

# SENATE BILL No. 20

January 16, 2013, Introduced by Senators HOPGOOD, JONES, ANDERSON and WARREN and referred to the Committee on Natural Resources, Environment and Great Lakes.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 11123 (MCL 324.11123), as amended by 2010 PA  
357.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

6       (2) An application for an operating license for a proposed  
7       treatment, storage, or disposal facility or the expansion,  
8       enlargement, or alteration of a treatment, storage, or disposal

1 facility beyond its original authorized design capacity or beyond  
2 the area specified in an existing operating license, original  
3 construction permit, or other authorization shall be submitted on  
4 a form provided by the department and contain all of the  
5 following:

6 (a) The name and residence of the applicant.

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

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

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

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

1 part.

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

7 (g) The procedures for closure and postclosure monitoring.

8 (h) An engineering plan.

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

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

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

26 (k) Except as otherwise provided in this subdivision, a  
27 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 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 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~~ **FOR EACH PERSON REQUIRED TO BE LISTED UNDER THIS SUBDIVISION, 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 THE STATUTE IS AN ENVIRONMENTAL STATUTE, IF THE VIOLATION WAS A MISDEMEANOR COMMITTED IN FURTHERANCE OF OBTAINING AN OPERATING LICENSE UNDER THIS PART NOT**

1 MORE THAN 5 YEARS BEFORE THE APPLICATION IS FILED, OR IF THE  
2 VIOLATION WAS A FELONY COMMITTED IN FURTHERANCE OF OBTAINING AN  
3 OPERATING LICENSE UNDER THIS PART NOT MORE THAN 10 YEARS BEFORE  
4 THE APPLICATION IS FILED. If debt liability is held by a  
5 chartered lending institution, information required in this  
6 subparagraph and subparagraphs (iii) and (iv) is not required from  
7 that institution.

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

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

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

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

27 (ii) The risk and impact of fires or explosions from improper

1 treatment, storage, and disposal methods at the treatment,  
2 storage, or disposal facility.

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

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

11 (A) The natural environment and ecology.

12 (B) Public health and safety.

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

14 (D) Water and air quality and wildlife.

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

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

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

25 (ii) A certification under the seal of a licensed  
26 professional engineer verifying that the construction of the  
27 treatment, storage, or disposal facility has proceeded according

1 to the plans approved by the department and, if applicable, the  
2 approved construction permit, including as-built plans.

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

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

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

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

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

20 (a) The name and residence of the applicant.

21 (b) The location of the proposed facility.

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

26 (d) An environmental assessment. The environmental  
27 assessment shall include, at a minimum, an evaluation of the

1 proposed facility's impact on the air, water, and other natural  
2 resources of this state, and also shall contain an environmental  
3 failure mode assessment.

4 (e) The procedures for closure.

5 (f) An engineering plan.

6 (g) Proof of financial responsibility.

7 (h) A resolution or other formal determination of the  
8 governing body of each municipality in which the proposed limited  
9 storage facility would be located indicating that the limited  
10 storage facility is compatible with the zoning ordinance of that  
11 municipality, if any. However, in the absence of a resolution or  
12 other formal determination, the application shall include a copy  
13 of a registered letter sent to the municipality at least 60 days  
14 before the application submittal, indicating the intent to  
15 construct a limited storage facility, and requesting a formal  
16 determination on whether the proposed facility is compatible with  
17 the zoning ordinance of that municipality, if any, in effect on  
18 the date the letter is received, and indicating that failure to  
19 pass a resolution or make a formal determination within 60 days  
20 of receipt of the letter means that the proposed facility is to  
21 be considered compatible with any applicable zoning ordinance.

22 If, within 60 days of receiving a registered letter, a  
23 municipality does not make a formal determination concerning  
24 whether a proposed limited storage facility is compatible with a  
25 zoning ordinance of that municipality as in effect on the date  
26 the letter is received, the limited storage facility is  
27 considered compatible with any zoning ordinance of that



1 municipality, and incompatibility with a zoning ordinance of that  
2 municipality ~~shall not be~~ **IS NOT** a basis for ~~denial of the~~  
3 ~~license by the department.~~ **THE DEPARTMENT TO DENY THE LICENSE.**

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

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

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

13 (a) The name and residence of the applicant.

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

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

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

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

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

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

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

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

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

26       (9) A person may request to be placed on a department-  
27 organized mailing list to be kept informed of any rules, plans,

1 operating license applications, contested case hearings, public  
2 hearings, or other information or procedures relating to the  
3 administration of this part. The department may charge a fee to  
4 cover the cost of the materials.