

Act No. 153
Public Acts of 2003
Approved by the Governor
August 7, 2003
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Senator Leland

ENROLLED SENATE BILL No. 561

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 prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 11507a, 11512, 11516, 11525, 11525a, and 11550 (MCL 324.11507a, 324.11512, 324.11516, 324.11525, 324.11525a, and 324.11550), section 11507a as added by 1996 PA 359, sections 11512 and 11516 as amended and sections 11525a and 11550 as added by 1996 PA 358, and section 11525 as amended by 1996 PA 506.

The People of the State of Michigan enact:

Sec. 11507a. (1) The owner or operator of a landfill shall annually submit a report to the state and the county and municipality in which the landfill is located that contains information on the amount of solid waste received by the landfill during the year itemized, to the extent possible, by county, state, or country of origin. The report shall be submitted on a form provided by the department within 30 days following the end of each state fiscal year.

(2) By September 1, 1996, the department shall develop and submit to the legislature a plan to gather data on the amount of recyclable materials recovered in the state itemized, to the extent possible, by county, state, or country of origin.

Sec. 11512. (1) A person shall dispose of solid waste at a disposal area licensed under this part unless a person is permitted by state law or rules promulgated by the department to dispose of the solid waste at the site of generation.

(2) Except as otherwise provided in this section or in section 11529, a person shall not conduct, manage, maintain, or operate a disposal area within this state without a license from the department, contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued under this part. A person who intends to conduct, manage, maintain, or operate a disposal area shall submit a license application to the department through a certified health department on a form provided by the department. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department. A person authorized by this part to operate more than 1 type of disposal area at the same facility may apply for a single license.

(3) The application for a license shall contain the name and residence of the applicant, the location of the proposed or existing disposal area, the type or types of disposal area proposed, evidence of bonding, and other information required by rule. In addition, an applicant for a type II landfill shall submit evidence of financial assurance adequate to meet the requirements of section 11523a, the maximum waste slope in the active portion, an estimate of remaining permitted capacity, and documentation on the amount of waste received at the disposal area during the previous license period or expected to be received, whichever is greater. The application shall be accompanied by a fee as specified in subsections (7), (9), and (10).

(4) At the time of application for a license for a disposal area, the applicant shall submit to a health officer or the department a certification under the seal of a licensed professional engineer verifying that the construction of the disposal area has proceeded according to the approved plans. If construction of the disposal area or a portion of the disposal area is not complete, the department shall require additional construction certification of that portion of the disposal area during intermediate progression of the operation, as specified in section 11516(5).

(5) An applicant for an operating license, within 6 months after a license denial, may resubmit the application, together with additional information or corrections as are necessary to address the reason for denial, without being required to pay an additional application fee.

(6) In order to conduct tests and assess operational capabilities, the owner or operator of a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit may operate the incinerator without an operating license, upon notice to the department, for a period not to exceed 60 days.

(7) The application for a type II landfill operating license shall be accompanied by the following fee for the 5-year term of the operating license, calculated in accordance with subsection (8):

- (a) Landfills receiving less than 100 tons per day, \$250.00.
- (b) Landfills receiving 100 tons per day or more, but less than 250 tons per day, \$1,000.00.
- (c) Landfills receiving 250 tons per day or more, but less than 500 tons per day, \$2,500.00.
- (d) Landfills receiving 500 tons per day or more, but less than 1,000 tons per day, \$5,000.00.
- (e) Landfills receiving 1,000 tons per day or more, but less than 1,500 tons per day, \$10,000.00.
- (f) Landfills receiving 1,500 tons per day or more, but less than 3,000 tons per day, \$20,000.00.
- (g) Landfills receiving greater than 3,000 tons per day, \$30,000.00.

(8) Type II landfill application fees shall be based on the average amount of waste projected to be received daily during the license period. Application fees for license renewals shall be based on the average amount of waste received in the previous calendar year. Application fees shall be adjusted in the following circumstances:

(a) If a landfill accepts more waste than projected, a supplemental fee equal to the difference shall be submitted with the next license application.

(b) If a landfill accepts less waste than projected, the department shall credit the applicant an amount equal to the difference with the next license application.

(c) A type II landfill that measures waste by volume rather than weight shall pay a fee based on 3 cubic yards per ton.

(d) A landfill used exclusively for municipal solid waste incinerator ash that measures waste by volume rather than weight shall pay a fee based on 1 cubic yard per ton.

(e) If an application is submitted to renew a license more than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/2 the application fee.

(f) If an application is submitted to renew a license more than 6 months but less than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/4 the application fee.

(9) The operating license application for a type III landfill shall be accompanied by a fee equal to \$2,500.00.

(10) The operating license application for a solid waste processing plant, solid waste transfer facility, other disposal area, or combination of these entities shall be accompanied by a fee equal to \$500.00.

(11) The department shall deposit operating license application fees collected under this section in the perpetual care account of the solid waste management fund established in section 11550.

(12) A person who applies for an operating license for more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable application fees listed in this section.

Sec. 11516. (1) Subject to subsection (4), the department shall conduct a consistency review and make a final decision on a license application within 90 days after the department receives an administratively complete application. The decision of the department and the reasons for the decision shall be documented in writing with specific reference to this part or rules promulgated under this part and shall be sent by first-class mail to the clerk of the municipality in which the disposal area is located and to the applicant within 10 days after the final decision is made. If the department fails to make a final decision within 90 days, the license is considered issued.

(2) An operating license shall expire 5 years after the date of issuance. An operating license may be renewed before expiration upon payment of a renewal application fee specified in section 11512(8) if the licensee is in compliance with this part and the rules promulgated under this part.

(3) The issuance of the operating license under this part empowers the department or a health officer or an authorized representative of a health officer to enter at any reasonable time, pursuant to law, in or upon private or public property licensed under this part for the purpose of inspecting or investigating conditions relating to the storage, processing, or disposal of any material.

(4) Except as otherwise provided in this subsection, the department shall not issue an operating license for a new disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. The department may issue an operating license for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for electrical power generation in the absence of an approved county solid waste management plan, upon receipt of a letter of approval from whichever county or counties, group of municipalities, or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

(5) Issuance of an operating license by the department authorizes the licensee to accept waste for disposal in certified portions of the disposal area for which a bond was established under section 11523 and, for type II landfills, for which financial assurance was demonstrated under section 11523a. If the construction of a portion of a landfill licensed under this section is not complete at the time of license application, the owner or operator of the landfill shall submit a certification under the seal of a licensed professional engineer verifying that the construction of that portion of the landfill has proceeded according to the approved plans at least 60 days prior to the anticipated date of waste disposal in that portion of the landfill. If the department does not deny the certification within 60 days of receipt, the owner or operator may accept waste for disposal in the certified portion. In the case of a denial, the department shall issue a written statement stating the reasons why the construction or certification is not consistent with this part or rules promulgated under this part or the approved plans.

Sec. 11525. (1) The owner or operator of a landfill shall establish and maintain a perpetual care fund for a period of 30 years after final closure of the landfill as specified in this section. A perpetual care fund may be established as a trust or an escrow account and may be used to demonstrate financial assurance for type II landfills under section 11523 and section 11523a.

(2) Except as otherwise provided in this section, the owner or operator of a landfill shall deposit into his or her perpetual care fund 75 cents for each ton or portion of a ton or 25 cents for each cubic yard or portion of a cubic yard of solid waste that is disposed of in the landfill after June 17, 1990. The deposits shall be made not less than semiannually until the fund reaches the maximum required fund amount. As of July 1, 1996, the maximum required fund amount is \$1,156,000.00. This amount shall be annually adjusted for inflation and rounded to the nearest thousand. The department shall adjust the maximum required fund amount for inflation annually by multiplying the amount by an inflation factor derived from the most recent bureau of reclamation composite index published by the United States department of commerce or another index more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department.

(3) The owner or operator of a landfill that is used for the disposal of the following materials shall deposit into the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of the following materials that are disposed of in the landfill after June 17, 1990:

(a) Coal ash, wood ash, or cement kiln dust that is disposed of in a landfill that is used only for the disposal of coal ash, wood ash, or cement kiln dust, or a combination of these materials, or that is permanently segregated in a landfill.

(b) Wastewater treatment sludge or sediments from wood pulp or paper producing industries that is disposed of in a landfill that is used only for the disposal of wastewater treatment sludge and sediments from wood pulp or paper producing industries, or that is permanently segregated in a landfill.

(c) Foundry sand or other material that is approved by the department for use as daily cover at an operating landfill, that is disposed of in a landfill that is used only for the disposal of foundry sand, or that is permanently segregated in a landfill.

(4) The owner or operator of a landfill that is used only for the disposal of a mixture of 2 or more of the materials described in subsection (3)(a) to (c) or in which a mixture of 2 or more of these materials are permanently segregated shall deposit into the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of these materials that are disposed of in the landfill after July 1, 1996.

(5) Money is not required to be deposited into a perpetual care fund for materials that are regulated under part 631.

(6) The owner or operator of a landfill may contribute additional amounts into the perpetual care fund at his or her discretion.

(7) The custodian of a perpetual care fund shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Until the perpetual care fund reaches the maximum required fund amount, the custodian of a perpetual care fund shall credit interest and earnings of the perpetual care fund to the perpetual care fund. However, upon the direction of the owner or operator, the custodian may utilize the interest and earnings of the perpetual care fund to pay the solid waste management program administration fee or the surcharge required by section 11525a for the landfill for which the perpetual care fund was established. After the perpetual care fund reaches the maximum required fund amount, interest and earnings shall be distributed as directed by the owner or operator. The agreement governing the operation of the perpetual care fund shall be executed on a form consistent with this part as prepared by the department. The custodian may be compensated from the fund for reasonable fees and costs incurred for his or her responsibilities as

custodian. The custodian of a perpetual care fund shall annually make an accounting to the department within 30 days following the close of the state fiscal year.

(8) The custodian of a perpetual care fund shall not disburse any funds to the owner or operator of a landfill for the purposes of the perpetual care fund except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the perpetual care fund is liable and shall disburse funds to pay lawfully due taxes owed by the perpetual care fund without permission of the department, and may disburse interest and earnings of the perpetual care fund to pay the solid waste management program administration fee or the surcharge required by section 11525a as provided in subsection (7). The owner or operator of the landfill shall provide notice of requests for disbursement and denials and approvals to the custodian of the perpetual care fund. Requests for disbursement from a perpetual care fund shall be submitted not more frequently than semiannually. The owner or operator of a landfill may request disbursement of funds from a perpetual care fund whenever the amount of money in the fund exceeds the maximum required fund amount. The department shall approve the disbursement provided the total amount of financial assurance maintained meets the requirements of sections 11523 and 11523a. As used in this subsection, "maximum required fund amount" means:

(a) For those landfills containing only those materials specified in subsection (3), an amount equal to 1/2 of the maximum required fund amount specified in subsection (2).

(b) For all other landfills, an amount equal to the maximum required fund amount specified in subsection (2).

(9) If the owner or operator of a landfill refuses or fails to conduct closure, postclosure monitoring and maintenance, or corrective action as necessary to protect the public health, safety, or welfare, or the environment or fails to request the disbursement of money from a perpetual care fund when necessary to protect the public health, safety, or welfare, or the environment, or fails to pay the solid waste management program administration fee or the surcharge required under section 11525a, then the department may require the disbursement of money from the perpetual care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action, as necessary. The department may assess a perpetual care fund for administrative costs associated with actions taken under this subsection.

(10) Upon approval by the department of a request to terminate financial assurance for a landfill under section 11525b, any money in the perpetual care fund for that landfill shall be disbursed by the custodian to the owner of the landfill unless a contract between the owner and the operator of the landfill provides otherwise.

(11) The owner of a landfill shall provide notice to the custodian of the perpetual care fund for that landfill if there is a change of ownership of the landfill. The custodian shall maintain records of ownership of a landfill during the time in which a perpetual care fund is established.

(12) This section does not relieve an owner or operator of a landfill of any liability that he or she may have under this part or as otherwise provided by law.

(13) This section does not create a cause of action at law or in equity against a custodian of a perpetual care fund other than for errors or omissions related to investments, accountings, disbursements, filings of required tax returns, and maintenance of records required by this section or the applicable perpetual care fund.

(14) As used in this section, "custodian" means the trustee or escrow agent of a perpetual care fund.

Sec. 11525a. (1) Until October 1, 2003, a solid waste program administration fee is imposed upon the owners or operators of landfills in the state. The annual cumulative total amount of this fee shall be \$1,040,000.00 as this amount is annually adjusted for inflation beginning in 1997 using the Detroit consumer price index. As used in this section, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the United States department of labor, bureau of labor statistics.

(2) The department shall apportion the cumulative solid waste program administration fee among the operating landfills in the state. The apportionment shall be made on the basis of each landfill's pro rata share of the cumulative total of amounts maintained in individual perpetual care funds in the state.

(3) By November 1, 2003, the owner or operator of a landfill shall report to the department the total amount of assets in its perpetual care fund. The department shall determine the cumulative total amount of perpetual care funds in the state but shall not credit any individual landfill more than the maximum required fund amount established in section 11525(2). The department shall determine each landfill's pro rata share of perpetual care fund contributions using this amount.

(4) By December 1, 2003, the department shall notify the owner or operator of each landfill of its assessed share of the solid waste program administration fee. By January 1, 2004, the owner or operator of a landfill shall pay his or her assessed share of the solid waste program administration fee.

(5) Solid waste program administration fees collected under this section shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

(6) Beginning January 1, 2004, and until October 1, 2007, the owner or operator of a landfill shall pay a surcharge as follows:

(a) Except as provided in subdivision (b), 7 cents for each cubic yard or portion of a cubic yard of solid waste or municipal solid waste incinerator ash that is disposed of in the landfill during the previous quarter of the state fiscal year.

(b) For type III landfills that are captive facilities, the following annual amounts:

(i) For a captive facility that receives 100,000 or more cubic yards of waste, \$3,000.00.

(ii) For a captive facility that receives 75,000 or more but less than 100,000 cubic yards of waste, \$2,500.00.

(iii) For a captive facility that receives 50,000 or more but less than 75,000 cubic yards of waste, \$2,000.00.

(iv) For a captive facility that receives 25,000 or more but less than 50,000 cubic yards of waste, \$1,000.00.

(v) For a captive facility that receives less than 25,000 cubic yards of waste, \$500.00.

(7) The owner or operator of a landfill or municipal solid waste incinerator shall pay the surcharge under subsection (6)(a) within 30 days after the end of each quarter of the state fiscal year. The owner or operator of a type III landfill that is a captive facility shall pay the surcharge under subsection (6)(b) by January 31 of each year.

(8) The owner or operator of a landfill or municipal solid waste incinerator who is required to pay the surcharge under subsection (6) may pass through and collect the surcharge from any person who generated the solid waste or who arranged for its delivery to the solid waste hauler or transfer facility notwithstanding the provisions of any contract or agreement to the contrary or the absence of any contract or agreement.

(9) Surcharges collected under this section shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

(10) As used in this section, "captive facility" means a landfill that accepts for disposal only nonhazardous industrial waste generated only by the owner of the landfill or a nonhazardous industrial waste landfill that is specified in section 11525(3).

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.

(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) Money shall be expended from the solid waste staff account, upon appropriation, only for the following purposes:

(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 which are or have been licensed under this part.

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

(5) Money shall be expended from the perpetual care account only for the purpose of conducting the following activities at disposal areas which are or have been licensed under this part:

(a) Postclosure maintenance and monitoring at a disposal area where the owner or operator is no longer required to do so.

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

(6) 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 established in this section. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing solid waste management permitting, 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 120 days of receipt as required by section 11511.

(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 90 days of receipt as required by section 11516.

(d) The number of inspections conducted at licensed disposal areas as required by section 11519.

(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 what corrective actions were required by the enforcement action.

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

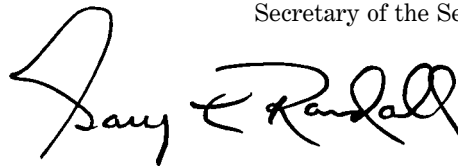
(i) The amount of revenue in the staff account of the solid waste management fund at the end of the fiscal year.

Enacting section 1. This amendatory act takes effect October 1, 2003.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor