

SUBSTITUTE FOR
HOUSE BILL NO. 5496

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 11503 and 11504 (MCL 324.11503 and 324.11504),
as amended by 2018 PA 640.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (2) "Department", subject to section 11554, means the
6 department of ~~environmental quality~~**environment, Great Lakes, and**
7 **energy**.

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

1 (4) "Discharge" includes, but is not limited to, any spilling,
2 leaking, pumping, pouring, emitting, emptying, discharging,
3 injecting, escaping, leaching, dumping, or disposing of a substance
4 into the environment that is or may become injurious to the public
5 health, safety, or welfare, or to the environment.

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

9 (a) A solid waste transfer facility.

10 (b) An incinerator.

11 (c) A sanitary landfill.

12 (d) A processing plant.

13 (e) A coal ash impoundment.

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

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

19 (a) Is generated by households, businesses, or governmental
20 entities.

21 (b) Can lawfully be disposed of at a licensed sanitary
22 landfill or municipal solid waste incinerator.

23 (c) Is separated from other waste.

24 (d) Is 1 or more of the following:

25 (i) Hazardous material.

26 (ii) Liquid waste.

27 (iii) Pharmaceuticals.

28 (iv) Electronics.

29 (v) Batteries.

1 (vi) Light bulbs.

2 (vii) Pesticides.

3 (viii) Thermostats, switches, thermometers, or other devices
4 that contain elemental mercury.

5 (ix) Sharps.

6 (x) Other wastes approved by the department that can be
7 readily separated from solid waste for diversion to preferred
8 methods of management and disposal.

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

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

19 (9) "Existing coal ash impoundment" means a coal ash
20 impoundment that received coal ash before ~~the effective date of the~~
21 ~~amendatory act that added this subsection, December 28, 2018,~~ and
22 that, as of that date, ~~has~~**had** not initiated elements of closure
23 that include dewatering, stabilizing residuals, or placement of an
24 engineered cover or otherwise closed pursuant to its part 31 permit
25 or pursuant to R 299.4309 of the part 115 rules and, therefore, is
26 capable of receiving coal ash in the future. A coal ash impoundment
27 that has initiated closure is considered an open dump unless the
28 owner or operator has completed closure of the coal ash impoundment
29 under section 11519b or obtained an operating license for the coal

1 ash impoundment ~~within 2 years after the effective date of the~~
2 ~~amendatory act that added this subsection.~~ **by December 28, 2020.**

3 **(10) "Existing coal ash landfill" means a coal ash landfill to**
4 **which either of the following applies:**

5 **(a) The landfill received coal ash both before and after**
6 **October 19, 2015.**

7 **(b) Construction of the landfill commenced before October 19,**
8 **2015, and the landfill received coal ash on or after October 19,**
9 **2015. For the purposes of this subdivision, construction of a**
10 **landfill commenced before October 19, 2015 if both of the following**
11 **requirements were met before that date:**

12 **(i) The owner or operator obtained the federal, state, and**
13 **local approvals or permits necessary to begin physical**
14 **construction.**

15 **(ii) A continuous, on-site physical construction program began.**

16 **(11) ~~(10)~~"Existing disposal area" means any of the following:**

17 **(a) A disposal area that has in effect a construction permit**
18 **under this part.**

19 **(b) A disposal area that had engineering plans approved by the**
20 **director before January 11, 1979.**

21 **(c) An industrial waste landfill that was authorized to**
22 **operate by the director or by court order before October 9, 1993.**

23 **(d) An industrial waste pile that was located at the site of**
24 **generation on October 9, 1993.**

25 **(e) An existing coal ash impoundment.**

26 **(12) ~~(11)~~"Existing landfill unit" or "existing unit" means**
27 **any landfill unit that received solid waste on or before October 9,**
28 **1993.**

29 **(13) ~~(12)~~"Farm" means that term as defined in section 2 of**

1 the Michigan right to farm act, 1981 PA 93, MCL 286.472.

2 (14) ~~(13)~~ "Farm operation" means that term as defined in
3 section 2 of the Michigan right to farm act, 1981 PA 93, MCL
4 286.472.

5 (15) ~~(14)~~ "Financial assurance" means the mechanisms used to
6 demonstrate that the funds necessary to meet the cost of closure,
7 postclosure maintenance and monitoring, and corrective action will
8 be available whenever they are needed.

9 (16) ~~(15)~~ "Financial test" means a corporate or local
10 government financial test or guarantee approved for type II
11 landfills under 42 USC 6941 to 6949a and regulations promulgated
12 thereunder. An owner or operator may use a single financial test
13 for more than 1 facility. Information submitted to the department
14 to document compliance with the test shall include a list showing
15 the name and address of each facility and the amount of funds
16 assured by the test for each facility. For purposes of the
17 financial test, the owner or operator shall aggregate the sum of
18 the closure, postclosure, and corrective action costs it seeks to
19 assure with any other environmental obligations assured by a
20 financial test under state or federal law.

21 (17) ~~(16)~~ "Flue gas desulfurization material" means the
22 material recovered from air pollution control systems that capture
23 sulfur dioxide from the combustion of wood, coal, or fossil fuels,
24 or other combustible materials, if the other combustible materials
25 constitute less than 50% by weight of the total material combusted
26 and the department determines in writing that the other combustible
27 materials do not materially affect the character of the residue.
28 Flue gas desulfurization material includes synthetic gypsum.

29 (18) ~~(17)~~ "Food processing residuals" means any of the

1 following:

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

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

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

9 (19) ~~(18)~~—"Foundry sand" means silica sand used in the metal
10 casting process, including binding material or carbonaceous
11 additives, from ferrous or nonferrous foundries.

12 (20) ~~(19)~~—"GAAMPS" means the generally accepted agricultural
13 and management practices under the Michigan right to farm act, 1981
14 PA 93, MCL 286.471 to 286.474.

15 (21) ~~(20)~~—"Garbage" means rejected food wastes including waste
16 accumulation of animal, fruit, or vegetable matter used or intended
17 for food or that results from the preparation, use, cooking,
18 dealing in, or storing of meat, fish, fowl, fruit, or vegetable
19 matter.

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

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

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

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

29 (b) If the landfill is an existing disposal area, nonhazardous

1 solid waste that originates from an industrial site.

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

3 (a) Rock.

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

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

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

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

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

13 (c) Uncontaminated excavated soil or dredged sediment.

14 Excavated soil or dredged sediment is considered uncontaminated if
15 it does not contain more than de minimis amounts of solid waste and
16 1 of the following applies:

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

25 (ii) For any hazardous substance that could reasonably be
26 expected to be present as a result of past land use and human
27 activity, the soil or sediment does not exceed the background
28 concentration, as that term is defined in part 201.

29 (iii) For any hazardous substance that could reasonably be

1 expected to be present as a result of past land use and human
2 activity, the soil or sediment falls below part 201 generic
3 residential soil direct contact cleanup criteria and hazardous
4 substances in leachate from the soil or sediment, using, at the
5 option of the generator, EPA method 1311, 1312, or any other
6 leaching protocol approved by the department, fall below part 201
7 generic residential health based groundwater drinking water values
8 or criteria, and the soil or sediment would not cause a violation
9 of any surface water quality standard established under part 31 at
10 the area of placement, disposal, or use.

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

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

20 (i) The use of the material does not violate section 3108, part
21 301, or part 303.

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

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

28 (f) Portland cement clinker produced by a cement kiln using
29 wood, fossil fuels, or solid waste as a fuel or feedstock, but not

1 including cement kiln dust generated in the process.

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

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

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

7 (iii) Does not include exposed reinforcement bars.

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

12 (i) Any material determined by the department under section
13 11553(5) or (6) to be an inert material, either for general use or
14 for a particular use.

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

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

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

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

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

29 (a) A landfill, other than a coal ash landfill, if the

1 expansion is beyond the limit established in a construction permit
 2 or engineering plans approved by the solid waste control agency
 3 before January 11, 1979.

4 (b) A coal ash landfill, if ~~the expansion is beyond either of~~
 5 the **following applies:**

6 (i) **The expansion is beyond the** limit established in a
 7 construction permit issued after ~~the effective date of the~~
 8 ~~amendatory act that added this subsection or the horizontal limits~~
 9 ~~of coal ash in place on or before October 14, 2015.~~**December 28,**
 10 **2018.**

11 (ii) **The expansion is made after October 19, 2015, and is a**
 12 **horizontal expansion of the outermost boundary, as defined by a**
 13 **construction certification or operating license, of an existing**
 14 **coal ash landfill.**

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

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

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

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

26 (a) Coal ash ~~or~~**and** wood ash.

27 (b) Cement kiln dust.

28 (c) Pulp and paper mill material.

29 (d) Scrap wood.

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

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

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

7 (h) Foundry sand.

8 (i) Mixed wood ash, scrap wood ash, **and** pulp and paper mill
9 ash.

10 (j) Street cleanings.

11 (k) Asphalt shingles.

12 (l) New construction or production scrap drywall.

13 (m) Chipped or shredded tires.

14 (n) Copper slag.

15 (o) Copper stamp sands.

16 (p) Dredge material from nonremedial activities.

17 (q) Flue gas desulfurization material.

18 (r) Dewatered grinding slurry generated from public
19 transportation agency road projects.

20 (s) Any material determined by the department under section
21 11553(7) to be a low-hazard industrial waste.

22 (11) "Low-hazard-potential coal ash impoundment" means a coal
23 ash impoundment that is a diked surface impoundment, the failure or
24 misoperation of which is expected to result in no loss of human
25 life and low economic or environmental losses principally limited
26 to the impoundment owner's property.

27 (12) "Medical waste" means that term as it is defined in
28 section 13805 of the public health code, 1978 PA 368, MCL
29 333.13805.

1 (13) "Mixed wood ash" means the material recovered from air
2 pollution control systems for, or the noncombusted residue
3 remaining after, the combustion of any combination of wood, scrap
4 wood, railroad ties, or tires, if railroad ties composed less than
5 35% by weight of the total combusted material and tires composed
6 less than 10% by weight of the total combusted material.

7 (14) "Municipal solid waste incinerator" means an incinerator
8 that is owned or operated by any person, and meets all of the
9 following requirements:

10 (a) The incinerator receives solid waste from off site and
11 burns only household waste from single and multiple dwellings,
12 hotels, motels, and other residential sources, or ~~this~~ **such**
13 household waste together with solid waste from commercial,
14 institutional, municipal, county, or industrial sources that, if
15 disposed of, would not be required to be placed in a disposal
16 facility licensed under part 111.

17 (b) The incinerator has established contractual requirements
18 or other notification or inspection procedures sufficient to ensure
19 that the incinerator receives and burns only waste referred to in
20 subdivision (a).

21 (c) The incinerator meets the requirements of this part and
22 the rules promulgated under this part.

23 (d) The incinerator is not an industrial furnace as defined in
24 40 CFR 260.10.

25 (e) The incinerator is not an incinerator that receives and
26 burns only medical waste or only waste produced at 1 or more
27 hospitals.

28 (15) "Municipal solid waste incinerator ash" means the
29 substances remaining after combustion in a municipal solid waste

1 incinerator.

2 (16) "New coal ash impoundment" means a coal ash impoundment
3 that first receives coal ash after the effective date of the
4 amendatory act that added this subsection.

5 (17) "New disposal area" means a disposal area that requires a
6 construction permit under this part and includes all of the
7 following:

8 (a) A disposal area, other than an existing disposal area,
9 that is proposed for construction.

10 (b) For a landfill, a lateral expansion, vertical expansion,
11 or other expansion that results in an increase in the landfill's
12 design capacity.

13 (c) A new coal ash impoundment, or a lateral expansion of a
14 coal ash impoundment beyond the placement of waste as of October
15 14, 2015.

16 (d) For a disposal area other than landfills or coal ash
17 impoundments, an enlargement in capacity beyond that indicated in
18 the construction permit or in engineering plans approved before
19 January 11, 1979.

20 (e) For any existing disposal area, an alteration of the
21 disposal area to a different disposal area type than had been
22 specified in the previous construction permit application or in
23 engineering plans that were approved by the director or his or her
24 designee before January 11, 1979.

25 (18) "Nonresidential property" means property not used or
26 intended to be used for any of the following:

27 (a) A child day care center.

28 (b) An elementary school.

29 (c) An elder care and assisted living center.

1 (d) A nursing home.

2 (e) A single-family or multifamily dwelling unless the
3 dwelling is part of a mixed use development and all dwelling units
4 and associated outdoor residential use areas are located above the
5 ground floor.

6 (19) "Part 115 rules" means R 299.4101 to R 299.4922 of the
7 Michigan Administrative Code including any amendments to or
8 replacements of those rules.

9 (20) "Perpetual care fund" means a trust or escrow account or
10 perpetual care fund bond provided for in section 11525.

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

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

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

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

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

28 (c) Bark, wood fiber, and chips.

29 (d) Scrap paper.

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

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