

Act No. 248
Public Acts of 2022
Approved by the Governor
December 22, 2022
Filed with the Secretary of State
December 22, 2022
EFFECTIVE DATE: Sine Die

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

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

ENROLLED HOUSE BILL No. 4459

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 11550, 11553, and 11554 (MCL 324.11550, 324.11553, and 324.11554), section 11550 as amended by 2020 PA 201 and sections 11553 and 11554 as added by 2014 PA 178, and by designating section 11550 as subpart 8 and sections 11553 and 11554 as subpart 9 of part 115.

The People of the State of Michigan enact:

SUBPART 8 FUND AND GRANTS

Sec. 11550. (1) The solid waste management fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The department shall be the administrator of the fund for auditing purposes.

(2) Money in the solid waste management fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) The state treasurer shall establish, within the solid waste management fund, a solid waste staff account and a perpetual care account.

(4) Subject to subsection (5), money shall be expended from the solid waste staff account, upon appropriation, only for the following purposes:

(a) Preparing generally applicable guidance regarding the materials management facility program or its implementation or enforcement.

(b) Reviewing and acting on any notification, registration, application for approval under a general permit, application for a permit or license, permit or license revision, or permit or license renewal under part 115, including the cost of public notice and public hearings.

(c) Providing an advisory analysis under section 11510(1).

(d) General administrative costs of running the permit, license, registration, and notification program under part 115, including permit, license, registration, and notification tracking and data entry.

(e) Inspection of materials management facilities and open dumps.

(f) Implementing and enforcing the conditions of any permit, license, approval under a general permit, registration, or order under part 115.

(g) Groundwater monitoring audits at disposal areas that are or have been licensed under this part or at any other materials management facility that requires groundwater monitoring because of a release or suspected release.

(h) Reviewing and acting upon corrective action plans for materials management facilities, if required under part 115.

(i) Review of certifications of closure under part 115.

(j) Postclosure maintenance and monitoring inspections and review under part 115.

(k) Review of bonds and financial assurance documentation at materials management facilities, if required under part 115.

(l) Materials management planning.

(m) Materials utilization education and outreach.

(n) Development of a materials utilization and recycled materials market directory.

(o) Administration of grants and loans under part 115 for planning, market development and recycling infrastructure, outreach, and education.

(p) Up to 1 full-time equivalent employee for the Michigan economic development corporation to address recycled materials market development.

(5) Money shall be expended from the perpetual care account, upon appropriation, only for the following activities at materials management facilities for which the requirements of section 11508(1)(a) are or were met and for which fees have been collected and deposited into the perpetual care account:

(a) To conduct postclosure maintenance and monitoring if the owner or operator is no longer required to do so.

(b) To conduct closure, postclosure maintenance and monitoring, and necessary corrective action if the owner or operator has failed to do so. Money shall be expended from the account only after funds from any other financial assurance mechanisms held by the owner or operator have been expended and the department has made reasonable efforts to obtain funding from other sources.

(6) Subject to appropriations, the department shall provide grants for the following purposes:

(a) The recycling markets program established under subsection (7).

(b) The local recycling innovation program established under subsection (8).

(c) The recycling access and voluntary participation program established under subsection (9).

(7) The department shall establish a recycling markets program. The program shall provide grants or loans for acquiring equipment or technology, for research and development, or for associated activities to provide for new or increased use of recycled materials or to support the development of recycling markets. Local units of government and nonprofit and for-profit entities are eligible for funding under the program. The funding is not limited to entities in counties with approved materials management plans. In addition to any other reporting requirements established by the department, grant recipients under the program shall provide information on the materials managed.

(8) The department shall establish a local recycling innovation program. The program shall provide grants or loans for developing local recycling infrastructure, for recycling education campaigns for residents and businesses, technology, or other activities that result in increasing recycling access, quality, or participation, for reducing waste, or for sustainable materials management. Local units of government and nonprofit and for-profit entities are eligible for funding under the program. The funding is not limited to entities in counties with approved materials management plans. In addition to any other reporting requirements established by the department, grant recipients under the program shall provide the department information on the materials managed.

(9) The department shall establish a recycling access and voluntary participation program. The program shall provide grants or loans to assist local units of government in implementing best materials utilization practices or identifying ways to innovate and to collaborate with other local units and the private sector. To be eligible for a grant, a local unit of government must be a county that meets, or a municipality located within a county that meets, both of the following requirements:

(a) Has a materials management plan.

(b) Has documented progress toward meeting or has met its benchmark recycling standards and ultimately the municipal solid waste recycling rate goal under section 11507.

(10) The department shall publish and make available to grant and loan applicants criteria upon which the grants and loans will be made.

(11) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities of the previous fiscal year funded by the staff account of the solid waste management fund. This report shall include, at a minimum, all of the following as they apply to the department:

(a) The number of full-time equated positions performing solid waste management authorization, compliance, and enforcement activities.

(b) All of the following information related to the construction permit applications received under section 11509:

(i) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(ii) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(iii) The percentage and number of applications determined to be administratively complete for which a final decision was made within the period required by part 13.

(c) All of the following information related to the operating license applications received under section 11512:

(i) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(ii) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(iii) The percentage and number of applications determined to be administratively complete for which a final decision was made within the period required by part 13.

(d) The number of inspections conducted at licensed disposal areas as required by section 11519 and the number of inspections conducted at materials utilization facilities as required by section 11526.

(e) The number of letters of warning sent to licensed disposal areas.

(f) The number of contested case hearings and civil actions initiated and completed, the number of voluntary consent orders and administrative orders entered or issued, and the amount of fines and penalties collected through such actions or orders.

(g) For each enforcement action that includes a penalty, a description of the corrective actions required by the enforcement action.

(h) The number of solid waste complaints received, investigated, resolved, and not resolved by the department.

(i) The amount of revenue in the staff account of the solid waste management fund and the amount of revenue in the coal ash care fund at the end of the fiscal year.

(12) The coal ash care fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(13) Money shall be expended from the coal ash care fund, upon appropriation, only for the following purposes relating to coal ash impoundments and coal ash landfills:

(a) Preparing generally applicable guidance regarding the solid waste permit and license program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit or license, permit or license revision, or permit or license renewal, including the cost of public notice and public hearings.

(c) Performing an advisory analysis under section 11510(1).

(d) General administrative costs of running the permit and license program, including permit and license tracking and data entry.

(e) Inspection of licensed disposal areas and open dumps.

(f) Implementing and enforcing the conditions of any permit or license.

(g) Groundwater monitoring audits at disposal areas that are or have been licensed under this part.

(h) Reviewing and acting upon corrective action plans for disposal areas that are or have been licensed under this part.

- (i) Review of certifications of closure.
- (j) Postclosure maintenance and monitoring inspections and review.
- (k) Review of bonds and financial assurance documentation at disposal areas that are or have been licensed under this part.

SUBPART 9 BENEFICIAL USE BY-PRODUCTS

Sec. 11553. (1) Consistent with the requirements of part 115, the department shall apply this section so as to promote and foster the use of wastes and by-products for recycling or beneficial purposes.

(2) Any person may request the department, consistent with the definitions and other terms of part 115, to approve a material, a use, or a material and use as a source separated material; a beneficial use by-product for beneficial use 1, 2, 4, or 5; an inert material; a low-hazard industrial waste; nondetrimental material managed for agricultural or silvicultural use; or another material, use, or material and use that can be approved under part 115. Among other things, a person may request the department to approve a use that does not meet the definition of beneficial use 2 under section 11502(8)(a) because the property is not nonresidential property or under section 11502(8)(a), (b), or (c) because the material exceeds 4 feet in thickness. A request under this subsection shall be in writing and contain a description of the material including the process generating it; results of analyses of representative samples of the material for any hazardous substances that the person has knowledge or reason to believe could be present in the material, based on its source, its composition, or the process that generated it; and, if applicable, a description of the proposed use. The analysis and sampling of the material under this subsection shall be consistent with the methods identified in "Standard Methods for the Examination of Water and Wastewater, 20th Edition," (jointly published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation) or "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW-846, Third Edition, Final Updates I (1993), II (1995), IIA (1994), IIB (1995), III (1997), IIIA (1999), IIIB (2005), IV (2008), AND V (2015); 1 or more peer-reviewed standards developed by a national or international organization, such as ASTM International; or 1 or more standards or methods approved by the department or the EPA. The department shall approve or deny the request in writing within 150 days after the request is received, unless the parties agree to an extension. If the department determines that the request does not include sufficient information, the department shall, not more than 60 days after receipt of the request, notify the requester. The notice shall specify the additional information that is required. The 150-day period is tolled until the requestor submits the information specified in the notice. If the department approves a request under this subsection, the approval shall include the following statement: "This approval does not require any use of any beneficial use by-product by a governmental entity or any other person." The department may impose conditions and other requirements consistent with the purposes of part 115 on a material, a use, or a material and use approved under this section that are reasonably necessary for the use. If a request is approved with conditions or other requirements, the approval shall specifically state the conditions or other requirements. If the request is denied, the denial shall, to the extent practical, state with specificity all of the reasons for denial. If the department fails to approve or deny the request within the 150-day period, the request is considered approved. A person requesting approval under this subsection may seek review of any final department decision pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(3) The department shall approve a material for a specified use as a beneficial use by-product if all of the following requirements are met:

(a) The material is an industrial or commercial material that is or has the potential to be generated in high volumes.

(b) The proposed use serves a legitimate beneficial purpose other than providing a means to discard the material.

(c) A market exists for the material or there is a reasonable potential for the creation of a new market for the material if it is approved as a beneficial use by-product.

(d) The material and use meet all federal and state consumer protection and product safety laws and regulations.

(e) The material meets all of the following requirements:

(i) Any hazardous substances in the material do not pose a direct contact health hazard to humans.

(ii) The material does not leach, decompose, or dissolve to form a leachate that exceeds either of the following:

(A) Part 201 generic residential groundwater drinking water criteria.

(B) Surface water quality standards established under part 31.

(iii) The material does not produce emissions that violate part 55 or that create a nuisance.

(4) The department may approve a material for a specified use as a beneficial use by-product or as restricted use compost if the material meets the requirements of subsection (3)(a), (b), (c), and (d) but fails to meet the requirements of subsection (3)(e) and if the department determines that the material and use are protective of the environment, natural resources, and the public health, safety, and welfare. In making the determination, the department shall consider the potential for exposure and risk to the environment, natural resources, and the public health, safety, and welfare given the nature of the material, its proposed use, and the environmental fate and transport of any hazardous substances in the material in soil, groundwater, or other relevant media.

(5) The department shall approve a material as inert or as general use compost if all of the following requirements are met:

(a) The material is proposed to be used for a legitimate purpose other than a means to dispose of the material.

(b) Substances in the material do not pose a direct contact health hazard to humans.

(c) The material does not leach, decompose, or dissolve in water or other liquids likely to be found at the area of placement, disposal, or use to form a leachate that exceeds either of the following:

(i) Part 201 generic residential groundwater drinking water criteria.

(ii) Surface water quality standards established under part 31.

(d) The material does not produce emissions that violate part 55 or that create a nuisance.

(6) The department may approve a material as inert if the material meets the requirements of subsection (5)(a) but fails to meet the requirements of subsection (5)(b), (c), or (d) and if the department determines that the material is protective of the environment, natural resources, and the public health, safety, and welfare. In making the determination, the department shall consider the potential for exposure and risk to the environment, natural resources, and the public health, safety, and welfare given the nature of the material, its proposed use, and the environmental fate and transport of any hazardous substances in the material in soil, groundwater, or other relevant media.

(7) The department shall approve a material as a low-hazard industrial waste if hazardous substances in representative samples of the material do not leach, using, at the option of the generator, EPA method 1311, "Toxicity Characteristic Leaching Procedure", EPA method 1312, "Synthetic Precipitation Leaching Procedure", or any other method approved by the department that more accurately simulates mobility, above the higher of the following:

(a) One-tenth the hazardous waste toxicity characteristic threshold as set forth in rules promulgated under part 111.

(b) Ten times the generic residential groundwater drinking water cleanup criteria as set forth in rules promulgated under part 201.

(8) The department shall approve a material as a source separated material if the person who seeks the designation demonstrates that the material can be recycled or converted into raw materials or new products by being returned to the original process from which it was generated, by use or reuse as an ingredient in an industrial process to make a product, or by use or reuse as an effective substitute for a commercial product. To qualify as a source separated material, the material, product, or reuse must meet all federal and state consumer protection and product safety laws and regulations and must not create a nuisance. If a material will be applied to or placed on land, or will be used to produce products that are applied to or placed on land, the material must qualify as an inert material or beneficial use by-product.

(9) Any written determination by the department made before September 16, 2014, designating a material as an inert material, an inert material appropriate for general reuse, an inert material appropriate for reuse at a specific location, an inert material appropriate for specific reuse instead of virgin material, a source separated material, a low-hazard industrial waste, or a non-solid-waste material remains in effect according to its terms or until forfeited in writing by the person who received the determination. Upon termination, expiration, or forfeiture of the written determination, the current requirements of part 115 control. The amendments made to this part by 2014 PA 178 do not rescind, invalidate, limit, or modify any such prior determination in any way.

(10) Notwithstanding any other provision of part 115, a person in possession of material that is designated or approved for beneficial use or as inert material or in possession of material from an industrial facility that is designated or approved as source separated material is not subject to regulation as a materials management facility if the person manages and uses the material as provided in part 115 for that material.

Sec. 11554. The department of agriculture and rural development, and not the department of environment, Great Lakes, and energy, shall administer and enforce part 115 in connection with any material that is licensed or registered under part 85 or 1955 PA 162, MCL 290.531 to 290.538.

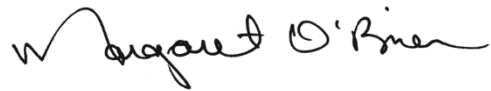
Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. 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. 4458.
- (e) House Bill No. 4460.
- (f) House Bill No. 4461.
- (g) House Bill No. 4455.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor