

SENATE BILL No. 646

September 14, 2011, Introduced by Senators HOPGOOD, ANDERSON, PAPPAGEORGE, WARREN and KOWALL and referred to the Committee on Natural Resources, Environment and Great Lakes.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 11123 (MCL 324.11123), as amended by 2010 PA
357.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11123. (1) Unless a person is complying with subsection
2 (8) or a rule promulgated under section 11127(4), a person shall
3 not establish, construct, conduct, manage, maintain, or operate a
4 treatment, storage, or disposal facility within this state
5 without an operating license from the department.

6 (2) An application for an operating license for a proposed
7 treatment, storage, or disposal facility or the expansion,
8 enlargement, or alteration of a treatment, storage, or disposal
9 facility beyond its original authorized design capacity or beyond

1 the area specified in an existing operating license, original
2 construction permit, or other authorization shall be submitted on
3 a form provided by the department and contain all of the
4 following:

5 (a) The name and residence of the applicant.

6 (b) The location of the proposed treatment, storage, or
7 disposal facility project.

8 (c) A copy of an actual published notice that the applicant
9 published at least 30 days before submittal of the application in
10 a newspaper having major circulation in the municipality and the
11 immediate vicinity of the proposed treatment, storage, or
12 disposal facility project. The notice shall contain a map
13 indicating the location of the proposed treatment, storage, or
14 disposal facility project and information on the nature and size
15 of the proposed facility. In addition, as provided by the
16 department, the notice shall contain a description of the
17 application review process, the location where the complete
18 application may be reviewed, and an explanation of how copies of
19 the complete application may be obtained.

20 (d) A written summary of the comments received at the public
21 preapplication meeting required by rule and the applicant's
22 response to the comments, including any revisions to the
23 application.

24 (e) A determination of existing hydrogeological
25 characteristics specified in a hydrogeological report and
26 monitoring program consistent with rules promulgated under this
27 part.

(f) An environmental assessment. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of this state, and also shall contain an environmental failure mode assessment.

(g) The procedures for closure and postclosure monitoring.

(h) An engineering plan.

(i) Other information specified by rule or by federal regulation issued under the solid waste disposal act.

(j) An application fee. The application fee shall be deposited in the environmental pollution prevention fund created in section 11130. Pursuant to procedures established by rule, the application fee shall be ~~the sum of~~ \$25,000.00 plus all of the following, as applicable:

- (i) For a landfill, surface impoundment, land treatment, or waste pile facility..... \$ 9,000.00
- (ii) For an incinerator or treatment facility other than a treatment facility described in subparagraph (i)..... \$ 7,200.00
- (iii) For a storage facility, other than storage that is associated with treatment or disposal activities that may be regulated under a single license.. \$ 500.00

(k) Except as otherwise provided in this subdivision, a disclosure statement that includes all of the following:

(i) The full name and business address of all of the

1 following:

2 (A) The applicant.

3 (B) The 5 persons holding the largest shares of the equity
4 in or debt liability of the proposed facility. The department may
5 waive all or any portion of this requirement for an applicant
6 that is a corporation with publicly traded stock.

7 (C) The operator. If a waiver is obtained under sub-
8 subparagraph (B), detailed information regarding the proposed
9 operator shall be included in the disclosure statement.

10 (D) If known, the 3 employees of the operator who will have
11 the most responsibility for the day-to-day operation of the
12 facility, including their previous experience with other
13 hazardous waste treatment, storage, or disposal facilities.

14 (E) Any other partnership, corporation, association, or
15 other legal entity if any person required to be listed under sub-
16 subparagraphs (A) to (D) has at any time had 25% or more of the
17 equity in or debt liability of that legal entity. The department
18 may waive all or any portion of this requirement for an applicant
19 that is a corporation with publicly traded stock.

20 (ii) ~~A~~ **FOR EACH PERSON REQUIRED TO BE LISTED UNDER THIS**
21 **SUBDIVISION, A** list of all convictions for criminal violations of
22 any ~~environmental~~ statute enacted by a federal, state, Canadian,
23 or Canadian provincial agency ~~for each person required to be~~
24 ~~listed under this subdivision.~~ **IF THE STATUTE IS AN ENVIRONMENTAL**
25 **STATUTE OR IF THE VIOLATION WAS COMMITTED IN FURTHERANCE OF**
26 **OBTAINING THE PERMIT FOR WHICH THE APPLICATION IS FILED.** If debt
27 liability is held by a chartered lending institution, information

1 required in this subparagraph and subparagraphs (iii) and (iv) is
2 not required from that institution.

3 (iii) A list of all environmental permits or licenses issued
4 by a federal, state, local, Canadian, or Canadian provincial
5 agency held by each person required to be listed under this
6 subdivision that were permanently revoked because of
7 noncompliance.

8 (iv) A list of all activities at property owned or operated
9 by each person required to be listed under this subdivision that
10 resulted in a threat or potential threat to the environment and
11 for which public funds were used to finance an activity to
12 mitigate the threat or potential threat to the environment,
13 except if the public funds expended to facilitate the mitigation
14 of environmental contamination were voluntarily and expeditiously
15 recovered from the applicant or other listed person without
16 litigation.

17 (l) A demonstration that the applicant has considered each of
18 the following:

19 (i) The risk and impact of accident during the transportation
20 of hazardous waste to the treatment, storage, or disposal
21 facility.

22 (ii) The risk and impact of fires or explosions from improper
23 treatment, storage, and disposal methods at the treatment,
24 storage, or disposal facility.

25 (iii) The impact on the municipality where the proposed
26 treatment, storage, or disposal facility is to be located in
27 terms of health, safety, cost, and consistency with local

1 planning and existing development, including proximity to
2 housing, schools, and public facilities.

3 (iv) The nature of the probable environmental impact,
4 including the specification of the predictable adverse effects on
5 each of the following:

6 (A) The natural environment and ecology.

7 (B) Public health and safety.

8 (C) Scenic, historic, cultural, and recreational values.

9 (D) Water and air quality and wildlife.

10 (m) A summary of measures evaluated to mitigate the impacts
11 identified in subdivision (l) and a detailed description of the
12 measures to be implemented by the applicant.

13 (n) A schedule for submittal of all of the following
14 postconstruction documentation:

15 (i) Any changes in, or additions to, the previously submitted
16 disclosure information, or a certification that the disclosure
17 listings previously submitted continue to be correct, following
18 completion of construction of the treatment, storage, or disposal
19 facility.

20 (ii) A certification under the seal of a licensed
21 professional engineer verifying that the construction of the
22 treatment, storage, or disposal facility has proceeded according
23 to the plans approved by the department and, if applicable, the
24 approved construction permit, including as-built plans.

25 (iii) A certification of the treatment, storage, or disposal
26 facility's capability of treating, storing, or disposing of
27 hazardous waste in compliance with this part.

1 (iv) Proof of financial assurance as required by rule.

2 (3) If any information required to be included in the
3 disclosure statement under subsection (2)(k) changes or is
4 supplemented after the filing of the statement, the applicant or
5 licensee shall provide that information to the department in
6 writing not later than 30 days after the change or addition.

7 (4) Notwithstanding any other provision of law, the
8 department may deny an application for an operating license if
9 there are any listings pursuant to subsection (2)(k)(ii), (iii), or
10 (iv) as originally disclosed or as supplemented.

11 (5) The application for an operating license for a proposed
12 limited storage facility, which is subject to the requirements
13 pertaining to storage facilities, shall be submitted on a form
14 provided by the department and contain all of the following:

15 (a) The name and residence of the applicant.

16 (b) The location of the proposed facility.

17 (c) A determination of existing hydrogeological
18 characteristics specified in a hydrogeological report and
19 monitoring program consistent with rules promulgated under this
20 part.

21 (d) An environmental assessment. The environmental
22 assessment shall include, at a minimum, an evaluation of the
23 proposed facility's impact on the air, water, and other natural
24 resources of this state, and also shall contain an environmental
25 failure mode assessment.

26 (e) The procedures for closure.

27 (f) An engineering plan.

1 (g) Proof of financial responsibility.

2 (h) A resolution or other formal determination of the
3 governing body of each municipality in which the proposed limited
4 storage facility would be located indicating that the limited
5 storage facility is compatible with the zoning ordinance of that
6 municipality, if any. However, in the absence of a resolution or
7 other formal determination, the application shall include a copy
8 of a registered letter sent to the municipality at least 60 days
9 before the application submittal, indicating the intent to
10 construct a limited storage facility, and requesting a formal
11 determination on whether the proposed facility is compatible with
12 the zoning ordinance of that municipality, if any, in effect on
13 the date the letter is received, and indicating that failure to
14 pass a resolution or make a formal determination within 60 days
15 of receipt of the letter means that the proposed facility is to
16 be considered compatible with any applicable zoning ordinance.
17 If, within 60 days of receiving a registered letter, a
18 municipality does not make a formal determination concerning
19 whether a proposed limited storage facility is compatible with a
20 zoning ordinance of that municipality as in effect on the date
21 the letter is received, the limited storage facility is
22 considered compatible with any zoning ordinance of that
23 municipality, and incompatibility with a zoning ordinance of that
24 municipality shall not be a basis for denial of the license by
25 the department.

26 (i) An application fee of \$500.00. The application fee shall
27 be deposited in the environmental pollution prevention fund

1 created in section 11130.

2 (j) Other information specified by rule or by federal
3 regulation issued under the solid waste disposal act.

4 (6) The application for an operating license for a
5 treatment, storage, or disposal facility other than a facility
6 identified in subsection (2) or (5) shall be made on a form
7 provided by the department and include all of the following:

8 (a) The name and residence of the applicant.

9 (b) The location of the existing treatment, storage, or
10 disposal facility.

11 (c) Other information considered necessary by the department
12 or specified in this section, by rule, or by federal regulation
13 issued under the solid waste disposal act.

14 (d) Proof of financial responsibility. An applicant for an
15 operating license for a treatment, storage, or disposal facility
16 that is a surface impoundment, landfill, or land treatment
17 facility shall demonstrate financial responsibility for claims
18 arising from nonsudden and accidental occurrences relating to the
19 operation of the facility that cause injury to persons or
20 property.

21 (e) A fee of \$500.00. The fee shall be deposited in the
22 environmental pollution prevention fund created in section 11130.

23 (7) The department shall establish a schedule for requiring
24 each person subject to subsection (8) to submit an operating
25 license application. The department may adjust this schedule as
26 necessary. Each person subject to subsection (8) shall submit a
27 complete operating license application within 180 days of the

1 date requested to do so by the department.

2 (8) A person who owns or operates a treatment, storage, or
3 disposal facility that is in existence on the effective date of
4 an amendment of this part or of a rule promulgated under this
5 part that renders all or portions of the facility subject to the
6 operating license requirements of this section may continue to
7 operate the facility or portions of the facility that are subject
8 to the operating license requirements until an operating license
9 application is approved or denied if all of the following
10 conditions have been met:

11 (a) A complete operating license application is submitted
12 within 180 days of the date requested by the department under
13 subsection (7).

14 (b) The person is in compliance with all rules promulgated
15 under this part and with all other state laws.

16 (c) The person qualifies for interim status as defined in
17 the solid waste disposal act, is in compliance with interim
18 status standards established by federal regulation under subtitle
19 C of the solid waste disposal act, 42 USC 6921 to 6939e, and has
20 not had interim status terminated.

21 (9) A person may request to be placed on a department-
22 organized mailing list to be kept informed of any rules, plans,
23 operating license applications, contested case hearings, public
24 hearings, or other information or procedures relating to the
25 administration of this part. The department may charge a fee to
26 cover the cost of the materials.