

# HOUSE BILL NO. 4459

March 09, 2021, Introduced by Reps. Martin, Howell, Borton, Kuppa, O'Malley, VanSingel, Manoogian, Tate, Cambensy, Pohutsky, Anthony, Brixie, Sowerby, Liberati, Markkanen, Breen, Hood, Cavanagh, Aiyash, Puri, Brabec, Brenda Carter and Hammoud and referred to the Committee on Natural Resources and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 11550, 11553, and 11554 (MCL 324.11550, 324.11553, and 324.11554), section 11550 as amended by 2020 PA 201 and sections 11553 and 11554 as added by 2014 PA 178, and by designating section 11550 as subpart 8 and sections 11553 and 11554 as subpart 9 of part 115.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**

**SUBPART 8 FUND AND GRANTS**

1           Sec. 11550. (1) The solid waste management fund is created  
 2 within the state treasury. The state treasurer may receive money  
 3 from any source for deposit into the fund. The state treasurer  
 4 shall direct the investment of the fund. The state treasurer shall  
 5 credit to the fund interest and earnings from fund investments. The  
 6 department shall be the administrator of the fund for auditing  
 7 purposes.

8           (2) Money in the solid waste management fund at the close of  
 9 the fiscal year shall remain in the fund and shall not lapse to the  
 10 general fund.

11           (3) The state treasurer shall establish, within the solid  
 12 waste management fund, a solid waste staff account and a perpetual  
 13 care account.

14           (4) Subject to subsection (5), money shall be expended from  
 15 the solid waste staff account, upon appropriation, only for the  
 16 following purposes:

17           (a) Preparing generally applicable guidance regarding the  
 18 ~~solid waste permit and license~~ **materials management facility**  
 19 program or its implementation or enforcement.

20           (b) Reviewing and acting on any **notification, registration,**  
 21 **application for approval under a general permit,** application for a  
 22 permit or license, permit or license revision, or permit or license  
 23 renewal **under part 115,** including the cost of public notice and  
 24 public hearings.

25           (c) ~~Performing~~ **Providing** an advisory analysis under section  
 26 11510(1).

27           (d) General administrative costs of running the permit, ~~and~~  
 28 license, **registration, and notification** program **under part 115,**  
 29 including permit, ~~and~~ license, **registration, and notification**

1 tracking and data entry.

2 (e) Inspection of ~~licensed disposal areas~~ **materials management**  
3 **facilities** and open dumps.

4 (f) Implementing and enforcing the conditions of any permit,  
5 ~~or~~ **license, approval under a general permit, registration, or order**  
6 **under part 115.**

7 (g) Groundwater monitoring audits at disposal areas ~~which~~ **that**  
8 are or have been licensed under this part **or at any other materials**  
9 **management facility that requires groundwater monitoring because of**  
10 **a release or suspected release.**

11 (h) Reviewing and acting upon corrective action plans for  
12 ~~disposal areas which are or have been licensed~~ **materials management**  
13 **facilities, if required** under ~~this~~ **part 115.**

14 (i) Review of certifications of closure **under part 115.**

15 (j) Postclosure maintenance and monitoring inspections and  
16 review **under part 115.**

17 (k) Review of bonds and financial assurance documentation at  
18 ~~disposal areas which are or have been licensed~~ **materials management**  
19 **facilities, if required** under ~~this~~ **part 115.**

20 (l) **Materials management planning.**

21 (m) **Materials utilization education and outreach.**

22 (n) **Development of a materials utilization and recycled**  
23 **materials market directory.**

24 (o) **Administration of grants and loans under part 115 for**  
25 **planning, market development and recycling infrastructure,**  
26 **outreach, and education.**

27 (p) **Up to 1 full-time equivalent employee for the Michigan**  
28 **economic development corporation to address recycled materials**  
29 **market development.**

1       ~~(5) For the fiscal year ending September 30, 2020, only,~~  
 2       ~~\$2,000,000.00 of the money in the solid waste staff account of the~~  
 3       ~~solid waste management fund is transferred to and must be deposited~~  
 4       ~~in the general fund.~~

5       (5) ~~(6)~~ Money shall be expended from the perpetual care  
 6       account, upon appropriation, only for the following activities at  
 7       disposal areas that are or have been licensed under this part:  
 8       **materials management facilities for which the requirements of**  
 9       **section 11508(1) (a) are or were met and for which fees have been**  
 10       **collected and deposited into the perpetual care account:**

11       (a) To conduct postclosure maintenance and monitoring ~~at a~~  
 12       ~~disposal area~~ if the owner or operator is no longer required to do  
 13       so.

14       (b) To conduct closure, ~~or~~ postclosure maintenance and  
 15       monitoring, and **necessary** corrective action if ~~necessary, at a~~  
 16       ~~disposal area where~~ the owner or operator has failed to do so.  
 17       Money shall be expended from the account only after funds from any  
 18       ~~perpetual care fund or~~ other financial assurance mechanisms held by  
 19       the owner or operator have been expended and the department has  
 20       made reasonable efforts to obtain funding from other sources.

21       (6) **Subject to appropriations, the department shall provide**  
 22       **grants for the following purposes:**

23       (a) **The recycling markets program established under subsection**  
 24       **(7).**

25       (b) **The local recycling innovation program established under**  
 26       **subsection (8).**

27       (c) **The recycling access and voluntary participation program**  
 28       **established under subsection (9).**

29       (7) **The department shall establish a recycling markets**

1 program. The program shall provide grants or loans for acquiring  
2 equipment or technology, for research and development, or for  
3 associated activities to provide for new or increased use of  
4 recycled materials or to support the development of recycling  
5 markets. Local units of government and nonprofit and for-profit  
6 entities are eligible for funding under the program. The funding is  
7 not limited to entities in counties with approved materials  
8 management plans. In addition to any other reporting requirements  
9 established by the department, grant recipients under the program  
10 shall provide information on the materials managed.

11 (8) The department shall establish a local recycling  
12 innovation program. The program shall provide grants or loans for  
13 developing local recycling infrastructure, for recycling education  
14 campaigns for residents and businesses, technology, or other  
15 activities that result in increasing recycling access, quality, or  
16 participation, for reducing waste, or for sustainable materials  
17 management. Local units of government and nonprofit and for-profit  
18 entities are eligible for funding under the program. The funding is  
19 not limited to entities in counties with approved materials  
20 management plans. In addition to any other reporting requirements  
21 established by the department, grant recipients under the program  
22 shall provide the department information on the materials managed.

23 (9) The department shall establish a recycling access and  
24 voluntary participation program. The program shall provide grants  
25 or loans to assist local units of government in implementing best  
26 materials utilization practices or identifying ways to innovate and  
27 to collaborate with other local units and the private sector. To be  
28 eligible for a grant, a local unit of government must be a county  
29 that meets, or a municipality located within a county that meets,

1 both of the following requirements:

2 (a) Has a materials management plan.

3 (b) Has documented progress toward meeting or has met its  
4 benchmark recycling standards and ultimately the municipal solid  
5 waste recycling rate goal under section 11507.

6 (10) The department shall publish and make available to grant  
7 and loan applicants criteria upon which the grants and loans will  
8 be made.

9 (11) ~~(7)~~—By March 1 annually, the department shall prepare and  
10 submit to the governor, the legislature, the chairs of the standing  
11 committees of the senate and house of representatives with primary  
12 responsibility for issues related to natural resources and the  
13 environment, and the chairs of the subcommittees of the senate and  
14 house appropriations committees with primary responsibility for  
15 appropriations to the department a report that details the  
16 activities of the previous fiscal year funded by the staff account  
17 of the solid waste management fund. This report shall include, at a  
18 minimum, all of the following as ~~it relates~~ **they apply** to the  
19 department:

20 (a) The number of full-time equated positions performing solid  
21 waste management ~~permitting, authorization,~~ compliance, and  
22 enforcement activities.

23 (b) All of the following information related to the  
24 construction permit applications received under section 11509:

25 (i) The number of applications received by the department,  
26 reported as the number of applications determined to be  
27 administratively incomplete and the number determined to be  
28 administratively complete.

29 (ii) The number of applications determined to be

1 administratively complete for which a final action was taken by the  
2 department. The number of final actions shall be reported as the  
3 number of applications approved, the number of applications denied,  
4 and the number of applications withdrawn by the applicant.

5 (iii) The percentage and number of applications determined to be  
6 administratively complete for which a final decision was made  
7 within the period required by part 13.

8 (c) All of the following information related to the operating  
9 license applications received under section 11512:

10 (i) The number of applications received by the department,  
11 reported as the number of applications determined to be  
12 administratively incomplete and the number determined to be  
13 administratively complete.

14 (ii) The number of applications determined to be  
15 administratively complete for which a final action was taken by the  
16 department. The number of final actions shall be reported as the  
17 number of applications approved, the number of applications denied,  
18 and the number of applications withdrawn by the applicant.

19 (iii) The percentage and number of applications determined to be  
20 administratively complete for which a final decision was made  
21 within the period required by part 13.

22 (d) The number of inspections conducted at licensed disposal  
23 areas as required by section 11519 **and the number of inspections**  
24 **conducted at materials utilization facilities as required by**  
25 **section 11526.**

26 (e) The number of letters of warning sent to licensed disposal  
27 areas.

28 (f) The number of contested case hearings and civil actions  
29 initiated and completed, the number of voluntary consent orders and

1 administrative orders entered or issued, and the amount of fines  
2 and penalties collected through such actions or orders.

3 (g) For each enforcement action that includes a penalty, a  
4 description of the corrective actions required by the enforcement  
5 action.

6 (h) The number of solid waste complaints received,  
7 investigated, resolved, and not resolved by the department.

8 (i) The amount of revenue in the staff account of the solid  
9 waste management fund and **the amount of revenue in** the coal ash  
10 care fund at the end of the fiscal year.

11 **(12)** ~~(8)~~—The coal ash care fund is created within the state  
12 treasury. The state treasurer may receive money from any source for  
13 deposit into the fund. The state treasurer shall direct the  
14 investment of the fund. The state treasurer shall credit to the  
15 fund interest and earnings from fund investments.

16 **(13)** ~~(9)~~—Money shall be expended from the coal ash care fund,  
17 upon appropriation, only for the following purposes relating to  
18 coal ash impoundments and coal ash landfills:

19 (a) Preparing generally applicable guidance regarding the  
20 solid waste permit and license program or its implementation or  
21 enforcement.

22 (b) Reviewing and acting on any application for a permit or  
23 license, permit or license revision, or permit or license renewal,  
24 including the cost of public notice and public hearings.

25 (c) Performing an advisory analysis under section 11510(1).

26 (d) General administrative costs of running the permit and  
27 license program, including permit and license tracking and data  
28 entry.

29 (e) Inspection of licensed disposal areas and open dumps.



1 (f) Implementing and enforcing the conditions of any permit or  
2 license.

3 (g) Groundwater monitoring audits at disposal areas that are  
4 or have been licensed under this part.

5 (h) Reviewing and acting upon corrective action plans for  
6 disposal areas that are or have been licensed under this part.

7 (i) Review of certifications of closure.

8 (j) Postclosure maintenance and monitoring inspections and  
9 review.

10 (k) Review of bonds and financial assurance documentation at  
11 disposal areas that are or have been licensed under this part.

#### 12 **SUBPART 9 BENEFICIAL USE BY-PRODUCTS**

13 Sec. 11553. (1) Consistent with the requirements of ~~this part~~  
14 **115**, the department shall apply this section so as to promote and  
15 foster the use of wastes and by-products for recycling or  
16 beneficial purposes.

17 (2) Any person may request the department, consistent with the  
18 definitions and other terms of ~~this part~~ **115**, to approve a  
19 material, a use, or a material and use as a source separated  
20 material; a beneficial use by-product for beneficial use 1, 2, 4,  
21 or 5; an inert material; a low-hazard industrial waste;  
22 **nondetrimental material managed for agricultural or silvicultural**  
23 **use**; or another material, use, or material and use that can be  
24 approved under ~~this part~~ **115**. Among other things, a person may  
25 request the department to approve a use that does not ~~qualify as~~  
26 **meet the definition of** beneficial use 2 under section ~~11502(4)(a)~~  
27 **11502(8)(a)** because the property is not nonresidential property or  
28 under section ~~11502(4)(a)~~, **11502(8)(a)**, (b), or (c) because the  
29 material exceeds 4 feet in thickness. A request under this

1 subsection shall **be in writing and** contain a description of the  
2 material including the process generating it; results of analyses  
3 of representative samples of the material for any hazardous  
4 substances that the person has knowledge or reason to believe could  
5 be present in the material, based on its source, its composition,  
6 or the process that generated it; and, if applicable, a description  
7 of the proposed use. The analysis and sampling of the material  
8 under this subsection shall be consistent with the methods  
9 ~~contained in the EPA document entitled "test methods for the~~  
10 ~~evaluation of solid waste, physical/chemical methods," SW 846 3rd~~  
11 ~~edition; identified in "Standard Methods for the Examination of~~  
12 **Water and Wastewater, 20th Edition,** (jointly published by the  
13 **American Public Health Association, the American Water Works**  
14 **Association, and the Water Environment Federation) or "Test Methods**  
15 **for Evaluating Solid Waste, Physical/Chemical Methods," EPA**  
16 **publication SW-846, Third Edition, Final Updates I (1993), II**  
17 **(1995), IIA (1994), IIB (1995), III (1997), IIIA (1999), IIIB**  
18 **(2005), IV (2008), AND V (2015);** 1 or more peer-reviewed standards  
19 developed by a national or international organization, such as ASTM  
20 ~~international; **International;**~~ or 1 or more standards or methods  
21 approved by the department or the EPA. The department shall approve  
22 or deny the request **in writing** within 150 days after the request is  
23 received, unless the parties agree to an extension. If the  
24 department determines that the request does not include sufficient  
25 information, the department shall, not more than 60 days after  
26 receipt of the request, notify the requester. The notice shall  
27 specify the additional information that is required. The 150-day  
28 period is tolled until the requestor submits the information  
29 specified in the notice. If the department approves a request under

1 this subsection, the approval shall include the following  
2 statement: "This approval does not require any use of any  
3 beneficial use by-product by a governmental entity or any other  
4 person." The department may impose conditions and other  
5 requirements consistent with the purposes of ~~this part~~ **115** on a  
6 material, a use, or a material and use approved under this section  
7 that are reasonably necessary for the use. If a request is approved  
8 with conditions or other requirements, the approval shall  
9 specifically state the conditions or other requirements. If the  
10 request is denied, the ~~department's~~ denial shall, to the extent  
11 practical, state with specificity all of the reasons for denial. If  
12 the department fails to approve or deny the request within the 150-  
13 day period, the request is considered approved. A person requesting  
14 approval under this subsection may seek review of any final  
15 department decision pursuant to section 631 of the revised  
16 judicature act of 1961, 1961 PA 236, MCL 600.631.

17 (3) The department shall approve a material for a specified  
18 use as a beneficial use by-product if all of the following  
19 requirements are met:

20 (a) The material is an industrial or commercial material that  
21 is or has the potential to be generated in high volumes.

22 (b) The proposed use serves a legitimate beneficial purpose  
23 other than providing a means to discard the material.

24 (c) A market exists for the material or there is a reasonable  
25 potential for the creation of a new market for the material if it  
26 is approved as a beneficial use by-product.

27 (d) The material and use meet all federal and state consumer  
28 protection and product safety laws and regulations.

29 (e) The material meets all of the following requirements:

1           (i) ~~Hazardous~~ **Any hazardous** substances in the material do not  
2 pose a direct contact health hazard to humans.

3           (ii) The material does not leach, decompose, or dissolve ~~in a~~  
4 ~~way that forms an unacceptably contaminated leachate. An~~  
5 ~~unacceptably contaminated leachate is one to form a leachate~~ that  
6 exceeds either ~~part of the following~~:

7           **(A) Part** 201 generic residential groundwater drinking water  
8 criteria. ~~or surface~~

9           **(B) Surface** water quality standards established under part 31.

10          (iii) The material does not produce emissions that violate part  
11 55 or that create a nuisance.

12          (4) The department may approve a material for a specified use  
13 as a beneficial use by-product **or as restricted use compost** if the  
14 material meets the requirements of subsection (3)(a), (b), (c), and  
15 (d) but fails to meet the requirements of subsection (3)(e) and if  
16 the department determines that the material and use are protective  
17 of **the environment, natural resources, and** the public health,  
18 **safety, and environment-welfare.** In making the determination, the  
19 department shall consider the potential for exposure and risk to  
20 ~~human health and the environment,~~ **natural resources, and the public**  
21 **health, safety, and welfare** given the nature of the material, its  
22 proposed use, and the environmental fate and transport of any  
23 hazardous substances in the material in soil, groundwater, or other  
24 relevant media.

25          (5) The department shall approve a material as inert **or as**  
26 **general use compost** if all of the following requirements are met:

27           (a) The material is proposed to be used for a legitimate  
28 purpose other than a means to dispose of the material.

29           (b) ~~Hazardous substances~~ **Substances** in the material do not

1 pose a direct contact health hazard to humans.

2 (c) The material does not leach, decompose, or dissolve in a  
3 way that forms an unacceptably contaminated leachate upon contact  
4 with water or other liquids likely to be found at the area of  
5 placement, disposal, or use. ~~An unacceptably contaminated leachate~~  
6 ~~is to form a~~ leachate that exceeds ~~part~~ **either of the following:**

7 (i) **Part** 201 generic residential groundwater drinking water  
8 criteria. ~~or surface~~

9 (ii) **Surface** water quality standards established under part 31.

10 (d) The material does not produce emissions that violate part  
11 55 or that create a nuisance.

12 (6) The department may approve a material as inert if the  
13 material meets the requirements of subsection (5)(a) but fails to  
14 meet the requirements of subsection (5)(b), (c), or (d) and if the  
15 department determines that the material is protective of the ~~public~~  
16 ~~health and environment,~~ **natural resources, and the public health,**  
17 **safety, and welfare.** In making the determination, the department  
18 shall consider the potential for exposure and risk to ~~human health~~  
19 ~~and the environment,~~ **natural resources, and the public health,**  
20 **safety, and welfare** given the nature of the material, its proposed  
21 use, and the environmental fate and transport of any hazardous  
22 substances in the material in soil, groundwater, or other relevant  
23 media.

24 (7) The department shall approve a material as a low-hazard  
25 industrial waste if hazardous substances in representative samples  
26 of the material do not leach, using, at the option of the  
27 generator, EPA method 1311, ~~1312,~~ **"Toxicity Characteristic Leaching**  
28 **Procedure", EPA method 1312, "Synthetic Precipitation Leaching**  
29 **Procedure",** or any other method approved by the department that

1 more accurately simulates mobility, above the higher of the  
2 following:

3 (a) One-tenth the hazardous waste toxicity characteristic  
4 threshold as set forth in rules promulgated under part 111.

5 (b) Ten times the generic residential groundwater drinking  
6 water cleanup criteria as set forth in rules promulgated under part  
7 201.

8 (8) The department shall approve a material as a source  
9 separated material if the person who seeks the designation  
10 demonstrates that the material can be recycled or converted into  
11 raw materials or new products by being returned to the original  
12 process from which it was generated, by use or reuse as an  
13 ingredient in an industrial process to make a product, or by use or  
14 reuse as an effective substitute for a commercial product. To  
15 qualify as a source separated material, the material, product, or  
16 reuse must meet all federal and state consumer protection and  
17 product safety laws and regulations and must not create a nuisance.  
18 If a material will be applied to or placed on ~~the~~ land, or will be  
19 used to produce products that are applied to or placed on ~~the~~ land,  
20 the material must qualify as an inert material or beneficial use  
21 by-product.

22 (9) Any written determination by the department made ~~prior to~~  
23 ~~the effective date of the amendatory act that added this section~~  
24 **before September 16, 2014**, designating a material as an inert  
25 material, an inert material appropriate for general reuse, an inert  
26 material appropriate for reuse at a specific location, an inert  
27 material appropriate for specific reuse instead of virgin material,  
28 a source separated material, ~~a site separated material,~~ a low-  
29 hazard industrial waste, or a non-solid-waste material remains in

1 effect according to its terms or until forfeited in writing by the  
 2 person who received the determination. Upon termination,  
 3 expiration, or forfeiture of the written determination, the current  
 4 requirements of ~~this part 115~~ control. The amendments made to this  
 5 part by ~~the amendatory act that added this section 2014 PA 178~~ do  
 6 not rescind, invalidate, limit, or modify any such prior  
 7 determination in any way.

8 **(10) Notwithstanding any other provision of part 115, a person**  
 9 **in possession of material that is designated or approved for**  
 10 **beneficial use or as inert material or in possession of material**  
 11 **from an industrial facility that is designated or approved as**  
 12 **source separated material is not subject to regulation as a**  
 13 **materials management facility if the person manages and uses the**  
 14 **material as provided in part 115 for that material.**

15 Sec. 11554. The department of agriculture and rural  
 16 development, and not the department of ~~environmental quality,~~  
 17 **environment, Great Lakes, and energy,** shall administer and enforce  
 18 ~~this part 115~~ in connection with any material that is licensed or  
 19 registered under part 85 or 1955 PA 162, MCL 290.531 to 290.538.

20 Enacting section 1. This amendatory act takes effect 90 days  
 21 after the date it is enacted into law.

22 Enacting section 2. This amendatory act does not take effect  
 23 unless all of the following bills of the 101st Legislature are  
 24 enacted into law:

25 (a) Senate Bill No. \_\_\_\_ or House Bill No. 4454 (request no.  
 26 01463'21 \*).

27 (b) Senate Bill No. \_\_\_\_ or House Bill No. 4456 (request no.  
 28 01464'21).

29 (c) Senate Bill No. \_\_\_\_ or House Bill No. 4457 (request no.

1 01465'21).

2 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 4458 (request no.  
3 01466'21 \*).

4 (e) Senate Bill No. \_\_\_\_\_ or House Bill No. 4460 (request no.  
5 01467'21).

6 (f) Senate Bill No. \_\_\_\_\_ or House Bill No. 4461 (request no.  
7 01468'21).

8 (g) Senate Bill No. \_\_\_\_\_ or House Bill No. 4455 (request no.  
9 02172'21).