

HOUSE BILL No. 6288

November 10, 1998, Introduced by Rep. Kukuk and referred to the Committee on Conservation, Environment and Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 11509, 11510, 11511, 11512, 11516, and 11532
(MCL 324.11509, 324.11510, 324.11511, 324.11512, 324.11516, and
324.11532), sections 11509, 11510, 11511, 11512, and 11516 as
amended by 1996 PA 358.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11509. (1) Except as otherwise provided in section
2 11529, a person otherwise allowed under this part to own or oper-
3 ate a solid waste disposal area shall not establish a disposal
4 area without a construction permit from the department, contrary
5 to an approved solid waste management plan, ~~or~~ contrary to a
6 permit, license, or final order issued pursuant to this part, OR
7 CONTRARY TO A RESOLUTION OF THE GOVERNING BODY OF THE
8 MUNICIPALITY IN WHICH THE DISPOSAL AREA IS PROPOSED. A person

1 proposing the establishment of a disposal area shall apply for a
2 construction permit to the department through the health officer
3 on a form provided by the department. If the disposal area is
4 located in a county or city that does not have a certified health
5 department, the application shall be made directly to the
6 department.

7 (2) The application for a construction permit shall contain
8 the name and residence of the applicant, the location of the pro-
9 posed disposal area, the design capacity of the disposal area,
10 and other information specified by rule. A person may apply to
11 construct more than 1 type of disposal area at the same facility
12 under a single permit. The application shall be accompanied by
13 an engineering plan, ~~and~~ a construction permit application fee,
14 AND A RESOLUTION BY THE GOVERNING BODY OF THE MUNICIPALITY IN
15 WHICH THE DISPOSAL AREA IS PROPOSED THAT GIVES PRELIMINARY
16 APPROVAL TO THE SITING OF THE PROPOSED DISPOSAL AREA. A con-
17 struction application permit for a landfill shall be accompanied
18 by a fee in an amount that is the sum of all of the applicable
19 fees in this subsection:

20 (a) For a new sanitary landfill, a fee equal to the follow-
21 ing amount:

22 (i) For a municipal solid waste landfill, \$1,500.00.

23 (ii) For an industrial waste landfill, \$1,000.00.

24 (iii) For a type III landfill limited to low hazard indus-
25 trial waste, \$750.00.

26 (b) For a lateral expansion of a sanitary landfill, a fee
27 equal to the following amount:

- 1 (i) For a municipal solid waste landfill, \$1,000.00.
- 2 (ii) For an industrial waste landfill, \$750.00.
- 3 (iii) For a type III landfill limited to low hazard indus-
- 4 trial waste, construction and demolition waste, or other nonin-
- 5 dustrial waste, \$500.00.
- 6 (c) For a vertical expansion of an existing sanitary land-
- 7 fill, a fee equal to the following amount:
- 8 (i) For a municipal solid waste landfill, \$750.00.
- 9 (ii) For an industrial waste landfill, \$500.00.
- 10 (iii) For an industrial waste landfill limited to low hazard
- 11 industrial waste, construction and demolition waste, or other
- 12 nonindustrial waste, \$250.00.
- 13 (3) The application for a construction permit for a solid
- 14 waste transfer facility, a solid waste processing plant, other
- 15 disposal area, or a combination of these, shall be accompanied by
- 16 a fee in the following amount:
- 17 (a) For a new facility for municipal solid waste, or a com-
- 18 bination of municipal solid waste and waste listed in subdivision
- 19 (b), \$1,000.00.
- 20 (b) For a new facility for industrial waste, or construction
- 21 and demolition waste, \$500.00.
- 22 (c) For the expansion of an existing facility for any type
- 23 of waste, \$250.00.
- 24 (4) If an application is returned to the applicant as admin-
- 25 istratively incomplete, the department shall refund the entire
- 26 fee. If a permit is denied or an application is withdrawn, the
- 27 department shall refund 1/2 the amount specified in subsection

1 (3) to the applicant. An applicant for a construction permit,
2 within 12 months after a permit denial or withdrawal, may resub-
3 mit the application and the refunded portion of the fee, together
4 with the additional information as needed to address the reasons
5 for denial, without being required to pay an additional applica-
6 tion fee.

7 (5) An application for a modification to a construction
8 permit or for renewal of a construction permit which has expired
9 shall be accompanied by a fee of \$250.00. Increases in final
10 elevations that do not result in an increase in design capacity
11 or a change in the solid waste boundary shall be considered a
12 modification and not a vertical expansion.

13 (6) A person who applies to permit more than 1 type of dis-
14 posal area at the same facility shall pay a fee equal to the sum
15 of the applicable fees listed in this section.

16 (7) The department shall deposit permit application fees
17 collected under this section in the solid waste staff account of
18 the solid waste management fund established in section 11550.

19 Sec. 11510. (1) Before the submission of a construction
20 permit application for a new disposal area, the applicant shall
21 request a health officer or the department to provide an advisory
22 analysis of the proposed disposal area. However, the applicant,
23 not less than 15 days after the request, and notwithstanding an
24 analysis result, may file an application for a construction
25 permit. IN ADDITION, BEFORE THE SUBMISSION OF A CONSTRUCTION
26 PERMIT APPLICATION FOR A NEW DISPOSAL AREA, THE APPLICANT SHALL
27 OBTAIN A RESOLUTION BY THE GOVERNING BODY OF THE MUNICIPALITY IN

1 WHICH THE DISPOSAL AREA IS PROPOSED THAT GIVES PRELIMINARY
2 APPROVAL TO THE SITING OF THE PROPOSED DISPOSAL AREA.

3 (2) Upon receipt of a construction permit application, the
4 department shall do all of the following:

5 (a) Immediately notify the clerk of the municipality in
6 which the disposal area is located or proposed to be located, the
7 local soil erosion and sedimentation control agency, each divi-
8 sion within the department and the department of natural
9 resources that has responsibilities in land, air, or water man-
10 agement, and the designated regional solid waste management plan-
11 ning agency.

12 (b) Publish a notice in a newspaper having major circulation
13 in the vicinity of the proposed disposal area. The required pub-
14 lished notice shall contain a map indicating the location of the
15 proposed disposal area and shall contain a description of the
16 proposed disposal area and the location where the complete appli-
17 cation package may be reviewed and where copies may be obtained.

18 (c) Indicate in the public, departmental, and municipality
19 notice that the department shall hold a public hearing in the
20 area of the proposed disposal area if a written request is sub-
21 mitted by the applicant or a municipality within 30 days after
22 the date of publication of the notice, or by a petition submitted
23 to the department containing a number of signatures equal to not
24 less than 10% of the number of registered voters of the munici-
25 pality where the proposed disposal area is to be located who
26 voted in the last gubernatorial election. The petition shall be
27 validated by the clerk of the municipality. The public hearing

1 shall be held after the department makes a preliminary review of
2 the application and all pertinent data and before a construction
3 permit is issued or denied.

4 (d) Conduct a consistency review of the plans of the pro-
5 posed disposal area to determine if it complies with this part
6 and the rules promulgated under this part. The review shall be
7 made by persons qualified in hydrogeology and sanitary landfill
8 engineering. A written acknowledgment that the application pack-
9 age is in compliance with the requirements of this part and rules
10 promulgated under this part by the persons qualified in hydro-
11 geology and sanitary landfill engineering shall be received
12 before a construction permit is issued. If the consistency
13 review of the site and the plans and the application meet the
14 requirements of this part and the rules promulgated under this
15 part AND THE GOVERNING BODY OF THE MUNICIPALITY PASSES A RESOLU-
16 TION APPROVING THE ISSUANCE OF A CONSTRUCTION PERMIT, the depart-
17 ment shall issue a construction permit that may contain a stipu-
18 lation specifically applicable to the site and operation. Except
19 as otherwise provided in section 11542, an expansion of the area
20 of a disposal area, an enlargement in capacity of a disposal
21 area, or an alteration of a disposal area to a different type of
22 disposal area than had been specified in the previous construc-
23 tion permit application constitutes a new proposal for which a
24 new construction permit is required. The upgrading of a disposal
25 area type required by the department to comply with this part or
26 the rules promulgated under this part or to comply with a consent
27 order does not require a new construction permit.

1 (e) Notify the Michigan aeronautics commission if the
2 disposal area is a sanitary landfill proposed to be located
3 within 10,000 feet of a runway or a proposed runway extension
4 contained in a plan approved by the Michigan aeronautics commis-
5 sion of an airport licensed and regulated by the Michigan aero-
6 nautics commission. The department shall make a copy of the
7 application available to the Michigan aeronautics commission.
8 If, after a period of time for review and comment not to exceed
9 60 days, the Michigan aeronautics commission informs the depart-
10 ment that it finds that operation of the proposed disposal area
11 would present a potential hazard to air navigation and presents
12 the basis for its findings, the department may either recommend
13 appropriate changes in the location, construction, or operation
14 of the proposed disposal area or deny the application for a con-
15 struction permit. The department shall give an applicant an
16 opportunity to rebut a finding of the Michigan aeronautics com-
17 mission that the operation of a proposed disposal area would
18 present a potential hazard to air navigation.

19 Sec. 11511. (1) The department shall make a final decision
20 as to whether to issue a construction permit within 120 days
21 after the department receives an administratively complete
22 application. The decision of the department and the reasons for
23 the decision shall be in writing with specific reference to this
24 part or rules promulgated under this part for any substantiation
25 of denial of the permit application and shall be sent by
26 first-class mail to the clerk of the municipality in which the
27 disposal area is proposed to be located and to the applicant

1 within 10 days after the final decision is made. If the
2 department fails to make a final decision within 120 days, the
3 permit shall be considered issued IF THE MUNICIPALITY IN WHICH
4 THE DISPOSAL FACILITY IS PROPOSED DOES NOT OBJECT.

5 (2) A construction permit shall expire 1 year after the date
6 of issuance, unless development under the construction permit is
7 initiated within that year. A construction permit that has
8 expired may be renewed upon payment of a permit renewal fee and
9 submission of any additional information the department may
10 require.

11 (3) Except as otherwise provided in this subsection, the
12 department shall not issue a construction permit for a disposal
13 area within a planning area unless a solid waste management plan
14 for that planning area has been approved pursuant to sections
15 11536 and 11537 and unless the disposal area complies with and is
16 consistent with the approved solid waste management plan. The
17 department may issue a construction permit for a disposal area
18 designed to receive ashes produced in connection with the combus-
19 tion of fossil fuels for electrical power generation in the
20 absence of an approved county solid waste management plan, upon
21 receipt of a letter of approval from whichever county or coun-
22 ties, group of municipalities, or regional planning agency has
23 prepared or is preparing the county solid waste management plan
24 for that planning area under section 11533 and from the munici-
25 pality in which the disposal area is to be located.

26 Sec. 11512. (1) A person shall dispose of solid waste at a
27 disposal area licensed under this part unless a person is

1 permitted by state law or rules promulgated by the department to
2 dispose of the solid waste at the site of generation.

3 (2) Except as otherwise provided in this section or in sec-
4 tion 11529, a person otherwise allowed under this part to own or
5 operate a solid waste disposal area shall not conduct, manage,
6 maintain, or operate a disposal area within this state without a
7 license from the department, contrary to an approved solid waste
8 management plan, ~~or~~ contrary to a permit, license, or final
9 order issued under this part, OR CONTRARY TO A RESOLUTION OF THE
10 GOVERNING BODY OF THE MUNICIPALITY IN WHICH THE DISPOSAL AREA IS
11 PROPOSED. A person who intends to conduct, manage, maintain, or
12 operate a disposal area shall submit a prior license application
13 to the department through a certified health department on a form
14 provided by the department. If the disposal area is located in a
15 county or city that does not have a certified health department,
16 the application shall be made directly to the department. A
17 person authorized by this part to operate more than 1 type of
18 disposal area at the same facility may apply for a single
19 license.

20 (3) The application for a license shall contain the name and
21 residence of the applicant, the location of the proposed or
22 existing disposal area, the type or types of disposal area pro-
23 posed, evidence of bonding, and other information required by
24 rule. In addition, an applicant for a type II landfill shall
25 submit evidence of financial assurance adequate to meet the
26 requirements of section 11523a, the maximum waste slope in the
27 active portion, an estimate of remaining permitted capacity, and

1 documentation on the amount of waste received at the disposal
2 area during the previous license period or expected to be
3 received, whichever is greater. The application shall be accom-
4 panied by a fee based on the number of years proposed for licen-
5 sure as specified in subsections (7), (9), and (10), AND A RESO-
6 LUTION BY THE GOVERNING BODY OF THE MUNICIPALITY IN WHICH THE
7 DISPOSAL AREA IS PROPOSED STATING THAT THE DISPOSAL AREA IS
8 APPROVED BY THE GOVERNING BODY.

9 (4) At the time of application for a license for a disposal
10 area, the applicant shall submit to a health officer or the
11 department a certification under the seal of a licensed profes-
12 sional engineer verifying that the construction of the disposal
13 area has proceeded according to the approved plans. If construc-
14 tion of the disposal area or a portion of the disposal area is
15 not complete, the department shall require additional construc-
16 tion certification of that portion of the disposal area during
17 intermediate progression of the operation, as specified in
18 section 11516(4).

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

24 (6) In order to conduct tests and assess operational capa-
25 bilities, the owner or operator of a municipal solid waste incin-
26 erator that is designed to burn at a temperature in excess of
27 2500 degrees Fahrenheit may operate the incinerator without an

1 operating license, upon notice to the department, for a period
2 not to exceed 60 days.

3 (7) The application for a type II landfill operating license
4 shall be accompanied by the following fee for the 2-year term of
5 the operating license, calculated in accordance with
6 subsection (8):

7 (a) Landfills receiving less than 100 tons per day,
8 \$250.00.

9 (b) Landfills receiving 100 tons per day or more, but less
10 than 250 tons per day, \$1,000.00.

11 (c) Landfills receiving 250 tons per day or more, but less
12 than 500 tons per day, \$2,500.00.

13 (d) Landfills receiving 500 tons per day or more, but less
14 than 1,000 tons per day, \$5,000.00.

15 (e) Landfills receiving 1,000 tons per day or more, but less
16 than 1,500 tons per day, \$10,000.00.

17 (f) Landfills receiving 1,500 tons per day or more, but less
18 than 3,000 tons per day, \$20,000.00.

19 (g) Landfills receiving greater than 3,000 tons per day,
20 \$30,000.00.

21 (8) Type II landfill application fees shall be based on the
22 average amount of waste projected to be received daily during the
23 license period. Application fees for license renewals shall be
24 based on the average amount of waste received in the previous
25 calendar year. Application fees shall be adjusted in the follow-
26 ing circumstances:

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

4 (b) If a landfill accepts less waste than projected, the
5 department shall credit the applicant an amount equal to the dif-
6 ference with the next license application.

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

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

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

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

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

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

25 (11) The department shall deposit operating license applica-
26 tion fees collected under this section in the perpetual care

1 account of the solid waste management fund established in
2 section 11550.

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

7 Sec. 11516. (1) Subject to subsection (4), the department
8 shall conduct a consistency review and make a final decision on a
9 license application within 90 days after the department receives
10 an administratively complete application. The decision of the
11 department and the reasons for the decision shall be documented
12 in writing with specific reference to this part or rules promul-
13 gated under this part and shall be sent by first-class mail to
14 the clerk of the municipality in which the disposal area is
15 located and to the applicant within 10 days after the final deci-
16 sion is made. If the department fails to make a final decision
17 within 90 days, the license is considered issued IF THE MUNICI-
18 PALITY IN WHICH THE DISPOSAL FACILITY IS PROPOSED DOES NOT
19 OBJECT.

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

25 (3) The issuance of the operating license under this part
26 empowers the department or a health officer or an authorized
27 representative of a health officer to enter at any reasonable

1 time, pursuant to law, in or upon private or public property
2 licensed under this part for the purpose of inspecting or inves-
3 tigating conditions relating to the storage, processing, or dis-
4 posal of any material.

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

20 (5) Issuance of an operating license by the department
21 authorizes the licensee to accept waste for disposal in certified
22 portions of the disposal area for which a bond was established
23 under section 11523 and, for type II landfills, for which finan-
24 cial assurance was demonstrated under section 11523a. If the
25 construction of a portion of a landfill licensed under this sec-
26 tion is not complete at the time of license application, the
27 owner or operator of the landfill shall submit a certification

1 under the seal of a licensed professional engineer verifying that
2 the construction of that portion of the landfill has proceeded
3 according to the approved plans at least 60 days prior to the
4 anticipated date of waste disposal in that portion of the
5 landfill. If the department does not deny the certification
6 within 60 days of receipt, the owner or operator may accept waste
7 for disposal in the certified portion. In the case of a denial,
8 the department shall, issue a written statement stating the rea-
9 sons why the construction or certification is not consistent with
10 this part or rules promulgated under this part or the approved
11 plans.

12 Sec. 11532. (1) ~~Except as provided in subsection (3), a~~ A
13 municipality may impose an impact fee ~~of not more than 10 cents~~
14 ~~per~~ IN AN AMOUNT THAT IS NEGOTIATED AND AGREED UPON BETWEEN THE
15 MUNICIPALITY AND THE OWNER OR OPERATOR OF THE LANDFILL OR INCIN-
16 ERATOR ON EACH cubic yard ~~on~~ OF solid waste that is disposed of
17 ~~in a landfill located~~ OR INCINERATED within the municipality AT
18 A LANDFILL OR INCINERATOR that is utilized by the public and uti-
19 lized to dispose of OR INCINERATE solid waste collected from 2 or
20 more persons. However, if the landfill OR INCINERATOR is located
21 within a village, the impact fee provided for in this subsection
22 shall be imposed by the township in agreement with the village.
23 The impact fee shall be assessed uniformly on all wastes accepted
24 for disposal OR INCINERATION.

25 ~~(2) Except as provided in subsection (3), a municipality~~
26 ~~may impose an impact fee of not more than 10 cents per cubic yard~~
27 ~~on municipal solid waste incinerator ash that is disposed of in a~~

~~1 landfill located within the municipality that is utilized to
2 dispose of municipal solid waste incinerator ash. However, if
3 the landfill is located within a village, the impact fee provided
4 for in this subsection shall be imposed by the township in agree-
5 ment with the village.~~

~~6 (3) A municipality may enter into an agreement with the
7 owner or operator of a landfill to establish a higher impact fee
8 than those provided for in subsections (1) and (2).~~

9 (2) ~~-(4)-~~ The impact ~~fees~~ FEE imposed under this section
10 shall be collected by the owner or operator of a landfill OR
11 INCINERATOR and shall be paid to the municipality quarterly by
12 the thirtieth day after the end of each calendar quarter.
13 However, the impact ~~fees~~ FEE allowed to be assessed to each
14 landfill OR INCINERATOR under this section shall be reduced by
15 any amount of revenue paid to or available to the municipality
16 from the landfill OR INCINERATOR under the terms of any preexist-
17 ing agreements, including, but not limited to, contracts, special
18 use permit conditions, court settlement agreement conditions, and
19 trusts.

20 (3) ~~-(5)-~~ Unless a trust fund is established by a municipal-
21 ity pursuant to subsection ~~-(6)-~~ (4), the revenue collected by a
22 municipality under ~~subsections (1) and (2)-~~ SUBSECTION (1) shall
23 be deposited in its general fund to be used for any purpose that
24 promotes the public health, safety, or welfare of the citizens of
25 the municipality. ~~However, revenue collected pursuant to this
26 section shall not be used to bring or support a lawsuit or other
27 legal action against an owner or operator of a landfill who is~~

~~1 collecting an impact fee pursuant to subsection (4) unless the
2 owner or operator of the landfill has instituted a lawsuit or
3 other legal action against the municipality.~~

4 (4) ~~-(6) The~~ A municipality may establish a trust fund to
5 receive revenue collected pursuant to this section. The trust
6 fund shall be administered by a board of trustees. The board of
7 trustees shall consist of the following members:

8 (a) The chief elected official of the municipality creating
9 the trust fund.

10 (b) An individual from the municipality appointed by the
11 governing board of the municipality.

12 (c) An individual approved by the owners or operators of
13 ~~the~~ landfills OR INCINERATORS within the municipality and
14 appointed by the governing board of the municipality.

15 (5) ~~-(7)-~~ Individuals appointed to serve on the board of
16 trustees under subsection ~~-(6)-(b)-~~ (4)(B) and (c) shall serve
17 for terms of 2 years.

18 (6) ~~-(8)-~~ Money in the trust fund may be expended, pursuant
19 to a majority vote of the board of trustees, for any purpose that
20 promotes the public health, safety, or welfare of the citizens of
21 the municipality. ~~However, revenue collected pursuant to this
22 section shall not be used to bring or support a lawsuit or other
23 legal action against an owner or operator of a landfill who is
24 collecting an impact fee pursuant to subsection (4) unless the
25 owner or operator of the landfill has instituted a lawsuit or
26 other legal action against the municipality.~~

1 (7) IF A MUNICIPALITY AND THE OWNER OR OPERATOR OF A
2 LANDFILL OR INCINERATOR CANNOT REACH AN AGREEMENT ON THE AMOUNT
3 OF AN IMPACT FEE THAT IS SUFFICIENT TO ENABLE A MUNICIPALITY TO
4 ADDRESS IMPACTS CAUSED BY THE DISPOSAL FACILITY WITHIN ITS BOUND-
5 ARIES AND IS REASONABLE IN LIGHT OF THE OPERATIONAL EXPENSES OF
6 THE FACILITY, THE PARTIES SHALL SUBMIT THE UNRESOLVED MATTER TO
7 BINDING ARBITRATION UNDER THE RULES AND PROCEDURES OF THE
8 AMERICAN ARBITRATION ASSOCIATION.