

Act No. 85
Public Acts of 2020
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**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Reps. Howell and Cambensy

ENROLLED HOUSE BILL No. 5496

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people’s right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” 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:

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

(2) “Department”, subject to section 11554, means the department of environment, Great Lakes, and energy.

(3) “Director” means the director of the department.

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

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

(a) A solid waste transfer facility.

(b) An incinerator.

(c) A sanitary landfill.

(d) A processing plant.

(e) A coal ash impoundment.

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

(6) “Diverted waste” means waste that meets all of the following requirements:

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

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

(c) Is separated from other waste.

(d) Is 1 or more of the following:

(i) Hazardous material.

(ii) Liquid waste.

(iii) Pharmaceuticals.

(iv) Electronics.

(v) Batteries.

(vi) Light bulbs.

(vii) Pesticides.

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

(ix) Sharps.

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

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

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

(9) “Existing coal ash impoundment” means a coal ash impoundment that received coal ash before December 28, 2018, and that, as of that date, had not initiated elements of closure that include dewatering, stabilizing residuals, or placement of an engineered cover or otherwise closed pursuant to its part 31 permit or pursuant to R 299.4309 of the part 115 rules and, therefore, is capable of receiving coal ash in the future. A coal ash impoundment that has initiated closure is considered an open dump unless the owner or operator has completed closure of the coal ash impoundment under section 11519b or obtained an operating license for the coal ash impoundment by December 28, 2020.

(10) “Existing coal ash landfill” means a coal ash landfill to which either of the following applies:

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

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

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

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

(11) “Existing disposal area” means any of the following:

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

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

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

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

(e) An existing coal ash impoundment.

(12) “Existing landfill unit” or “existing unit” means any landfill unit that received solid waste on or before October 9, 1993.

(13) “Farm” means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(14) “Farm operation” means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(15) “Financial assurance” means the mechanisms used to demonstrate that the funds necessary to meet the cost of closure, postclosure maintenance and monitoring, and corrective action will be available whenever they are needed.

(16) “Financial test” means a corporate or local government financial test or guarantee approved for type II landfills under 42 USC 6941 to 6949a and regulations promulgated thereunder. An owner or operator may use a single financial test for more than 1 facility. Information submitted to the department to document compliance with the test shall include a list showing the name and address of each facility and the amount of funds assured by the test for each facility. For purposes of the financial test, the owner or operator shall aggregate the sum of

the closure, postclosure, and corrective action costs it seeks to assure with any other environmental obligations assured by a financial test under state or federal law.

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

(18) "Food processing residuals" means any of the following:

- (a) Residuals of fruits, vegetables, aquatic plants, or field crops.
- (b) Otherwise unusable parts of fruits, vegetables, aquatic plants, or field crops from the processing thereof.
- (c) Otherwise unusable food products that do not meet size, quality, or other product specifications and that were intended for human or animal consumption.

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

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

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

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

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

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

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

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

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

(a) Rock.

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

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

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

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

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

(c) Uncontaminated excavated soil or dredged sediment. Excavated soil or dredged sediment is considered uncontaminated if it does not contain more than de minimis amounts of solid waste and 1 of the following applies:

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Does not include exposed reinforcement bars.

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

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

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

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

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

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

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

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

(b) A coal ash landfill, if either of the following applies:

(i) The expansion is beyond the limit established in a construction permit issued after December 28, 2018.

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

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

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

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

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

(a) Coal ash and wood ash.

(b) Cement kiln dust.

(c) Pulp and paper mill material.

(d) Scrap wood.

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

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

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

(h) Foundry sand.

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

(j) Street cleanings.

(k) Asphalt shingles.

(l) New construction or production scrap drywall.

(m) Chipped or shredded tires.

(n) Copper slag.

- (o) Copper stamp sands.
- (p) Dredge material from nonremedial activities.
- (q) Flue gas desulfurization material.
- (r) Dewatered grinding slurry generated from public transportation agency road projects.
- (s) Any material determined by the department under section 11553(7) to be a low-hazard industrial waste.

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

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

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

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

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

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

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

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

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

(15) “Municipal solid waste incinerator ash” means the substances remaining after combustion in a municipal solid waste incinerator.

(16) “New coal ash impoundment” means a coal ash impoundment that first receives coal ash after the effective date of the amendatory act that added this subsection.

(17) “New disposal area” means a disposal area that requires a construction permit under this part and includes all of the following:

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

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

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

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

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

(18) “Nonresidential property” means property not used or intended to be used for any of the following:

(a) A child day care center.

(b) An elementary school.

(c) An elder care and assisted living center.

(d) A nursing home.

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

(19) “Part 115 rules” means R 299.4101 to R 299.4922 of the Michigan Administrative Code including any amendments to or replacements of those rules.

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

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

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

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

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

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

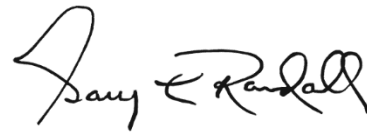
(c) Bark, wood fiber, and chips.

(d) Scrap paper.

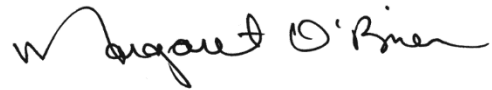
(e) Causticizing residues, including lime mud and grit and green liquor dregs.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor