

Act No. 357
Public Acts of 2010
Approved by the Governor
December 22, 2010
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**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Senator Birkholz

ENROLLED SENATE BILL No. 1564

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, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 11102, 11107, 11118a, 11121, 11123, 11124, 11125, 11129, 11140, and 11153 (MCL 324.11102, 324.11107, 324.11118a, 324.11121, 324.11123, 324.11124, 324.11125, 324.11129, 324.11140, and 324.11153), section 11118a as added by 1996 PA 182 and section 11153 as amended by 2008 PA 403; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 11102. (1) "Contaminant" means any of the following:

- (a) Hazardous waste as defined in R 299.9203 of the Michigan administrative code.
- (b) Any hazardous waste or hazardous constituent listed in 40 CFR part 261, appendix VIII or 40 CFR part 264, appendix IX.
- (2) "Corrective action" means an action determined by the department to be necessary to protect the public health, safety, or welfare, or the environment, and includes, but is not limited to, investigation, evaluation, cleanup, removal, remediation, monitoring, containment, isolation, treatment, storage, management, temporary relocation of people, and provision of alternative water supplies, or any corrective action allowed under the solid waste disposal act or regulations promulgated pursuant to that act.
- (3) "Designated facility" means a hazardous waste treatment, storage, or disposal facility that has received a permit or has interim status under the solid waste disposal act or has a permit from a state authorized under section 3006 of subtitle C of the solid waste disposal act, 42 USC 6926, and which, if located in this state, has an operating license issued under this part, has a legally binding agreement with the department that authorizes operation, or is subject to the requirements of section 11123(8).
- (4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste into or on land or water in a manner that the hazardous waste or a constituent of the hazardous waste may enter the environment, be emitted into the air, or be discharged into water, including groundwater.
- (5) "Disposal facility" means a facility or a part of a facility where managed hazardous waste, as defined by rule, is intentionally placed into or on any land or water and at which hazardous waste will remain after closure.
- (6) "Failure mode assessment" means an analysis of the potential major methods by which safe handling of hazardous wastes may fail at a treatment, storage, or disposal facility.

Sec. 11107. The department, in the conduct of its duties as prescribed under this part, shall assist in encouraging, developing, and implementing methods of hazardous waste management that are environmentally sound, that maximize the utilization of valuable resources, that encourage resource conservation, including source separation, recycling, and waste reduction, and that are consistent with the plan to be provided by the department pursuant to section 12103(1)(d) of the public health code, 1978 PA 368, MCL 333.12103. In addition, the department, in the conduct of its duties as prescribed by this part, shall assist in implementing the policy of this state to minimize the placement of untreated hazardous waste in disposal facilities.

Sec. 11118a. (1) As used in this section, “multisource commercial hazardous waste disposal well” has the meaning ascribed to that term in section 62506a.

(2) A multisource commercial hazardous waste disposal well shall maintain on site a treatment facility and a storage facility that have obtained an operating license under section 11123.

(3) Subject to subsection (4), in addition to the information required under section 11123, the owner or operator of a proposed treatment and storage facility with a multisource commercial hazardous waste disposal well shall provide to the department in an application for an operating license a business plan for the well operations. The business plan shall contain all of the following information:

(a) The type, estimated quantities, and expected potential sources of wastes to be disposed of in the well.

(b) A feasibility study on the viability of the disposal well operations.

(c) Additional business plan information required by the department and related solely to the requirements of subdivisions (a) and (b).

(d) Any additional business plan information if the department and applicant agree that such additional information should be submitted.

(4) Subsection (3) applies only to a person who submits an application for an operating license, other than a renewal operating license, after the effective date of the 2010 amendatory act that added this subsection.

Sec. 11121. A local ordinance, permit requirement, or other requirement does not prohibit the construction of a treatment, storage, or disposal facility, except as otherwise provided in section 11123.

Sec. 11123. (1) Unless a person is complying with subsection (8) or a rule promulgated under section 11127(4), a person shall not establish, construct, conduct, manage, maintain, or operate a treatment, storage, or disposal facility within this state without an operating license from the department.

(2) An application for an operating license for a proposed treatment, storage, or disposal facility or the expansion, enlargement, or alteration of a treatment, storage, or disposal facility beyond its original authorized design capacity or beyond the area specified in an existing operating license, original construction permit, or other authorization shall be submitted on a form provided by the department and contain all of the following:

(a) The name and residence of the applicant.

(b) The location of the proposed treatment, storage, or disposal facility project.

(c) A copy of an actual published notice that the applicant published at least 30 days before submittal of the application in a newspaper having major circulation in the municipality and the immediate vicinity of the proposed treatment, storage, or disposal facility project. The notice shall contain a map indicating the location of the proposed treatment, storage, or disposal facility project and information on the nature and size of the proposed facility. In addition, as provided by the department, the notice shall contain a description of the application review process, the location where the complete application may be reviewed, and an explanation of how copies of the complete application may be obtained.

(d) A written summary of the comments received at the public preapplication meeting required by rule and the applicant’s response to the comments, including any revisions to the application.

(e) A determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated under this part.

(f) An environmental assessment. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility’s impact on the air, water, and other natural resources of this state, and also shall contain an environmental failure mode assessment.

(g) The procedures for closure and postclosure monitoring.

(h) An engineering plan.

(i) Other information specified by rule or by federal regulation issued under the solid waste disposal act.

(j) An application fee. The application fee shall be deposited in the environmental pollution prevention fund created in section 11130. Pursuant to procedures established by rule, the application fee shall be the sum of \$25,000.00 plus all of the following, as applicable:

- (i) For a landfill, surface impoundment, land treatment, or waste pile facility \$ 9,000.00
- (ii) For an incinerator or treatment facility other than a treatment facility described in subparagraph (i)..... \$ 7,200.00
- (iii) For a storage facility, other than storage that is associated with treatment or disposal activities that may be regulated under a single license \$ 500.00

(k) Except as otherwise provided in this subdivision, a disclosure statement that includes all of the following:

(i) The full name and business address of all of the following:

(A) The applicant.

(B) The 5 persons holding the largest shares of the equity in or debt liability of the proposed facility. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(C) The operator. If a waiver is obtained under sub-subparagraph (B), detailed information regarding the proposed operator shall be included in the disclosure statement.

(D) If known, the 3 employees of the operator who will have the most responsibility for the day-to-day operation of the facility, including their previous experience with other hazardous waste treatment, storage, or disposal facilities.

(E) Any other partnership, corporation, association, or other legal entity if any person required to be listed under sub-subparagraphs (A) to (D) has at any time had 25% or more of the equity in or debt liability of that legal entity. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(ii) A list of all convictions for criminal violations of any environmental statute enacted by a federal, state, Canadian, or Canadian provincial agency for each person required to be listed under this subdivision. If debt liability is held by a chartered lending institution, information required in this subparagraph and subparagraphs (iii) and (iv) is not required from that institution.

(iii) A list of all environmental permits or licenses issued by a federal, state, local, Canadian, or Canadian provincial agency held by each person required to be listed under this subdivision that were permanently revoked because of noncompliance.

(iv) A list of all activities at property owned or operated by each person required to be listed under this subdivision that resulted in a threat or potential threat to the environment and for which public funds were used to finance an activity to mitigate the threat or potential threat to the environment, except if the public funds expended to facilitate the mitigation of environmental contamination were voluntarily and expeditiously recovered from the applicant or other listed person without litigation.

(l) A demonstration that the applicant has considered each of the following:

(i) The risk and impact of accident during the transportation of hazardous waste to the treatment, storage, or disposal facility.

(ii) The risk and impact of fires or explosions from improper treatment, storage, and disposal methods at the treatment, storage, or disposal facility.

(iii) The impact on the municipality where the proposed treatment, storage, or disposal facility is to be located in terms of health, safety, cost, and consistency with local planning and existing development, including proximity to housing, schools, and public facilities.

(iv) The nature of the probable environmental impact, including the specification of the predictable adverse effects on each of the following:

(A) The natural environment and ecology.

(B) Public health and safety.

(C) Scenic, historic, cultural, and recreational values.

(D) Water and air quality and wildlife.

(m) A summary of measures evaluated to mitigate the impacts identified in subdivision (l) and a detailed description of the measures to be implemented by the applicant.

(n) A schedule for submittal of all of the following postconstruction documentation:

(i) Any changes in, or additions to, the previously submitted disclosure information, or a certification that the disclosure listings previously submitted continue to be correct, following completion of construction of the treatment, storage, or disposal facility.

(ii) A certification under the seal of a licensed professional engineer verifying that the construction of the treatment, storage, or disposal facility has proceeded according to the plans approved by the department and, if applicable, the approved construction permit, including as-built plans.

(iii) A certification of the treatment, storage, or disposal facility's capability of treating, storing, or disposing of hazardous waste in compliance with this part.

(iv) Proof of financial assurance as required by rule.

(3) If any information required to be included in the disclosure statement under subsection (2)(k) changes or is supplemented after the filing of the statement, the applicant or licensee shall provide that information to the department in writing not later than 30 days after the change or addition.

(4) Notwithstanding any other provision of law, the department may deny an application for an operating license if there are any listings pursuant to subsection (2)(k)(ii), (iii), or (iv) as originally disclosed or as supplemented.

(5) The application for an operating license for a proposed limited storage facility, which is subject to the requirements pertaining to storage facilities, shall be submitted on a form provided by the department and contain all of the following:

(a) The name and residence of the applicant.

(b) The location of the proposed facility.

(c) A determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated under this part.

(d) An environmental assessment. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of this state, and also shall contain an environmental failure mode assessment.

(e) The procedures for closure.

(f) An engineering plan.

(g) Proof of financial responsibility.

(h) A resolution or other formal determination of the governing body of each municipality in which the proposed limited storage facility would be located indicating that the limited storage facility is compatible with the zoning ordinance of that municipality, if any. However, in the absence of a resolution or other formal determination, the application shall include a copy of a registered letter sent to the municipality at least 60 days before the application submittal, indicating the intent to construct a limited storage facility, and requesting a formal determination on whether the proposed facility is compatible with the zoning ordinance of that municipality, if any, in effect on the date the letter is received, and indicating that failure to pass a resolution or make a formal determination within 60 days of receipt of the letter means that the proposed facility is to be considered compatible with any applicable zoning ordinance. If, within 60 days of receiving a registered letter, a municipality does not make a formal determination concerning whether a proposed limited storage facility is compatible with a zoning ordinance of that municipality as in effect on the date the letter is received, the limited storage facility is considered compatible with any zoning ordinance of that municipality, and incompatibility with a zoning ordinance of that municipality shall not be a basis for denial of the license by the department.

(i) An application fee of \$500.00. The application fee shall be deposited in the environmental pollution prevention fund created in section 11130.

(j) Other information specified by rule or by federal regulation issued under the solid waste disposal act.

(6) The application for an operating license for a treatment, storage, or disposal facility other than a facility identified in subsection (2) or (5) shall be made on a form provided by the department and include all of the following:

(a) The name and residence of the applicant.

(b) The location of the existing treatment, storage, or disposal facility.

(c) Other information considered necessary by the department or specified in this section, by rule, or by federal regulation issued under the solid waste disposal act.

(d) Proof of financial responsibility. An applicant for an operating license for a treatment, storage, or disposal facility that is a surface impoundment, landfill, or land treatment facility shall demonstrate financial responsibility for claims arising from nonsudden and accidental occurrences relating to the operation of the facility that cause injury to persons or property.

(e) A fee of \$500.00. The fee shall be deposited in the environmental pollution prevention fund created in section 11130.

(7) The department shall establish a schedule for requiring each person subject to subsection (8) to submit an operating license application. The department may adjust this schedule as necessary. Each person subject to subsection (8) shall submit a complete operating license application within 180 days of the date requested to do so by the department.

(8) A person who owns or operates a treatment, storage, or disposal facility that is in existence on the effective date of an amendment of this part or of a rule promulgated under this part that renders all or portions of the facility subject to the operating license requirements of this section may continue to operate the facility or portions of the facility that are subject to the operating license requirements until an operating license application is approved or denied if all of the following conditions have been met:

(a) A complete operating license application is submitted within 180 days of the date requested by the department under subsection (7).

(b) The person is in compliance with all rules promulgated under this part and with all other state laws.

(c) The person qualifies for interim status as defined in the solid waste disposal act, is in compliance with interim status standards established by federal regulation under subtitle C of the solid waste disposal act, 42 USC 6921 to 6939e, and has not had interim status terminated.

(9) A person may request to be placed on a department-organized mailing list to be kept informed of any rules, plans, operating license applications, contested case hearings, public hearings, or other information or procedures relating to the administration of this part. The department may charge a fee to cover the cost of the materials.

Sec. 11124. (1) Following the construction of the proposed treatment, storage, or disposal facility or the expansion, enlargement, or alteration of a treatment, storage, or disposal facility beyond its original authorized design capacity or beyond the area specified in an existing operating license, original construction permit, or other authorization, and the receipt of the postconstruction documentation required under section 11123, the department shall inspect the site and determine if the proposed treatment, storage, or disposal facility complies with this part, the rules promulgated under this part, and the stipulations included in the approved treatment, storage, or disposal facility operating license. An inspection report shall be filed in writing by the department before issuing final authorization to manage, maintain, and operate the treatment, storage, or disposal facility and shall be made available for public review.

(2) Upon receipt of an operating license application meeting the requirements of section 11123(6), the department shall inspect the site and determine if the treatment, storage, or disposal facility complies with this part and the rules promulgated under this part. An inspection report shall be filed in writing by the department before issuing an operating license.

Sec. 11125. (1) Upon receipt of an operating license application that complies with the requirements of section 11123(2), the department shall do all of the following:

(a) Notify the municipality and county in which the treatment, storage, or disposal facility is located or proposed to be located; a local soil erosion and sedimentation control agency appointed pursuant to part 91; each division within the department that has responsibility in land, air, or water management; a regional planning agency established by executive directive of the governor; and other appropriate agencies. The notice shall describe the procedure by which the license may be approved or denied.

(b) Review the plans of the proposed treatment, storage, or disposal facility to determine if the proposed operation complies with this part and the rules promulgated under this part. The review shall be made within the department. The review shall include, but need not be limited to, a review of air quality, water quality, waste management, hydrogeology, and the applicant's disclosure statement. A written and signed review by each person within the department reviewing the application and plans shall be received and filed in the department's license application records before an operating license is issued or denied by the department.

(c) Integrate the relevant provisions of all permits that the applicant is required to obtain from the department to construct the proposed treatment, storage, or disposal facility into the operating license required by this part.

(d) Consider the mitigation measures proposed to be implemented as identified in section 11123(2)(m).

(e) Hold a public hearing not more than 60 days after receipt of the application.

(2) The department may establish operating license conditions specifically applicable to the treatment, storage, or disposal facility and operation at that site to mitigate adverse impacts.

(3) The department shall provide notice and an opportunity for a public hearing before making a final decision on an operating license application.

(4) The department shall make a final decision on an operating license application within 140 days after the department receives a complete application. However, if the state's hazardous waste management program is authorized by the United States environmental protection agency under section 3006 of subtitle C of the solid waste disposal act, 42 USC 6926, the department may extend the deadline beyond the limitation provided in this section in order to fulfill the public participation requirements of the solid waste disposal act. The operating license may contain stipulations specifically applicable to site and operation.

(5) A local ordinance, permit, or other requirement shall not prohibit the operation of a licensed treatment, storage, or disposal facility.

(6) If any information required to be included in the disclosure statement required under section 11123 changes or is supplemented after the filing of the statement, the applicant or licensee shall provide that information to the department in writing within 30 days after the change or addition.

(7) The department may deny an operating license application submitted pursuant to section 11123 if any information described in section 11123(2)(k)(i) to (iv) was not disclosed as required in section 11123(2) or this section.

(8) The department shall provide notice of the final decision to persons on the organized mailing list for the facility.

(9) Following the construction of a new, expanded, enlarged, or altered treatment, storage, or disposal facility, the department shall review all information required to be submitted by the operating license. If the department finds that the owner or operator has deviated from the specific conditions established in the operating license, the department shall determine if cause exists for modification or revocation of the operating license, in accordance with provisions established by rule. At a minimum, the postconstruction documentation shall include all of the following:

(a) Updated disclosure information or a certification as described in section 11123(2)(n)(i).

(b) A certification of construction as described in section 11123(2)(n)(ii). The department shall require additional certification periodically during the operation or in order to verify proper closure of the site.

(c) A certification of capability signed and sealed by a licensed professional engineer as described in section 11123(2)(n)(iii).

(d) Information regarding any deviations from the specific conditions in the operating license.

(e) Proof of financial responsibility.

Sec. 11129. (1) Except as provided in subsections (2) and (3), information obtained by the department under this part is a public record subject to disclosure as provided in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) A person regulated under this part may designate a record, permit application, other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents as being only for the confidential use of the department. The department shall notify the regulated person of a request for public records under section 5 of the freedom of information act, 1976 PA 442, MCL 15.235, whose scope includes information designated as confidential. The person regulated under this part has 30 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part makes a satisfactory demonstration to the department that the information should not be disclosed. If there is a dispute between the owner or operator of a treatment, storage, or disposal facility and the person requesting information under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, the director of the department shall make the decision to grant or deny the request. When the department makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after the decision is made.

(3) Data on the quantity or composition of hazardous waste generated, transported, treated, stored, or disposed of; air and water emission factors, rates and characterizations; emissions during malfunctions of equipment required under this part on treatment, storage, or disposal facilities; or the efficiency of air and water pollution control devices is not rendered as confidential information by this section.

(4) The department may release any information obtained under this part, including a record, permit application, or other information considered confidential pursuant to subsection (1), to the United States environmental protection agency, the United States agency for toxic substance disease registry, or other agency authorized to receive information, including confidential information, under the solid waste disposal act.

Sec. 11140. (1) The owner or operator of a treatment, storage, or disposal facility shall submit a closure plan to the department as part of the application for an operating license under section 11123. In addition, the owner or operator of a disposal facility shall submit a postclosure monitoring and maintenance plan to the department as part of the application. At a minimum, the closure plan shall include a description of how the facility shall be closed, possible uses of the land after closure, anticipated time until closure, estimated time for closure, and each anticipated partial closure. Those facilities described in section 11123(6) and (8) shall submit a closure and, if required by rule, a postclosure plan with their operating license application.

(2) The department shall promulgate rules regarding notification before closure of a treatment, storage, or disposal facility, length of time permitted for closure, removal and decontamination of equipment, security, groundwater and leachate monitoring system, sampling analysis and reporting requirements, and any other pertinent requirements.

Sec. 11153. (1) A generator, transporter, or treatment, storage, or disposal facility shall obtain and utilize a site identification number assigned by the United States environmental protection agency or the department. Until October 1, 2011, the department shall assess a site identification number user charge of \$50.00 for each site identification number it issues. The department shall not issue a site identification number under this subsection unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received by the department.

(2) Until October 1, 2011, except as provided in subsection (9), the department shall annually assess hazardous waste management program user charges as follows:

(a) A generator shall pay a handler user charge that is the highest of the following applicable fees:

(i) A generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in any month during the calendar year shall pay to the department an annual handler user charge of \$100.00.

(ii) A generator who generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and who generates less than 900,000 kilograms during the calendar year shall pay to the department an annual handler user charge of \$400.00.

(iii) A generator who generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and who generates 900,000 kilograms or more of hazardous waste during the calendar year shall pay to the department an annual handler user charge of \$1,000.00.

(b) An owner or operator of a treatment, storage, or disposal facility for which an operating license is required under section 11123 or for which an operating license has been issued under section 11125 shall pay to the department an annual handler user charge of \$2,000.00.

(c) A used oil processor or rerefiner, a used oil burner, or a used oil fuel marketer as defined in the rules promulgated under this part shall pay to the department an annual handler user charge of \$100.00.

(3) A handler shall pay the handler user charge specified in subsection (2)(a) to (c) for each of the activities conducted during the previous calendar year.

(4) Payment of the handler user charges shall be made using a form provided by the department. The handler shall certify that the information on the form is accurate. The department shall send forms to the handlers by March 30 of each year unless the handler user charges have been suspended as provided for in subsection (9). A handler shall return the completed forms and the appropriate payment to the department by April 30 of each year unless the handler user charges have been suspended as provided for in subsection (9).

(5) A handler who fails to provide timely and accurate information, a complete form, or the appropriate handler user charge is in violation of this part and is subject to both of the following:

(a) Payment of the handler user charge and an administrative fine of 5% of the amount owed for each month that the payment is delinquent. Any payments received after the 15th of the month after the due date shall be considered delinquent for that month. However, the administrative fine shall not exceed 25% of the total amount owed.

(b) Beginning 5 months after the date payment of the handler user charge is due, if the amount owed under subdivision (a) is not paid in full, at the request of the department, an action by the attorney general for the collection of the amount owed under subdivision (a) and the actual cost to the department in attempting to collect the amount owed under subdivision (a).

(6) The department shall maintain information regarding the site identification number user charges and the handler user charges collected under this section as necessary to satisfy the reporting requirements of subsection (8).

(7) The site identification number user charges and the handler user charges collected under this section and any amounts collected under subsection (5) for a violation of this section shall be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(8) The department shall evaluate the effectiveness and adequacy of the site identification number user charges and the handler user charges collected under this section relative to the overall revenue needs of the hazardous waste management program administered under this part. Not later than April 1 of each even-numbered year, the department shall summarize its findings under this subsection in a report and shall provide that report to the legislature.

(9) Notwithstanding any other provision in this section, if the balance of the hazardous waste and liquid industrial waste users account created in section 11130(5), as of December 31 of any year, exceeds \$3,200,000.00, the department shall suspend the handler user charges until October of the following year.

(10) As used in this section:

(a) "Handler" means the person required to pay the handler user charge.

(b) "Handler user charge" means the annual hazardous waste management program user charge provided for in subsection (2).

Enacting section 1. Sections 11116, 11117, 11118, 11119, 11120, and 11122 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11116, 324.11117, 324.11118, 324.11119, 324.11120, and 324.11122, are repealed.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor