

HOUSE BILL No. 5483

March 17, 2016, Introduced by Reps. Brunner and Lauwers and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 11502, 11551, 11554, and 20115 (MCL 324.11502,
324.11551, 324.11554, and 324.20115), sections 11502 and 20115 as
amended and sections 11551 and 11554 as added by 2014 PA 178.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

1 or vegetation grown on the land.

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

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

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

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

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

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

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

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

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

24 (b) Road base or soil stabilizer that does not exceed 4 feet
25 in thickness except for areas where exceedances are incidental to
26 variations in existing topography, is placed at least 4 feet above
27 the seasonal groundwater table, does not come into contact with a

1 surface water body, and is covered by concrete, asphalt pavement,
2 or other material approved by the department.

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

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

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

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

18 (i) Violate part 55 or create a nuisance.

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

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

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

25 (a) To stabilize, neutralize, solidify, or otherwise treat
26 waste for ultimate disposal at a facility licensed under this part
27 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 ~~1387~~**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,

1 paper, or plastic container, or a container composed of a
2 combination of these materials, which, at the time of sale,
3 contains 1 gallon or less of any of the following:

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

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

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

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

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

24 (12) "Certificate of deposit" means a negotiable certificate
25 of deposit held by a bank or other financial institution regulated
26 and examined by a state or federal agency, the value of which is
27 fully insured by an agency of the United States government. A

1 certificate of deposit used to fulfill the requirements of this
2 part shall be in the sole name of the department with a maturity
3 date of not less than 1 year and shall be renewed not less than 60
4 days before the maturity date. An applicant who uses a certificate
5 of deposit as a bond shall receive any accrued interest on that
6 certificate of deposit upon release of the bond by the department.

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

11 (14) "Coal ash" means the material recovered from systems for
12 the control of air pollution from, or the noncombusted residue
13 remaining after, the combustion of coal, including, but not limited
14 to, bottom ash, fly ash, boiler slag, or fluidized-bed combustion
15 ash. For beneficial use 2, coal ash does not include coal fly ash
16 except for the following if used at nonresidential property:

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

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

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

26 (15) "Coal bottom ash" means ash particles from the combustion
27 of coal that are too large to be carried in flue gases and that

1 collect on furnace walls or at the bottom of the furnace.

2 (16) "Collection center" means a tract of land, building,
3 unit, or appurtenance or combination thereof that is used to
4 collect junk motor vehicles and farm implements under section
5 11530.

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

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

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

26 Sec. 11551. (1) Except for a material that the department
27 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:

1	Constituent-	Coal	Pulp	Foundry	Cement	Water	Stamp	Spent
2	maximum	ash	and	sand	kiln	softening	sand	media
3	leachate mg/l	or	paper		dust,	limes,		from
4		wood	mill		lime	dewatered		sand
5		ash	ash,		kiln	grinding		blasting
6			mixed		dust	sludge		
7			wood					
8			ash					
9	Arsenic - 0.2	X	X	X	X	X		
10	Boron - 10	X						
11	Cadmium - 0.1	X	X		X	X		
12	Chromium - 2.0	X						X
13	Lead - 0.08	X	X	X	X	X		
14	Mercury - 0.04	X	X		X	X		
15	Copper - 20		X			X	X	
16	Nickel - 2.0		X	X		X		X
17	Selenium - 1.0	X				X		
18	Thallium - 0.04	X			X			
19	Zinc - 48	X	X			X		

20 (h) For beneficial use 3, the material or use of the material,
 21 as applicable, meets all of the following requirements:

22 (i) The material is coal bottom ash, wood ash, pulp and paper
 23 mill material, pulp and paper mill ash, mixed wood ash, foundry
 24 sand from ferrous or aluminum foundries, cement kiln dust, lime
 25 kiln dust, lime water softening residuals, flue gas desulfurization
 26 gypsum, soil washed or otherwise removed from sugar beets, or
 27 dewatered concrete grinding slurry from public transportation

1 agency road projects.

2 (ii) The amount of any constituent listed below applied to an
3 area of land over any period of time does not exceed the following:

4 CONSTITUENT	CUMULATIVE LOAD
5	POUNDS PER ACRE
6 Arsenic	37
7 Cadmium	35
8 Copper	1,335
9 Lead	267
10 Mercury	15
11 Nickel	374
12 Selenium	89
13 Zinc	2,492

14 (iii) If the department of agriculture and rural development
15 determines, based on peer-reviewed scientific literature, that any
16 other constituent is subject to a cumulative loading requirement,
17 the amount of that constituent applied to an area of land over any
18 period of time does not exceed that cumulative loading requirement.
19 The cumulative load for that constituent shall be calculated as
20 follows: constituent concentration (mg/kg dry weight) x conversion
21 factor of 0.002 (concentration to pounds per dry ton) x the
22 material application rate in dry tons per acre.

23 (i) For beneficial use 5, the material is foundry sand from
24 ferrous or aluminum foundries and representative sampling of the
25 foundry sand using either a totals analysis, a leachate analysis
26 (using EPA method 1311, EPA method 1312, ASTM method 3987, or other

1 leaching protocol approved by the department), or any combination
 2 of the 2 types of analyses demonstrates that none of the following
 3 maximum concentrations are exceeded:

4	CONSTITUENT	TOTALS	LEACHATE
5		ANALYSIS MG/KG	ANALYSIS MG/L
6	Antimony	4.3	0.006
7	Cobalt	0.8	0.04
8	Copper	5,800	1
9	Iron	23,185	2.0
10	Lead	700	0.004
11	Manganese	1,299	0.86
12	Molybdenum	5	0.073
13	Nickel	100	0.1
14	Thallium	2.3	0.002
15	Vanadium	72	0.0045
16	Zinc	2,400	2.4
17	Benzene	0.1	0.005
18	Formaldehyde	26	1.3
19	Phenol	88	4.4
20	Trichloroethylene	0.1	0.005

21 (2) The determination whether a material meets the
 22 requirements of subsection (1)(a) or (g) shall be based on the
 23 analysis of a representative sample of the material by the initial
 24 generator. The initial generator shall maintain records of the test
 25 results for not less than 10 years after the date the material was
 26 sent off site and make the records available to the department upon

1 request. The generator shall resample and analyze the material when
2 raw materials or processes change in a way that could reasonably be
3 expected to materially affect analysis results.

4 (3) Except as otherwise provided in this act, storage and use
5 of beneficial use by-products shall comply with all other
6 applicable provisions of this act.

7 (4) The storage of a material for beneficial use 3 that
8 complies with regulation no. 641, commercial fertilizer bulk
9 storage, R 285.641.1 to R 285.641.18 of the Michigan administrative
10 code, shall be considered to comply with the storage requirements
11 of this part.

12 (5) A person that actively manages and reuses a beneficial use
13 by-product that has already been used in compliance with this part
14 may rely on analytical data from the prior use.

15 (6) All of the following apply to beneficial uses 1 and 2 at
16 and along roadways:

17 (a) Routine repair and replacement of roadways constructed
18 using beneficial use materials does not constitute generation of
19 beneficial use by-products triggering the requirements of this
20 section if the beneficial use by-products remain or are reused at
21 the same roadway and are used in a manner that meets the definition
22 of beneficial use 1 or beneficial use 2, as appropriate. If the
23 beneficial use by-products will be reused at some place other than
24 the same roadway, then the requirements applicable to generators of
25 beneficial use by-products must be met, except as follows:

26 (i) As set forth in subsection (5).

27 (ii) The requirements of section 11552 apply only if the

1 category of beneficial use will change.

2 (b) For beneficial use 2, the requirement that beneficial use
3 materials be covered by concrete, asphalt, or 6 inches of gravel
4 applies at the time of placement and use. The development of
5 potholes, shoulder erosion, or similar deterioration does not
6 result in a violation of this part.

7 (c) If road materials containing beneficial use by-products
8 are ground, reheated, or melted for reuse, the requirements of part
9 55 must be met.

10 (d) This part does not prohibit the state transportation
11 department from seeking additional data or information for road
12 building materials or from requiring that road building materials
13 meet state transportation department specifications and standards.

14 (7) For beneficial use 3, the material that is offered for
15 sale or use shall be annually registered or licensed under part 85.
16 ~~or 1955 PA 162, MCL 290.531 to 290.538.~~ In addition to the
17 information required under part 85, ~~or 1955 PA 162, MCL 290.531 to~~
18 ~~290.538,~~ the following information shall be submitted to the
19 department of agriculture and rural development with the license or
20 registration application:

21 (a) Directions for use to ensure that the material is applied
22 at an agronomic rate that has been reviewed by a certified crop
23 advisor.

24 (b) A laboratory analysis report that contains all of the
25 following:

26 (i) Sampling results that demonstrate that the material does
27 not pose harm to human health or the environment. One method by

1 which this demonstration can be made is by sampling results that
2 comply with both of the following:

3 (A) The levels established pursuant to the ~~association~~
4 **ASSOCIATION** of American ~~plant food control officials'~~ **PLANT FOOD**
5 **CONTROL OFFICIALS'** statement of uniform interpretation and policy
6 #25, as follows:

7 (I) A fertilizer with a phosphorus or micronutrient guarantee
8 shall apply the policy in its entirety.

9 (II) A fertilizer with only a nitrogen, potassium, or
10 secondary nutrient guarantee shall use the micronutrients column in
11 the policy and apply a multiplier of 1 to determine the maximum
12 allowable concentration of each metal.

13 (III) A soil conditioner ~~or liming material~~ shall use the
14 micronutrients column in the policy and apply a multiplier of 1 to
15 determine the maximum allowable concentration of each metal.

16 (B) The part 201 generic residential soil direct contact
17 cleanup criteria for volatile organic compounds (as determined by
18 U.S. EPA method 8260), semivolatile organic compounds (as
19 determined by U.S. EPA method 8270c), and dioxins (as determined by
20 U.S. EPA method 1613b). Results for dioxins shall be reported on a
21 dry weight basis, and total dioxin equivalence shall be calculated
22 and reported utilizing the U.S. EPA toxic equivalency factors (U.S.
23 EPA/100/R10/005).

24 (ii) For a fertilizer, all of the following used by a
25 certified crop advisor to determine an agronomic rate consistent
26 with generally accepted agricultural and management practices:

27 (A) A demonstration that the material contains the minimum

1 percentage of each plant nutrient guaranteed or claimed to be
2 present.

3 (B) The percentage of dry solids, nitrogen, ammonium nitrogen,
4 nitrate nitrogen, phosphorus, and potassium in the material.

5 (C) The levels of calcium, magnesium, acidity or basicity
6 measured by pH, sulfur, chromium, copper, silver, chlorine, and
7 boron.

8 (iii) For a soil conditioner ~~or a liming material~~, all of the
9 following used by a certified crop advisor to determine an
10 agronomic rate consistent with generally accepted agricultural and
11 management practices:

12 (A) The percentage of dry solids in the material.

13 (B) The levels of calcium, magnesium, acidity or basicity
14 measured by pH, sulfur, chromium, copper, silver, chlorine, and
15 boron.

16 (iv) For a soil conditioner, scientifically acceptable data
17 that give reasonable assurance that the material will improve the
18 physical nature of the soil by altering the soil structure by
19 making soil nutrients more available or otherwise enhancing the
20 soil media resulting in beneficial crop response or other plant
21 growth.

22 ~~—— (v) For a liming material, scientifically acceptable data~~
23 ~~demonstrating that the material will correct soil acidity.~~

24 (8) When a material is licensed or registered as described in
25 subsection (7), the laboratory analysis report and the
26 scientifically acceptable data submitted with a prior application
27 may be resubmitted for a subsequent application unless the raw

1 materials or processes used to generate the material change in a
2 way that could reasonably be expected to materially affect the
3 laboratory analysis report or scientifically acceptable data.

4 (9) This part does not authorize open dumping prohibited by
5 the solid waste disposal act, 42 USC 6901 to 6992k.

6 (10) If an owner of property has knowledge that a material has
7 been used on the property for beneficial use 2, before transferring
8 the property, the owner shall provide notice to a prospective
9 transferee that the material was used for beneficial use 2,
10 including the date and location of the use, if known. If a
11 contractor, consultant, or agent of an owner of property uses a
12 material on the property for beneficial use 2, the contractor,
13 consultant, or agent shall provide notice to the owner that the
14 material was used for beneficial use 2, including the date and
15 location of the use.

16 Sec. 11554. The department of agriculture and rural
17 development, and not the department of environmental quality, shall
18 administer and enforce this part in connection with any material
19 that is licensed or registered under part 85. ~~or 1955 PA 162, MCL~~
20 ~~290.531 to 290.538.~~

21 Sec. 20115. (1) The department, upon confirmation of a release
22 or threat of release of a substance that is regulated by the
23 department of agriculture and rural development, shall notify the
24 department of agriculture and rural development. The department of
25 agriculture and rural development shall undertake or ensure the
26 initiation of the necessary response activity to immediately stop
27 or prevent further releases at the site. The department of

1 agriculture and rural development shall consult with the department
2 in the development of response activities if a release or threat of
3 a release of a substance regulated by the department of agriculture
4 and rural development occurs. The department of agriculture and
5 rural development shall provide to the department information
6 necessary to identify substances regulated by the department of
7 agriculture and rural development. This information shall include
8 but is not limited to the list of state registered pesticides.

9 (2) As used in this section, "substance regulated by the
10 department of agriculture and rural development" means any of the
11 following:

12 (a) A pesticide as defined in section 8305.

13 (b) A fertilizer as defined in section 8501.

14 (c) A soil conditioner as defined in section 8501a.

15 ~~—— (d) A liming material as defined in section 1 of 1955 PA 162,~~
16 ~~MCL 290.531.~~

17 (3) Response activities conducted under this section shall be
18 consistent with the requirements of section 8714(2).

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

21 Enacting section 2. This amendatory act does not take effect
22 unless House Bill No. 5058 of the 98th Legislature is enacted into
23 law.