before a hearing in a newspaper having a major circulation within the county. The notice shall indicate a location where copies of the plan are available for public inspection and shall indicate the time and place of the public hearing.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11536 Request by municipality to be included in plan of adjacent county; approval by resolution; appeal; final decision; formal action on plan; return of plan with statement of objections; review and recommendations; approval by governing bodies; preparation of final plan by department.**

Sec. 11536. (1) A municipality located in 2 counties or adjacent to a municipality located in another county may request to be included in the adjacent county's plan. Before the municipality may be included, the request shall be approved by a resolution of the county boards of commissioners of the counties involved. A municipality may appeal to the department a decision to exclude it from an adjacent county's plan. If there is an appeal, the department shall issue a decision within 45 days. The decision of the department is final.

(2) Except as provided in subsection (3), the county board of commissioners shall formally act on the plan following the public hearing required by section 11535(f).

(3) If a planning committee has been appointed by the county board of commissioners under section 11534(1), the county board of commissioners, or if a plan is prepared under section 11533(4), the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan, shall take formal action on the plan after the completion of public hearings and only after the plan has been approved by a majority of the planning committee as provided in section 11534(1). If the county board of commissioners, or, if a plan is prepared under section 11533(4), a majority of the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan, does or do not approve the plan as submitted, the plan shall be returned to the planning committee along with a statement of objections to the plan. Within 30 days after receipt, the planning committee shall review the objections and shall return the plan with its recommendations.

(4) Following approval the county plan shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan may take effect.

(5) A county plan prepared by a regional solid waste management planning agency shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan

may take effect.

(6) If, after the plan has been adopted, the governing bodies of not less than 67% of the municipalities have not approved the plan, the department shall prepare a plan for the county, including those municipalities that did not approve the county plan. A plan prepared by the department shall be final.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11537 Approval or disapproval of plan by department; time; minimum requirements; periodic review; revisions or corrections; withdrawal of approval; timetable or schedule for compliance.**

Sec. 11537. (1) The department shall, within 6 months after a plan has been submitted for approval, approve or disapprove the plan. An approved plan shall at a minimum meet the requirements set forth in section 11538(1).

(2) The department shall review an approved plan periodically and determine if revisions or corrections are necessary to bring the plan into compliance with this part. The department, after notice and opportunity for a public hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, may withdraw approval of the plan. If the department withdraws approval of a county plan, the department shall establish a timetable or schedule for compliance with this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11537a Use of siting mechanisms to site capacity.**

Sec. 11537a. Beginning on June 9, 1994 a county that has a solid waste management plan that provides for siting of disposal areas to fulfill a 20-year capacity need through use of a siting mechanism, is only required to use its siting mechanisms to site capacity to meet a 10-year capacity need. If any county is able to demonstrate to the department that it has at least 66 months of available capacity, that county may refuse to utilize its siting mechanism until the county is no longer able to demonstrate 66 months of capacity or until the county amends its plan in accordance with this part to provide for the annual certification process described in section 11538.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11538 Rules for development, form, and submission of initial solid waste management plans; requirements; identification of specific sites; calculation of disposal need requirements; interim siting mechanism; annual certification process; new certification; disposal area serving disposal needs of another county, state, or country; compliance as condition to disposing of, storing, or transporting solid waste; provisions or practices in conflict with part.**

Sec. 11538. (1) Not later than September 11, 1979, the director shall promulgate rules for the development, form, and submission of initial solid waste management plans. The rules shall require all of the following:

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

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

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

(d) An inventory and description of all existing facilities where solid waste is being treated, processed, or

disposed of, including a summary of the deficiencies, if any, of the facilities in meeting current solid waste management needs.

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

(f) That the solid waste management plan contain enforceable mechanisms for implementing the plan, including identification of the municipalities within the county responsible for the enforcement and may contain a mechanism for the county and those municipalities to assist the department and the state police in implementing and conducting the inspection program established in section 11526(2) and (3). This subdivision does not preclude the private sector's participation in providing solid waste management services consistent with the solid waste management plan for the county.

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

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

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

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

(2) Each solid waste management plan shall identify specific sites for solid waste disposal areas for a 5-year period after approval of a plan or plan update. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed by the planning entity. In addition, if the solid waste management plan does not also identify specific sites for solid waste disposal areas for the remaining portion of the entire planning period required by this part after approval of a plan or plan update, the solid waste management plan shall include an interim siting mechanism and an annual certification process as described in subsections (4) and (5). In calculating the capacity of identified disposal areas to determine if disposal needs are met for the entire required planning period, full achievement of the solid waste management plan's volume reduction goals may be assumed by the planning entity if the plan identifies a detailed programmatic approach to achieving these goals. If a siting mechanism is not included, and disposal capacity falls to less than 5 years of capacity, a county shall amend the solid waste management plan for that county to resolve the shortfall.

(3) An existing captive type III coal ash landfill or existing captive coal ash impoundment, or both, is considered consistent with and included in the solid waste management plan for the county or region in which the disposal area is located if the disposal area continues to accept waste generated only by the owner of the disposal area and meets any of the following requirements:

(a) Was issued a construction permit and licensed for operation under this part.

(b) Met local land use law requirements when initially sited or constructed.

(4) An interim siting mechanism shall include both a process and a set of minimum siting criteria, both of which are not subject to interpretation or discretionary acts by the planning entity, and which if met by an applicant submitting a disposal area proposal, will guarantee a finding of consistency with the plan. The interim siting mechanism shall be operative upon the call of the board of commissioners or shall automatically be operative whenever the annual certification process shows that available disposal capacity will provide for less than 66 months of disposal needs. In the latter event, applications for a finding of consistency from the proposers of disposal area capacity will be received by the planning agency commencing on January 1 following completion of the annual certification process. Once operative, an interim siting mechanism will remain operative for at least 90 days or until more than 66 months of disposal capacity is once again available, either by the approval of a request for consistency or by the adoption of a new annual certification process which concludes that more than 66 months of disposal capacity is available.

(5) An annual certification process shall be concluded by June 30 of each year, commencing on the first June 30 which is more than 12 months after the department's approval of the solid waste management plan or plan update. The certification process will examine the remaining disposal area capacity available for solid wastes generated within the planning area. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source

reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed. The annual certification of disposal capacity shall be approved by the board of commissioners. Failure to approve an annual certification by June 30 is equivalent to a finding that less than a sufficient amount of capacity is available and the interim siting mechanism will then be operative on the first day of the following January. As part of the department's responsibility to act on construction permit applications, the department has final decision authority to approve or disapprove capacity certifications and to determine consistency of a proposed disposal area with the solid waste management plan.

(6) A board of commissioners may adopt a new certification of disposal capacity at any time. A new certification of disposal capacity shall supersede all previous certifications, and become effective 30 days after adoption by the board of commissioners and remain in effect until subsequent certifications are adopted.

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

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

(9) An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute, which prohibits or regulates the location or development of a solid waste disposal area, and which is not part of or not consistent with the approved solid waste management plan for the county, shall be considered in conflict with this part and shall not be enforceable.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 44, Imd. Eff. Mar. 29, 2004;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Constitutionality:** US Supreme Court held that MCL 299.413a and 299.430(2) prohibiting private landfill operators from accepting out-of-county solid waste, unless authorized by county's solid waste management plan, are unconstitutional as a violation of the Commerce Clause. *Fort Gratiot Landfill v Mich Dept of Nat Res*, 504 US 353; 112 S Ct 2019; 119 L Ed2d 139 (1992).

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**Administrative rules:** R 299.4101 et seq. of the Michigan Administrative Code.

### **324.11539 Plan update; approval; conditions; rules.**

Sec. 11539. (1) The director shall not approve a plan update unless:

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

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

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

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

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

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

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

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

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

(i) The kinds and volumes of recyclable materials that will be recycled or composted.

(ii) Collection methods.

(iii) Measures that will ensure collection such as ordinances or cooperative arrangements, or both.

- (iv) Ordinances or regulations affecting the program.
  - (v) The role of counties and municipalities in implementing the plan.
  - (vi) The involvement of existing recycling interests, solid waste haulers, and the community.
  - (vii) Anticipated costs.
  - (viii) On-going program financing.
  - (ix) Equipment selection.
  - (x) Public and private sector involvement.
  - (xi) Site availability and selection.
  - (xii) Operating parameters such as pH and heat range.
- (d) The plan includes an evaluation of how the planning entity is meeting the state's waste reduction and recycling goals as established pursuant to section 11541(4).

(2) A disposal area permitted, licensed, or otherwise in existence on the date of approval of the solid waste management plan for the planning area where the disposal area is located shall be considered to be consistent with the plan and included in the plan.

(3) The director may promulgate rules as may be necessary to implement this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**Administrative rules:** R 299.4101 et seq. of the Michigan Administrative Code.

### **324.11539a Plan update; submission to legislature; standard format.**

Sec. 11539a. (1) The department shall prepare a proposed standard format for the submittal of updates to solid waste management plans. This proposed standard format shall be submitted to the standing committees of the legislature that address issues primarily pertaining to natural resources and the environment by November 1, 1994 for a 30-day review and comment period. Following this 30-day period, the department shall finalize the standard format and provide a copy of the standard format to each planning entity in the state that the department knows will be preparing an update to a solid waste management plan. The standard format shall be submitted to planning entities by January 1, 1995. Additionally, the department shall provide the standard format to any other person upon request.

(2) Notwithstanding any other provision of this part, the department shall not require planning entities to begin the process for updating solid waste management plans prior to January 1, 1995.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11540 Rules; sanitary design and operational standards.**

Sec. 11540. Not later than September 11, 1979, the department shall submit to the legislature rules that contain sanitary design and operational standards for solid waste transporting units and disposal areas and otherwise implement this part. The rules shall include standards for hydrogeologic investigations; monitoring; liner materials; leachate collection and treatment, if applicable; groundwater separation distances; environmental assessments; methane gas control; soil erosion; sedimentation control; groundwater and surface water quality; noise and air pollution; and the use of floodplains and wetlands.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**Administrative rules:** R 299.4101 et seq. of the Michigan Administrative Code.

### **324.11540a Repealed. 2010, Act 345, Eff. Mar. 1, 2011.**

**Compiler's note:** The repealed section pertained to promulgation of rules affecting inert material before March 1, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11541 State solid waste management plan; contents; duties of department.**



Sec. 11541. (1) The state solid waste management plan shall consist of the state solid waste plan and all county plans approved or prepared by the department.

(2) The department shall consult and assist in the preparation and implementation of the county solid waste management plans.

(3) The department may undertake or contract for studies or reports necessary or useful in the preparation of the state solid waste management plan.

(4) The department shall promote policies that encourage resource recovery and establishment of waste-to-energy facilities.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11542 Municipal solid waste incinerator ash; disposal.**

Sec. 11542. (1) Except as provided in subsection (5) and except for municipal solid waste incinerator ash that is described and used as provided in section 11506(6)(h), municipal solid waste incinerator ash shall be disposed of in 1 of the following:

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

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

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

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

(A) A leachate collection system.

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

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

(D) A leak detection and leachate collection system.

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

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

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

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

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

(A) A leachate collection system.

(B) A composite liner, as defined in R 299.4102 of the part 115 rules.

(C) A leak detection and leachate collection system.

(D) A second composite liner.

(iv) If contaminants that may threaten the public health, safety, or welfare, or the environment are found in the leachate collection system described in subparagraph (iii)(C), the owner or operator of the landfill shall determine the source and nature of the contaminants and make repairs, to the extent practicable, that will prevent the contaminants from entering the leachate collection system. If the department determines that the source of the contaminants is caused by a design failure of the landfill, the department, notwithstanding an approved construction permit or operating license, may require landfill cells at that landfill that will be used for the disposal of municipal solid waste incinerator ash, which are under construction or will be constructed in the future at the landfill, to be constructed in conformance with improved design standards approved by the department. However, this subparagraph does not require the removal of liners or leak detection and leachate collection systems that are already in place in a landfill cell under construction.

(c) A landfill that is a monitorable unit, as defined in R 299.4104 of the part 115 rules, and that meets all of the following requirements:

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

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

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

(A) A leachate collection system.

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

(C) Immediately below the synthetic liner, either 2 feet of compacted clay with a maximum hydraulic

conductivity of  $1 \times 10^{-7}$  centimeters per second or a bentonite geocomposite liner, as specified in R 299.4914 of the part 115 rules.

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

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

(e) A type II landfill, as described in R 299.4105 of the part 115 rules if both of the following conditions apply:

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

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

(2) Except as provided in subsection (3), a landfill that is constructed pursuant to the design described in subsection (1) shall be capped following its closure by all of the following in descending order:

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

(b) Two feet of soil to protect against animal burrowing, temperature, erosion, and rooted vegetation.

(c) An infiltration collection system.

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

(e) Two feet of compacted clay with a maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second.

(3) A landfill that receives municipal solid waste incinerator ash under this section may be capped with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subsection (2).

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

(5) As an alternative to disposal described in subsection (1), the owner or operator of a municipal solid waste incinerator may process municipal solid waste incinerator ash through mechanical or chemical methods, or both, to substantially diminish the toxicity of the ash or its constituents or limit the leachability of the ash or its constituents to minimize threats to human health and the environment, if processing is performed on the site of the municipal solid waste incinerator or at the site of a landfill described in subsection (1), if the process has been approved by the department as provided by rule, and if the ash is tested after processing in accordance with a protocol approved by the department as provided by rule. The department shall approve the process and testing protocol under this subsection only if the process and testing protocol will protect human health and the environment. In making this determination, the department shall consider all potential pathways of human and environmental exposure, including both short-term and long-term, to constituents of the ash that may be released during the reuse or recycling of the ash. The department shall consider requiring methods to determine the leaching, total chemical analysis, respirability, and toxicity of reused or recycled ash. A leaching procedure shall include testing under both acidic and native conditions. If municipal solid waste incinerator ash is processed in accordance with the requirements of this subsection and the processed ash satisfies the testing protocol approved by the department as provided by rule, the ash may be disposed of in a municipal solid waste landfill, as defined by R 299.4104 of the part 115 rules, licensed under this part or may be used in any manner approved by the department. If municipal solid waste incinerator ash is processed as provided in this subsection, but does not comply with the testing protocol approved by the department as provided by rule, the ash shall be disposed of in accordance with subsection (1).

(6) The disposal of municipal solid waste incinerator ash within a landfill that is in compliance with subsection (1) does not constitute a new proposal for which a new construction permit is required under section 11509, if a construction permit has previously been issued under section 11509 for the landfill and the owner or operator of the landfill submits 6 copies of an operating license amendment application to the department for approval pursuant to part 13. The operating license amendment application shall include revised plans and specifications for all facility modifications including a leachate disposal plan, an erosion control plan, and a dust control plan which shall be part of the operating license amendment. The dust control plan shall contain sufficient detail to ensure that dust emissions are controlled by available control technologies that reduce dust emissions by a reasonably achievable amount to the extent necessary to protect human health and the environment. The dust control plan shall provide for the ash to be wet during all times that the ash is exposed to the atmosphere at the landfill or otherwise to be covered by daily cover material; for dust emissions to be controlled during dumping, grading, loading, and bulk transporting of the ash at the landfill; and for dust emissions from access roads within the landfill to be controlled. With the exception of a

landfill that is in existence on June 12, 1989 that the department determines is otherwise in compliance with this section, the owner or operator of the landfill shall obtain the operating license amendment prior to initiating construction. Prior to operation, the owner or operator of a landfill shall submit to the department certification from a licensed professional engineer that the landfill has been constructed in accordance with the approved plan and specifications. When the copies are submitted to the department, the owner or operator of the landfill shall send a copy of the operating license amendment application to the municipality where the landfill is located. At least 30 days prior to making a final decision on the operating license amendment, the department shall hold at least 1 public meeting in the vicinity of the landfill to receive public comments. Prior to a public meeting, the department shall publish notice of the meeting in a newspaper serving the local area.

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

(8) As used in subsection (1), "landfill" means a landfill or a specific portion of a landfill.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11543 Municipal solid waste incinerator ash; transportation.**

Sec. 11543. (1) If municipal solid waste incinerator ash is transported, it shall be transported in compliance with section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws.

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

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

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11544 List of laboratories capable of performing test provided for in MCL 324.11542; compilation; publication; definitive testing; fraudulent or careless testing.**

Sec. 11544. (1) The department shall compile a list of approved laboratories that are capable of performing the test provided for in section 11542.

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

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

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

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11545 Incineration of used oil prohibited; "oil" defined.**

Sec. 11545. Beginning June 21, 1993, a municipal solid waste incinerator shall not incinerate used oil. As used in this section, used oil has the meaning ascribed to this term in part 167.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11546 Action for appropriate relief; penalties for violation or noncompliance; restoration;**

**return; civil action.**

Sec. 11546. (1) The department or a health officer may request that the attorney general bring an action in the name of the people of the state, or a municipality or county may bring an action based on facts arising within its boundaries, for any appropriate relief, including injunctive relief, for a violation of this part or rules promulgated under this part.

(2) In addition to any other relief provided by this section, the court may impose on any person who violates any provision of this part or rules promulgated under this part or who fails to comply with any permit, license, or final order issued pursuant to this part a civil fine as follows:

(a) Except as provided in subdivision (b), a civil fine of not more than \$10,000.00 for each day of violation.

(b) For a second or subsequent violation, a civil fine of not more than \$25,000.00 for each day of violation.

(3) In addition to any other relief provided by this section, the court may order a person who violates this part or the rules promulgated under this part to restore, or to pay to the state an amount equal to the cost of restoring, the natural resources of this state affected by the violation to their original condition before the violation, and to pay to the state the costs of surveillance and enforcement incurred by the state as a result of the violation.

(4) In addition to any other relief provided by this section, the court shall order a person who violates section 11526e to return, or to pay to the state an amount equal to the cost of returning, the solid waste that is the subject of the violation to the country in which that waste was generated.

(5) This part does not preclude any person from commencing a civil action based on facts that may also constitute a violation of this part or the rules promulgated under this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 41, Imd. Eff. Mar. 29, 2004;—Am. 2006, Act 56, Imd. Eff. Mar. 13, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11547 Grant program; establishment; purpose; interlocal agreements; separate planning grant; appropriation; use of grant funds by department; rules; financial assistance to certified health department.**

Sec. 11547. (1) In order for a county to effectively implement the planning responsibilities designated under this part, a grant program is established to provide financial assistance to county or regional solid waste management planning agencies. Municipalities joined together with interlocal agreements relating to solid waste management plans, within a county having a city of a population of more than 750,000, are eligible for a separate planning grant in addition to those granted to counties. This separate grant allocation provision does not alter the planning and approval process requirements for county plans as specified in this part. Eighty percent of the money for the program not provided for by federal funds shall be appropriated annually by the legislature from the general fund of the state and 20% shall be appropriated by the applicant. Grant funds appropriated for local planning may be used by the department if the department finds it necessary to invoke the department's authority to develop a local plan under section 11533(6). The department shall promulgate rules for the distribution of the appropriated funds.

(2) In order for a certified health department to effectively implement the responsibilities designated under this part, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to a certified health department. A certified health department is eligible to receive 100% of reasonable personnel costs as determined by the department based on criteria established by rule. The department shall promulgate rules for the distribution of the appropriated funds.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11548 Private sector; legislative intent; salvaging not prohibited.**

Sec. 11548. (1) This part is not intended to prohibit the continuation of the private sector from doing business in solid waste disposal and transportation. This part is intended to encourage the continuation of the private sector in the solid waste disposal and transportation business when in compliance with the minimum requirements of this part.

(2) This part is not intended to prohibit salvaging.

**History:** 1994, Act 451, Eff. Mar. 30, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11549 Violation as misdemeanor; violation as felony; penalty; separate offenses.**

Sec. 11549. (1) A person who violates this part, a rule promulgated under this part, or a condition of a permit, license, or final order issued pursuant to this part is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 for each violation and costs of prosecution and, if in default of payment of fine and costs, imprisonment for not more than 6 months.

(2) A person who knowingly violates section 11526e is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(3) Each day upon which a violation described in this section occurs is a separate offense.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 58, Imd. Eff. Mar. 13, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

**324.11550 Solid waste management fund; creation; deposit of money into fund; establishment of solid waste staff account and perpetual care account; expenditures; report; coal ash care fund; creation; deposit of money; expenditures.**

Sec. 11550. (1) The solid waste management fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(2) Money in the solid waste management fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) The state treasurer shall establish, within the solid waste management fund, a solid waste staff account and a perpetual care account.

(4) Money shall be expended from the solid waste staff account, upon appropriation, only for the following purposes:

(a) Preparing generally applicable guidance regarding the solid waste permit and license program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit or license, permit or license revision, or permit or license renewal, including the cost of public notice and public hearings.

(c) Performing an advisory analysis under section 11510(1).

(d) General administrative costs of running the permit and license program, including permit and license tracking and data entry.

(e) Inspection of licensed disposal areas and open dumps.

(f) Implementing and enforcing the conditions of any permit or license.

(g) Groundwater monitoring audits at disposal areas which are or have been licensed under this part.

(h) Reviewing and acting upon corrective action plans for disposal areas which are or have been licensed under this part.

(i) Review of certifications of closure.

(j) Postclosure maintenance and monitoring inspections and review.

(k) Review of bonds and financial assurance documentation at disposal areas which are or have been licensed under this part.

(5) Money shall be expended from the perpetual care account, upon appropriation, only for the purpose of conducting the following activities at disposal areas which are or have been licensed under this part:

(a) Postclosure maintenance and monitoring at a disposal area where the owner or operator is no longer required to do so.

(b) To conduct closure, or postclosure maintenance and monitoring and corrective action if necessary, at a disposal area where the owner or operator has failed to do so. Money shall be expended from the account only after funds from any perpetual care fund or other financial assurance mechanisms held by the owner or operator have been expended and the department has used reasonable efforts to obtain funding from other sources.

(6) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for

issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities of the previous fiscal year funded by the staff account of the solid waste management fund. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing solid waste management permitting, compliance, and enforcement activities.

(b) All of the following information related to the construction permit applications received under section 11509:

(i) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(ii) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(iii) The percentage and number of applications determined to be administratively complete for which a final decision was made within the period required by part 13.

(c) All of the following information related to the operating license applications received under section 11512:

(i) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(ii) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(iii) The percentage and number of applications determined to be administratively complete for which a final decision was made within the period required by part 13.

(d) The number of inspections conducted at licensed disposal areas as required by section 11519.

(e) The number of letters of warning sent to licensed disposal areas.

(f) The number of contested case hearings and civil actions initiated and completed, the number of voluntary consent orders and administrative orders entered or issued, and the amount of fines and penalties collected through such actions or orders.

(g) For each enforcement action that includes a penalty, a description of what corrective actions were required by the enforcement action.

(h) The number of solid waste complaints received, investigated, resolved, and not resolved by the department.

(i) The amount of revenue in the staff account of the solid waste management fund and the coal ash care fund at the end of the fiscal year.

(7) The coal ash care fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(8) Money shall be expended from the coal ash care fund, upon appropriation, only for the following purposes relating to coal ash impoundments and coal ash landfills:

(a) Preparing generally applicable guidance regarding the solid waste permit and license program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit or license, permit or license revision, or permit or license renewal, including the cost of public notice and public hearings.

(c) Performing an advisory analysis under section 11510(1).

(d) General administrative costs of running the permit and license program, including permit and license tracking and data entry.

(e) Inspection of licensed disposal areas and open dumps.

(f) Implementing and enforcing the conditions of any permit or license.

(g) Groundwater monitoring audits at disposal areas that are or have been licensed under this part.

(h) Reviewing and acting upon corrective action plans for disposal areas that are or have been licensed under this part.

(i) Review of certifications of closure.

(j) Postclosure maintenance and monitoring inspections and review.

(k) Review of bonds and financial assurance documentation at disposal areas that are or have been licensed under this part.

**History:** Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451  
 Popular name: NREPA  
 Popular name: Solid Waste Act

**324.11551 Beneficial use by-product; qualification; requirements; analysis of representative sample by initial generator; determination; storage and use; beneficial uses 1 and 2 at and along roadways; registration or licensure under MCL 290.531 to 290.538; submission of information; open dumping; notice to prospective transferee.**

Sec. 11551. (1) Except for a material that the department approves as a beneficial use by-product under section 11553(3) or (4), to qualify as a beneficial use by-product, a material or the use of the material, as applicable, shall meet all of the following requirements:

- (a) The material is not a part 111 hazardous waste or mixed with a hazardous waste.
- (b) The material is not stored at the site of generation or use for more than 3 years, or the amount that is transferred off site for use during a 3-year period equals at least 75% by weight or volume of the amount of that material stored on site for beneficial use at the beginning of the 3-year period.
- (c) The material is stored in a manner that maintains its usefulness, controls wind dispersal, and prevents loss of the material beyond the storage area.
- (d) The material is stored in a manner that does not cause groundwater to no longer be fit for 1 or more protected uses, does not cause a violation of a part 31 surface water quality standard, and otherwise does not violate part 31.
- (e) The material is transported in a manner that prevents accidental leakage, spillage, or wind dispersal.
- (f) The use of the material is for a legitimate beneficial purpose other than a means to discard the material and the material is used according to generally accepted engineering, industrial, or commercial standards for that use.

(g) For beneficial use 2, the material, if specified below, meets the following environmental standards using, at the option of the generator of the by-product, EPA method 1311, 1312, or ASTM test method 3987:

| Constituent-<br>maximum<br>leachate<br>mg/l | Coal<br>ash<br>or<br>wood<br>ash | Pulp<br>and<br>paper<br>mill<br>ash,<br>mixed<br>wood<br>ash | Foundry<br>sand | Cement<br>kiln<br>dust,<br>lime<br>kiln<br>dust | Water<br>softening<br>limes,<br>dewatered<br>grinding<br>sludge | Stamp<br>sand | Spent<br>media<br>from<br>sand<br>blasting |
|---|----------------------------------|--|-----------------|---|---|---------------|--|
| Arsenic -<br>0.2                            | X                                | X  | X               | X   | X   |               |  |
| Boron - 10                                  | X                                |  |                 |   |   |               |  |
| Cadmium -<br>0.1                            | X                                | X  |                 | X   | X   |               |  |
| Chromium -<br>2.0                           | X                                |  |                 |   |   |               | X  |
| Lead - 0.08                                 | X                                | X  | X               | X   | X   |               |  |
| Mercury -<br>0.04                           | X                                | X  |                 | X   | X   |               |  |
| Copper - 20                                 |                                  | X  |                 |   | X   | X             |  |
| Nickel - 2.0                                |                                  | X  | X               |   | X   |               | X  |
| Selenium -<br>1.0                           | X                                |  |                 |   | X   |               |  |
| Thallium -<br>0.04                          | X                                |  |                 | X   |   |               |  |
| Zinc - 48                                   | X                                | X  |                 |   | X   |               |  |

(h) For beneficial use 3, the material or use of the material, as applicable, meets all of the following requirements:

(i) The material is coal bottom ash, wood ash, pulp and paper mill material, pulp and paper mill ash, mixed wood ash, foundry sand from ferrous or aluminum foundries, cement kiln dust, lime kiln dust, lime water softening residuals, flue gas desulfurization gypsum, soil washed or otherwise removed from sugar beets, or dewatered concrete grinding slurry from public transportation agency road projects.

(ii) The amount of any constituent listed below applied to an area of land over any period of time does not

exceed the following:

| CONSTITUENT | CUMULATIVE LOAD<br>POUNDS PER ACRE |
|-------------|------------------------------------|
| Arsenic     | 37                                 |
| Cadmium     | 35                                 |
| Copper      | 1,335                              |
| Lead        | 267                                |
| Mercury     | 15                                 |
| Nickel      | 374                                |
| Selenium    | 89                                 |
| Zinc        | 2,492                              |

(iii) If the department of agriculture and rural development determines, based on peer-reviewed scientific literature, that any other constituent is subject to a cumulative loading requirement, the amount of that constituent applied to an area of land over any period of time does not exceed that cumulative loading requirement. The cumulative load for that constituent shall be calculated as follows: constituent concentration (mg/kg dry weight) x conversion factor of 0.002 (concentration to pounds per dry ton) x the material application rate in dry tons per acre.

(i) For beneficial use 5, the material is foundry sand from ferrous or aluminum foundries and representative sampling of the foundry sand using either a totals analysis, a leachate analysis (using EPA method 1311, EPA method 1312, ASTM method 3987, or other leaching protocol approved by the department), or any combination of the 2 types of analyses demonstrates that none of the following maximum concentrations are exceeded:

| CONSTITUENT       | TOTALS         | LEACHATE      |
|-------------------|----------------|---------------|
|                   | ANALYSIS MG/KG | ANALYSIS MG/L |
| Antimony          | 4.3            | 0.006         |
| Cobalt            | 0.8            | 0.04          |
| Copper            | 5,800          | 1             |
| Iron              | 23,185         | 2.0           |
| Lead              | 700            | 0.004         |
| Manganese         | 1,299          | 0.86          |
| Molybdenum        | 5              | 0.073         |
| Nickel            | 100            | 0.1           |
| Thallium          | 2.3            | 0.002         |
| Vanadium          | 72             | 0.0045        |
| Zinc              | 2,400          | 2.4           |
| Benzene           | 0.1            | 0.005         |
| Formaldehyde      | 26             | 1.3           |
| Phenol            | 88             | 4.4           |
| Trichloroethylene | 0.1            | 0.005         |

(2) The determination whether a material meets the requirements of subsection (1)(a) or (g) shall be based on the analysis of a representative sample of the material by the initial generator. The initial generator shall maintain records of the test results for not less than 10 years after the date the material was sent off site and make the records available to the department upon request. The generator shall resample and analyze the material when raw materials or processes change in a way that could reasonably be expected to materially affect analysis results.

(3) Except as otherwise provided in this act, storage and use of beneficial use by-products shall comply with all other applicable provisions of this act.

(4) The storage of a material for beneficial use 3 that complies with regulation no. 641, commercial fertilizer bulk storage, R 285.641.1 to R 285.641.18 of the Michigan administrative code, shall be considered to comply with the storage requirements of this part.

(5) A person that actively manages and reuses a beneficial use by-product that has already been used in compliance with this part may rely on analytical data from the prior use.

(6) All of the following apply to beneficial uses 1 and 2 at and along roadways:

(a) Routine repair and replacement of roadways constructed using beneficial use materials does not constitute generation of beneficial use by-products triggering the requirements of this section if the beneficial use by-products remain or are reused at the same roadway and are used in a manner that meets the definition of beneficial use 1 or beneficial use 2, as appropriate. If the beneficial use by-products will be reused at some place other than the same roadway, then the requirements applicable to generators of beneficial use by-products must be met, except as follows:



- (i) As set forth in subsection (5).
- (ii) The requirements of section 11552 apply only if the category of beneficial use will change.
- (b) For beneficial use 2, the requirement that beneficial use materials be covered by concrete, asphalt, or 6 inches of gravel applies at the time of placement and use. The development of potholes, shoulder erosion, or similar deterioration does not result in a violation of this part.
- (c) If road materials containing beneficial use by-products are ground, reheated, or melted for reuse, the requirements of part 55 must be met.
- (d) This part does not prohibit the state transportation department from seeking additional data or information for road building materials or from requiring that road building materials meet state transportation department specifications and standards.
- (7) For beneficial use 3, the material that is offered for sale or use shall be annually registered or licensed under part 85 or 1955 PA 162, MCL 290.531 to 290.538. In addition to the information required under part 85 or 1955 PA 162, MCL 290.531 to 290.538, the following information shall be submitted to the department of agriculture and rural development with the license or registration application:
  - (a) Directions for use to ensure that the material is applied at an agronomic rate that has been reviewed by a certified crop advisor.
  - (b) A laboratory analysis report that contains all of the following:
    - (i) Sampling results that demonstrate that the material does not pose harm to human health or the environment. One method by which this demonstration can be made is by sampling results that comply with both of the following:
      - (A) The levels established pursuant to the association of American plant food control officials' statement of uniform interpretation and policy #25, as follows:
        - (I) A fertilizer with a phosphorus or micronutrient guarantee shall apply the policy in its entirety.
        - (II) A fertilizer with only a nitrogen, potassium, or secondary nutrient guarantee shall use the micronutrients column in the policy and apply a multiplier of 1 to determine the maximum allowable concentration of each metal.
        - (III) A soil conditioner or liming material shall use the micronutrients column in the policy and apply a multiplier of 1 to determine the maximum allowable concentration of each metal.
      - (B) The part 201 generic residential soil direct contact cleanup criteria for volatile organic compounds (as determined by U.S. EPA method 8260), semivolatile organic compounds (as determined by U.S. EPA method 8270c), and dioxins (as determined by U.S. EPA method 1613b). Results for dioxins shall be reported on a dry weight basis, and total dioxin equivalence shall be calculated and reported utilizing the U.S. EPA toxic equivalency factors (U.S. EPA/100/R10/005).
    - (ii) For a fertilizer, all of the following used by a certified crop advisor to determine an agronomic rate consistent with generally accepted agricultural and management practices:
      - (A) A demonstration that the material contains the minimum percentage of each plant nutrient guaranteed or claimed to be present.
      - (B) The percentage of dry solids, nitrogen, ammonium nitrogen, nitrate nitrogen, phosphorus, and potassium in the material.
      - (C) The levels of calcium, magnesium, acidity or basicity measured by pH, sulfur, chromium, copper, silver, chlorine, and boron.
    - (iii) For a soil conditioner or a liming material, all of the following used by a certified crop advisor to determine an agronomic rate consistent with generally accepted agricultural and management practices:
      - (A) The percentage of dry solids in the material.
      - (B) The levels of calcium, magnesium, acidity or basicity measured by pH, sulfur, chromium, copper, silver, chlorine, and boron.
    - (iv) For a soil conditioner, scientifically acceptable data that give reasonable assurance that the material will improve the physical nature of the soil by altering the soil structure by making soil nutrients more available or otherwise enhancing the soil media resulting in beneficial crop response or other plant growth.
    - (v) For a liming material, scientifically acceptable data demonstrating that the material will correct soil acidity.
- (8) When a material is licensed or registered as described in subsection (7), the laboratory analysis report and the scientifically acceptable data submitted with a prior application may be resubmitted for a subsequent application unless the raw materials or processes used to generate the material change in a way that could reasonably be expected to materially affect the laboratory analysis report or scientifically acceptable data.
- (9) This part does not authorize open dumping prohibited by the solid waste disposal act, 42 USC 6901 to 6992k.
- (10) If an owner of property has knowledge that a material has been used on the property for beneficial use

2, before transferring the property, the owner shall provide notice to a prospective transferee that the material was used for beneficial use 2, including the date and location of the use, if known. If a contractor, consultant, or agent of an owner of property uses a material on the property for beneficial use 2, the contractor, consultant, or agent shall provide notice to the owner that the material was used for beneficial use 2, including the date and location of the use.

**History:** Add. 2014, Act 178, Eff. Sept. 16, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11551a Beneficial use by-product not required.**

Sec. 11551a. This part does not require the use of any beneficial use by-product, including, but not limited to, the uses and beneficial use by-products identified in sections 11502 to 11506, by any governmental entity or any other person.

**History:** Add. 2014, Act 178, Eff. Sept. 16, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11552 Notice; report; confidentiality.**

Sec. 11552. (1) Written notice shall be submitted to the department before a beneficial use by-product is used for beneficial use 2 as construction fill at a particular site for the first time, if the amount used will exceed 5,000 cubic yards. The generator of the beneficial use by-product shall submit the notice unless the generator transfers material to a broker, in which case the broker shall submit the notice.

(2) By October 30 of each year, any generator or broker of more than 1,000 cubic yards of material used as beneficial use by-products for beneficial use 1, 2, or 4 in the immediately preceding period of October 1 to September 30 or any person that uses or reuses more than 1,000 cubic yards of a source separated material in that period shall submit a report to the department containing all of the following information, as applicable:

(a) The business name, address, telephone number, and name of a contact person for the generator, broker, or other person.

(b) The types and approximate amounts of beneficial use by-products generated, brokered, and stored during that period.

(c) The approximate amount of beneficial use by-products shipped off site during that period and the uses and conditions of use.

(d) The amount of source separated materials used or reused.

(3) A generator or broker may designate the information required in the report under subsection (2)(b) and (c) as confidential business information. If the scope of a request for public records under section 5 of the freedom of information act, 1976 PA 442, MCL 15.235, includes information designated by the generator or broker as confidential, the department shall promptly notify the generator or broker of the request, including the date the request was received by the department and, pursuant to that section, shall issue a notice extending for 10 business days the period during which the department shall respond to the request. The department shall grant the request for the information unless, within 12 business days after the date the request was received by the department, the generator or broker demonstrates to the satisfaction of the department that the information designated as confidential should not be disclosed because the information constitutes a trade secret or secret process or is production or commercial information the disclosure of which would jeopardize the competitive position of the generator or broker. If there is a dispute over the release of information between the generator or broker and the person requesting the information, the director shall grant or deny the request. The department shall notify the generator or broker of a decision to grant the request at least 2 days before the release of the requested information.

**History:** Add. 2014, Act 178, Eff. Sept. 16, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

#### **324.11553 Promoting and fostering use of wastes and by-products for recycling or beneficial purposes; approval of material, use, or material and use; request; approval or denial by department; determination made prior to effective date of amendatory act.**

Sec. 11553. (1) Consistent with the requirements of this part, the department shall apply this section so as to promote and foster the use of wastes and by-products for recycling or beneficial purposes.

(2) Any person may request the department, consistent with the definitions and other terms of this part, to approve a material, a use, or a material and use as a source separated material; a beneficial use by-product for beneficial use 1, 2, 4, or 5; an inert material; a low-hazard industrial waste; or another material, use, or material and use that can be approved under this part. Among other things, a person may request the department to approve a use that does not qualify as beneficial use 2 under section 11502(4)(a) because the property is not nonresidential property or under section 11502(4)(a), (b), or (c) because the material exceeds 4 feet in thickness. A request under this subsection shall contain a description of the material including the process generating it; results of analyses of representative samples of the material for any hazardous substances that the person has knowledge or reason to believe could be present in the material, based on its source, its composition, or the process that generated it; and, if applicable, a description of the proposed use. The analysis and sampling of the material under this subsection shall be consistent with the methods contained in the EPA document entitled "test methods for the evaluation of solid waste, physical/chemical methods," SW 846 3rd edition; 1 or more peer-reviewed standards developed by a national or international organization, such as ASTM international; or 1 or more standards or methods approved by the department or the EPA. The department shall approve or deny the request within 150 days after the request is received, unless the parties agree to an extension. If the department determines that the request does not include sufficient information, the department shall, not more than 60 days after receipt of the request, notify the requester. The notice shall specify the additional information that is required. The 150-day period is tolled until the requestor submits the information specified in the notice. If the department approves a request under this subsection, the approval shall include the following statement: "This approval does not require any use of any beneficial use by-product by a governmental entity or any other person." The department may impose conditions and other requirements consistent with the purposes of this part on a material, a use, or a material and use approved under this section that are reasonably necessary for the use. If a request is approved with conditions or other requirements, the approval shall specifically state the conditions or other requirements. If the request is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. If the department fails to approve or deny the request within the 150-day period, the request is considered approved. A person requesting approval under this subsection may seek review of any final department decision pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(3) The department shall approve a material for a specified use as a beneficial use by-product if all of the following requirements are met:

(a) The material is an industrial or commercial material that is or has the potential to be generated in high volumes.

(b) The proposed use serves a legitimate beneficial purpose other than providing a means to discard the material.

(c) A market exists for the material or there is a reasonable potential for the creation of a new market for the material if it is approved as a beneficial use by-product.

(d) The material and use meet all federal and state consumer protection and product safety laws and regulations.

(e) The material meets all of the following requirements:

(i) Hazardous substances in the material do not pose a direct contact health hazard to humans.

(ii) The material does not leach, decompose, or dissolve in a way that forms an unacceptably contaminated leachate. An unacceptably contaminated leachate is one that exceeds either part 201 generic residential groundwater drinking water criteria or surface water quality standards established under part 31.

(iii) The material does not produce emissions that violate part 55 or that create a nuisance.

(4) The department may approve a material for a specified use as a beneficial use by-product if the material meets the requirements of subsection (3)(a), (b), (c), and (d) but fails to meet the requirements of subsection (3)(e) and if the department determines that the material and use are protective of the public health and environment. In making the determination, the department shall consider the potential for exposure and risk to human health and the environment given the nature of the material, its proposed use, and the environmental fate and transport of any hazardous substances in the material in soil, groundwater, or other relevant media.

(5) The department shall approve a material as inert if all of the following requirements are met:

(a) The material is proposed to be used for a legitimate purpose other than a means to dispose of the material.

(b) Hazardous substances in the material do not pose a direct contact health hazard to humans.

(c) The material does not leach, decompose, or dissolve in a way that forms an unacceptably contaminated

leachate upon contact with water or other liquids likely to be found at the area of placement, disposal, or use. An unacceptably contaminated leachate is leachate that exceeds part 201 generic residential groundwater drinking water criteria or surface water quality standards established under part 31.

(d) The material does not produce emissions that violate part 55 or that create a nuisance.

(6) The department may approve a material as inert if the material meets the requirements of subsection (5)(a) but fails to meet the requirements of subsection (5)(b), (c), or (d) and if the department determines that the material is protective of the public health and environment. In making the determination, the department shall consider the potential for exposure and risk to human health and the environment given the nature of the material, its proposed use, and the environmental fate and transport of any hazardous substances in the material in soil, groundwater, or other relevant media.

(7) The department shall approve a material as a low-hazard industrial waste if hazardous substances in representative samples of the material do not leach, using, at the option of the generator, EPA method 1311, 1312, or any other method approved by the department that more accurately simulates mobility, above the higher of the following:

(a) One-tenth the hazardous waste toxicity characteristic threshold as set forth in rules promulgated under part 111.

(b) Ten times the generic residential groundwater drinking water cleanup criteria as set forth in rules promulgated under part 201.

(8) The department shall approve a material as a source separated material if the person who seeks the designation demonstrates that the material can be recycled or converted into raw materials or new products by being returned to the original process from which it was generated, by use or reuse as an ingredient in an industrial process to make a product, or by use or reuse as an effective substitute for a commercial product. To qualify as a source separated material, the material, product, or reuse must meet all federal and state consumer protection and product safety laws and regulations and must not create a nuisance. If a material will be applied to or placed on the land, or will be used to produce products that are applied to or placed on the land, the material must qualify as an inert material or beneficial use by-product.

(9) Any written determination by the department made prior to the effective date of the amendatory act that added this section designating a material as an inert material, an inert material appropriate for general reuse, an inert material appropriate for reuse at a specific location, an inert material appropriate for specific reuse instead of virgin material, a source separated material, a site separated material, a low-hazard industrial waste, or a non-solid-waste material remains in effect according to its terms or until forfeited in writing by the person who received the determination. Upon termination, expiration, or forfeiture of the written determination, the current requirements of this part control. The amendments made to this part by the amendatory act that added this section do not rescind, invalidate, limit, or modify any such prior determination in any way.

**History:** Add. 2014, Act 178, Eff. Sept. 16, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act

### **324.11554 Administration and enforcement of part.**

Sec. 11554. The department of agriculture and rural development, and not the department of environmental quality, shall administer and enforce this part in connection with any material that is licensed or registered under part 85 or 1955 PA 162, MCL 290.531 to 290.538.

**History:** Add. 2014, Act 178, Eff. Sept. 16, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Solid Waste Act