

# HOUSE BILL NO. 5496

February 19, 2020, Introduced by Reps. Howell and Cambensy 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 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.



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

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

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

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

13 (a) A solid waste transfer facility.

14 (b) An incinerator.

15 (c) A sanitary landfill.

16 (d) A processing plant.

17 (e) A coal ash impoundment.

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

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

23 (a) Is generated by households, businesses, or governmental  
24 entities.

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

27 (c) Is separated from other waste.

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

29 (i) Hazardous material.



- 1           (ii) Liquid waste.  
 2           (iii) Pharmaceuticals.  
 3           (iv) Electronics.  
 4           (v) Batteries.  
 5           (vi) Light bulbs.  
 6           (vii) Pesticides.  
 7           (viii) Thermostats, switches, thermometers, or other devices  
 8 that contain elemental mercury.  
 9           (ix) Sharps.  
 10           (x) Other wastes approved by the department that can be  
 11 readily separated from solid waste for diversion to preferred  
 12 methods of management and disposal.

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

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

23           (9) "Existing coal ash impoundment" means a coal ash  
 24 impoundment that received coal ash before ~~the effective date of the~~  
 25 ~~amendatory act that added this subsection, **December 28, 2018,**~~ and  
 26 that, as of that date, ~~has had~~ not initiated elements of closure  
 27 that include dewatering, stabilizing residuals, or placement of an  
 28 engineered cover or otherwise closed pursuant to its part 31 permit



1 or pursuant to R 299.4309 of the part 115 rules and, therefore, is  
2 capable of receiving coal ash in the future. A coal ash impoundment  
3 that has initiated closure is considered an open dump unless the  
4 owner or operator has completed closure of the coal ash impoundment  
5 under section 11519b or obtained an operating license for the coal  
6 ash impoundment ~~within 2 years after the effective date of the~~  
7 ~~amendatory act that added this subsection.~~ **by December 28, 2020.**

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

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

12 (b) **Construction of the landfill commenced before October 19,**  
13 **2015, and the landfill received coal ash on or after October 19,**  
14 **2015. For the purposes of this subdivision, construction of a**  
15 **landfill has commenced if either of the following applies:**

16 (i) **The landfill is licensed under this part.**

17 (ii) **The landfill's engineering plans were approved by the**  
18 **department and an on-site physical construction program began and**  
19 **continued before October 19, 2015.**

20 **(11) ~~(10)~~"Existing disposal area" means any of the following:**

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

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

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

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

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



1           (12) ~~(11)~~—"Existing landfill unit" or "existing unit" means  
2 any landfill unit that received solid waste on or before October 9,  
3 1993.

4           (13) ~~(12)~~—"Farm" means that term as defined in section 2 of  
5 the Michigan right to farm act, 1981 PA 93, MCL 286.472.

6           (14) ~~(13)~~—"Farm operation" means that term as defined in  
7 section 2 of the Michigan right to farm act, 1981 PA 93, MCL  
8 286.472.

9           (15) ~~(14)~~—"Financial assurance" means the mechanisms used to  
10 demonstrate that the funds necessary to meet the cost of closure,  
11 postclosure maintenance and monitoring, and corrective action will  
12 be available whenever they are needed.

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

25           (17) ~~(16)~~—"Flue gas desulfurization material" means the  
26 material recovered from air pollution control systems that capture  
27 sulfur dioxide from the combustion of wood, coal, or fossil fuels,  
28 or other combustible materials, if the other combustible materials  
29 constitute less than 50% by weight of the total material combusted



1 and the department determines in writing that the other combustible  
2 materials do not materially affect the character of the residue.  
3 Flue gas desulfurization material includes synthetic gypsum.

4 **(18)** ~~(17)~~—"Food processing residuals" means any of the  
5 following:

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

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

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

13 **(19)** ~~(18)~~—"Foundry sand" means silica sand used in the metal  
14 casting process, including binding material or carbonaceous  
15 additives, from ferrous or nonferrous foundries.

16 **(20)** ~~(19)~~—"GAAMPS" means the generally accepted agricultural  
17 and management practices under the Michigan right to farm act, 1981  
18 PA 93, MCL 286.471 to 286.474.

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

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

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

29 (3) "Industrial waste landfill" means a landfill that is used



1 for the disposal of any of the following, as applicable:

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

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

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

7 (a) Rock.

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

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

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

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

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

17 (c) Uncontaminated excavated soil or dredged sediment.

18 Excavated soil or dredged sediment is considered uncontaminated if  
19 it does not contain more than de minimis amounts of solid waste and  
20 1 of the following applies:

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

29 (ii) 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 does not exceed the background  
3 concentration, as that term is defined in part 201.

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

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

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

24 (i) The use of the material does not violate section 3108, part  
25 301, or part 303.

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





1 contaminated.

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

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

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

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

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

11 (iii) Does not include exposed reinforcement bars.

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

16 (i) Any material determined by the department under section  
17 11553(5) or (6) to be an inert material, either for general use or  
18 for a particular use.

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

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

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

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



1 landfill.

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

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

8 (b) A coal ash landfill, if the expansion is beyond **either of**  
9 **the following:**

10 (i) **The** limit established in a construction permit issued after  
11 ~~the effective date of the amendatory act that added this subsection~~  
12 ~~or the horizontal limits of coal ash in place on or before October~~  
13 ~~14, 2015.~~ **December 28, 2018.**

14 (ii) **The solid waste boundary, as defined in R 299.4105 of the**  
15 **part 115 rules, of an existing coal ash landfill.**

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

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

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

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

27 (a) Coal ash or wood ash.

28 (b) Cement kiln dust.

29 (c) Pulp and paper mill material.



- 1 (d) Scrap wood.
- 2 (e) Sludge from the treatment and conditioning of water for  
3 domestic use.
- 4 (f) Residue from the thermal treatment of petroleum  
5 contaminated soil, media, or debris.
- 6 (g) Sludge from the treatment and conditioning of water from a  
7 community water supply.
- 8 (h) Foundry sand.
- 9 (i) Mixed wood ash, scrap wood ash, pulp and paper mill 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).

