

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022**

Introduced by Reps. O'Malley, Howell, Borton, Martin, VanSingel, Manoogian, Tate, Cambensy,
Pohutsky, Anthony, Brixie, Sowerby, Liberati, Markkanen, Breen, Hood, Aiyash, Puri,
Brabec, Brenda Carter and Hammoud

ENROLLED HOUSE BILL No. 4458

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 11526, 11526a, 11527, 11528, 11531, 11532, 11533, 11539, 11540, 11541, 11546, and 11549 (MCL 324.11526, 324.11526a, 324.11527, 324.11528, 324.11531, 324.11532, 324.11533, 324.11539, 324.11540, 324.11541, 324.11546, and 324.11549), section 11526 as amended by 2004 PA 43, section 11526a as added by 2004 PA 40, sections 11528 and 11539 as amended by 2018 PA 640, section 11533 as amended by 2004 PA 44, section 11541 as amended by 1996 PA 358, section 11546 as amended by 2006 PA 56, and section 11549 as amended by 2006 PA 58, and by designating sections 11526 to 11533 as subpart 5, sections 11539 to 11541 as subpart 6, and sections 11546 to 11549 as subpart 7 of part 115; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

SUBPART 5 MISCELLANEOUS

Sec. 11526. (1) The department, a local health officer, or a law enforcement officer of competent jurisdiction may inspect a managed materials transporting unit that is being used to transport managed materials along a public road to determine any of the following:

(a) If the managed materials transporting unit is designed, maintained, and operated in a manner to prevent littering.

(b) If the owner or operator of the managed materials transporting unit is performing in compliance with part 115.

(2) To protect the environment, natural resources, and the public health, safety, and welfare from items and substances being illegally disposed of in landfills in this state, the department shall do all of the following:

(a) Ensure that each materials management facility is in full compliance with part 115.

(b) Provide for the inspection, for compliance with part 115, of each licensed disposal area at least 4 times annually and each materials utilization facility that is approved under a general permit or registered under part 115 at least once annually. Each inspection shall be conducted by the department or a health officer. The department or the health officer shall do both of the following:

(i) Prepare a written inspection report.

(ii) Submit a copy of the inspection report to the municipality in which the licensed disposal area is located if the municipality arranges with the department or the health officer to pay the cost of duplicating and mailing the reports.

(c) Ensure that all persons disposing of solid waste are doing so in compliance with part 115.

(3) The department and the department of state police may conduct random inspections of waste being transported to a materials management facility in this state. Inspections under this subsection may be conducted during transportation or at the materials management facility.

(4) An inspection described in this section may also be conducted upon receipt of a complaint or as the department determines to be necessary to ensure compliance with part 115.

Sec. 11526a. (1) The owner or operator of a landfill shall not accept for disposal in this state solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of this state unless 1 or more of the following conditions are met:

(a) The solid waste is composed of a uniform type of item, material, or substance, other than municipal solid waste incinerator ash, that meets the requirements for disposal in a landfill under part 115.

(b) The solid waste was received through a facility that has documented that it has removed from the solid waste being delivered to the landfill those items that are prohibited from disposal in a landfill.

(c) The country, state, province, or local jurisdiction in which the solid waste was generated is approved by the department for inclusion on the list compiled by the department under section 11526b.

(2) Notwithstanding any other provision of part 115, if there is sufficient disposal capacity for a planning area's disposal needs in or within 130 miles of the planning area, the department is not required to issue a construction permit for a new landfill or municipal solid waste incinerator in the planning area.

Sec. 11527. (1) A hauler transporting solid waste over a public road in this state shall deliver all solid waste to a disposal area licensed under part 115 or a solid waste processing and transfer facility licensed or registered or for which a notification has been submitted under part 115.

(2) A hauler operating within a county with a materials management plan prepared by the department shall provide recycling services that meet the requirements of the benchmark recycling standard for single-family residences for which it provides solid waste hauling services within that county.

Sec. 11528. (1) A managed materials transporting unit used for food waste, industrial or domestic sludges, or other moisture laden materials not specifically covered by part 121 shall be watertight and constructed, maintained, and operated to prevent littering. A managed materials transporting unit shall be designed and operated to prevent littering or any other nuisance.

(2) The department, a local health officer, or a law enforcement officer may order a managed materials transporting unit out of service if the unit does not comply with the requirements of part 115. Continued use of a managed materials transporting unit ordered out of service is a violation of this part.

(3) A hauler that is responsible for a vehicle that contributes to a violation of part 115 is rebuttably presumed to have committed the violation.

Sec. 11531. (1) A municipality or county shall ensure that all solid waste is removed from the site of generation frequently enough to protect the environment, natural resources, and the public health, safety, and welfare and is delivered to a materials management facility that meets the requirements of section 11508(1)(a), except waste that is permitted by state law or rules promulgated by the department to be disposed of at the site of generation.

(2) An ordinance adopted before February 8, 1988 by a county or municipality incidental to the financing of a publicly owned disposal area or areas under construction that directs that all or part of the solid waste generated in that county or municipality be directed to the disposal area or areas is an acceptable means of compliance with subsection (1), notwithstanding that the ordinance, in the case of a county, has not been approved by the governor. This subsection does not validate or invalidate an ordinance adopted on or after February 8, 1988 as an acceptable means of compliance with subsection (1).

Sec. 11532. (1) Except as provided in subsection (2), a municipality may impose an impact fee of not more than 30 cents per ton on solid waste, including municipal solid waste incinerator ash, that is disposed of in a landfill located within the municipality that is utilized by the public and utilized to dispose of solid waste collected from 2 or more persons. However, if the landfill is located within a village, the impact fee shall be imposed only by the township pursuant to an agreement with the village. An impact fee shall be assessed uniformly on all wastes accepted for disposal.

(2) A municipality may enter into an agreement with the owner or operator of a landfill to establish a higher impact fee than that provided for in subsection (1).

(3) The impact fees imposed under this section shall be collected by the owner or operator of a landfill and shall be paid to the municipality quarterly by the thirtieth day after the end of each calendar quarter. However, the impact fees allowed to be assessed to each landfill under this section shall be reduced by any amount of revenue paid to or available to the municipality from the landfill under the terms of any preexisting agreements, special use permit conditions, court settlement agreement conditions, and trusts.

(4) Unless a trust fund is established by a municipality pursuant to subsection (5), the revenue collected by a municipality pursuant to subsection (1) shall be deposited in its general fund. Subject to subsection (8), the revenue shall be used for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality.

(5) A municipality may establish a trust fund to receive revenue collected pursuant to this section. The trust fund shall be administered by a board of trustees. The board of trustees shall consist of the following members:

- (a) The chief elected official of the municipality.
- (b) A resident of the municipality appointed by the governing body of the municipality.
- (c) An individual approved by the owners or operators of the landfills within the municipality and appointed by the governing body of the municipality.

(6) Individuals appointed to serve on the board of trustees under subsection (5)(b) and (c) shall serve for terms of 2 years.

(7) Subject to subsection (8), money in a trust fund under subsection (5) may be expended, pursuant to a majority vote of the board of trustees, for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality.

(8) Revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against a landfill owner or operator that is collecting an impact fee under subsection (3) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

Sec. 11533. The department may promulgate rules to implement this part. The rules may include, but are not limited to, standards for any of the following:

- (a) Hydrogeologic investigations.
- (b) Monitoring.
- (c) Liner materials.
- (d) Leachate collection and treatment, if applicable.
- (e) Groundwater separation distances.
- (f) Environmental assessments.
- (g) Gas control.
- (h) Soil erosion.
- (i) Sedimentation control.
- (j) Groundwater and surface water quality.
- (k) Noise.

- (l) Air pollution odors.
- (m) The use of floodplains and wetlands.
- (n) Managed materials transporting units.
- (o) Grants.
- (p) Materials management planning.
- (q) Closure and postclosure.

SUBPART 6 INCINERATORS AND OPEN BURNING

Sec. 11539. (1) The open burning of yard waste or leaves is prohibited in any municipality having a population of 7,500 or more, unless specifically authorized by local ordinance. Within 30 days after adoption of such an ordinance, the clerk of the municipality shall notify the department of its adoption.

(2) Subsection (1) does not permit a county or municipality to authorize open burning of yard waste or leaves by an ordinance that is prohibited under part 55 or rules promulgated under part 55.

(3) A person shall not conduct open burning of household waste that contains plastic, rubber, foam, chemically treated wood, textiles, electronics, chemicals, or hazardous materials.

(4) Subpart 7 does not apply to an individual who violates subsection (3) by open burning of waste from that individual's household. The individual is responsible for a state civil infraction and is subject to the following:

- (a) For a first offense within a 3-year period, a warning by the judge or magistrate.
- (b) For a second offense within a 3-year period, a civil fine of not more than \$75.00.
- (c) For a third offense within a 3-year period, a civil fine of not more than \$150.00.
- (d) For a fourth or subsequent offense within a 3-year period, a civil fine of not more than \$300.00.

(5) Notwithstanding section 5512, the department shall not promulgate or enforce a rule that extends the prohibition under subsection (3) to materials not listed in subsection (3).

(6) Part 115, part 55, or rules promulgated under part 55 do not prohibit a person from conducting open burning of wooden fruit or vegetable storage bins constructed from untreated lumber if all of the following requirements are met:

- (a) The burning is conducted for disease or pest control.
- (b) The burning is not conducted at any of the following locations:
 - (i) Within a priority I area as listed in table 33 or a priority II area as listed in table 34 of R 336.1331 of the MAC.
 - (ii) In a city or village.
 - (iii) Within 1,400 feet outside the boundary of a city or village.
- (7) Subsections (5) and (6) do not authorize open burning that is prohibited by a local ordinance.

(8) A congressionally chartered patriotic organization that disposes of an unserviceable flag of the United States by burning that flag is not subject to regulation or sanction for violating state law or a local ordinance pertaining to open burning.

Sec. 11540. (1) The owner or operator of an incinerator may, but is not required to, comply with the disposal area construction permit and operating license requirements of subpart 2 if both of the following conditions are met:

- (a) Solid waste to be incinerated is managed in a properly enclosed area in a manner that prevents fugitive dust, litter, leachate generation, precipitation runoff, or any release of solid waste to the air, soil, surface water, or groundwater.
- (b) The incinerator has a permit issued under part 55.

(2) An incinerator that, as authorized by subsection (1), does not comply with the construction permit and operating license requirements of subpart 2 is subject to the planning provisions of part 115 and must be included in the county materials management plan for the county in which the incinerator is located.

Sec. 11541. (1) Within 9 months after the completion of construction of a municipal solid waste incinerator, the owner or operator shall submit a plan to the department for a program that, to the extent practicable, reduces the incineration of noncombustible materials and dangerous combustible materials and their hazardous

by-products at the incinerator. The plan shall include an implementation schedule. Within 30 days after receiving the plan, the department shall approve or disapprove the plan and notify the owner or operator in writing. In reviewing the plan, the department shall consider the current materials management plan for the planning area where the incinerator is located and available markets, disposal alternatives, and collection practices for the managed materials. If the department disapproves a plan, the notice shall specify the reasons for disapproval. If the department disapproves the plan, the owner or operator shall, within 30 days after receipt of the department's disapproval, submit a revised plan that addresses all of the reasons for disapproval specified by the department. The department shall approve or disapprove the revised plan within 30 days after receiving the revised plan and notify the owner or operator in writing. If the department disapproves the revised plan, the notice shall specify the reasons for disapproval. If the department disapproves the revised plan, the department may continue with the approval process under this subsection or take appropriate enforcement action.

(2) Not later than 6 months after the approval of the plan by the department under subsection (1), the owner or operator shall implement the plan in compliance with the implementation schedule. The operation of a municipal solid waste incinerator without an approved plan under this section subjects the owner or operator, or both, to the sanctions provided by this part.

SUBPART 7 ENFORCEMENT

Sec. 11546. (1) The department or a local health officer may request that the attorney general bring an action in the name of the people of this state, or a municipality or county may bring an action based on facts arising within its boundaries, for any appropriate relief, including injunctive relief, for a violation of part 115.

(2) In addition to any other relief provided by this section, the court may impose on any person who violates part 115 a civil fine as follows:

(a) Except as provided in subdivision (b), not more than \$10,000.00 for each day of violation.

(b) For a second or subsequent violation, not more than \$25,000.00 for each day of violation.

(3) In addition to any other relief provided by this section, the court may order a person who violates part 115 to restore, or to pay to this state an amount equal to the cost of restoring, the natural resources of this state affected by the violation to their original condition before the violation, and to pay to this state the costs of surveillance and enforcement incurred by this state as a result of the violation.

(4) In addition to any other relief provided by this section, the court shall order a person who violates section 11526e to return, or to pay to this state an amount equal to the cost of returning, the solid waste that is the subject of the violation to the country in which that waste was generated.

(5) Part 115 does not preclude any person from commencing a civil action based on facts that may constitute a violation of part 115.

Sec. 11549. (1) A person who violates part 115 is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 for each violation and costs of prosecution and, if in default of payment of fine and costs, imprisonment for not more than 6 months.

(2) A person who knowingly violates section 11526e is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(3) Each day upon which a violation described in this section occurs is a separate offense.

Enacting section 1. Sections 11529, 11534 to 11538, 11539a, 11547, and 11548 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11529, 324.11534 to 324.11538, 324.11539a, 324.11547, and 324.11548, are repealed.

Enacting section 2. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

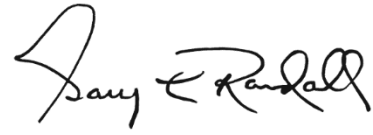
(a) House Bill No. 4454.

(b) House Bill No. 4456.

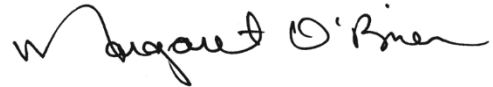
(c) House Bill No. 4457.

(d) House Bill No. 4460.

- (e) House Bill No. 4461.
- (f) House Bill No. 4455.
- (g) House Bill No. 4459.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor