

Act No. 250  
Public Acts of 2013  
Approved by the Governor  
December 21, 2013  
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December 26, 2013  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2013**

Introduced by Senators Brandenburg, Schuitmaker, Robertson, Pappageorge and Marleau

# **ENROLLED SENATE BILL No. 404**

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people's right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 11504, 11523, 11523a, 11525, and 11525b (MCL 324.11504, 324.11523, 324.11523a, 324.11525, and 324.11525b), sections 11504 and 11523 as amended and section 11523a as added by 1996 PA 359, section 11525 as amended by 2003 PA 153, and section 11525b as added by 1996 PA 358; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Sec. 11504. (1) "Health officer" means a full-time administrative officer of a certified city, county, or district department of health.

(2) "Inert material" means a substance that will not decompose, dissolve, or in any other way form a contaminated leachate upon contact with water, or other liquids determined by the department as likely to be found at the disposal area, percolating through the substance.

(3) "Insurance" means insurance that conforms to the requirements of 40 CFR 258.74(d) provided by an insurer who has a certificate of authority from the director of insurance and financial services to sell this line of coverage. An applicant for an operating license shall submit evidence of the required coverage by submitting both of the following to the department:

(a) A certificate of insurance that uses wording approved by the department.

(b) A certified true and complete copy of the insurance policy.

(4) "Landfill" means a disposal area that is a sanitary landfill.

(5) "Letter of credit" means an irrevocable letter of credit that complies with 40 CFR 258.74(c).

(6) "Medical waste" means that term as it is defined in section 13805 of the public health code, 1978 PA 368, MCL 333.13805.

(7) "Municipal solid waste incinerator" means an incinerator that is owned or operated by any person, and meets all of the following requirements:

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under part 111.

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to ensure that the incinerator receives and burns only waste referred to in subdivision (a).

(c) The incinerator meets the requirements of this part and the rules promulgated under this part.

(d) The incinerator is not an industrial furnace as defined in 40 CFR 260.10.

(e) The incinerator is not an incinerator that receives and burns only medical waste or only waste produced at 1 or more hospitals.

(8) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.

(9) "Perpetual care fund" means a trust or escrow account or perpetual care fund bond provided for in section 11525.

(10) "Perpetual care fund bond" means a surety bond, an irrevocable letter of credit, or a combination of these instruments in favor of and on a form approved by the department by which a perpetual care fund is established.

(11) "Trust fund" means a trust fund held by a trustee which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A trust fund shall comply with section 11523b.

Sec. 11523. (1) The department shall not issue a license to operate a disposal area unless the applicant has filed, as a part of the application for a license, evidence of the following financial assurance:

(a) Financial assurance established for a type III landfill or a preexisting unit at a type II landfill and until April 9, 1997, existing and new type II landfills shall be in the form of a bond in an amount equal to \$20,000.00 per acre of licensed landfill within the solid waste boundary. However, the amount of the bond shall not be less than \$20,000.00 or more than \$1,000,000.00. Each bond shall provide assurance for the maintenance of the finished landfill site for a period of 30 years after the landfill or any approved portion is completed. In addition to this bond, a perpetual care fund shall be maintained under section 11525.

(b) Financial assurance for a type II landfill that is an existing unit or a new unit shall be in an amount equal to the cost, in current dollars, of hiring a third party, to conduct closure, postclosure maintenance and monitoring, and if necessary, corrective action. An application for a type II landfill that is an existing unit or new unit shall demonstrate financial assurance in accordance with section 11523a.

(c) Financial assurance established for a solid waste transfer facility, incinerator, processing plant, other solid waste handling or disposal facility, or a combination of these utilized in the disposal of solid waste shall be in the form of a bond in an amount equal to 1/4 of 1% of the construction cost of the facility, but shall not be less than \$4,000.00, and shall be continued in effect for a period of 2 years after the disposal area is closed.

(2) The owner or operator of a landfill may post a cash bond with the department instead of other bonding mechanisms to fulfill the remaining financial assurance requirements of this section. An owner or operator of a disposal area who elects to post cash as a bond shall accrue interest on that bond at the annual rate of 6%, to be accrued quarterly, except that the interest rate payable to an owner or operator shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the owner or operator upon release of the bond by the department. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund and shall be appropriated to the department to be used by the department for administration of this part.

(3) An owner or operator of a disposal area that is not a landfill who has accomplished closure in a manner approved by the department and in accordance with this part and the rules promulgated under this part, may request a 50% reduction in the bond during the 2-year period after closure. At the end of the 2-year period, the owner or operator may request that the department terminate the bond. The department shall approve termination of the bond within 60 days after the request is made if all waste and waste residues have been removed from the disposal area and closure is certified.

(4) The department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the owner or operator fails to comply with the closure and postclosure monitoring and maintenance requirements of this part and the rules promulgated under this part to the extent necessary to correct such violations. At least 7 days before utilizing the bond, the department shall issue a notice of violation or other order that alleges violation of this part or rules promulgated under this part and provide an opportunity for a hearing. This subsection does not apply to a perpetual care fund bond.

(5) Under the terms of a surety bond, letter of credit, insurance policy, or perpetual care fund bond, the issuing institution shall notify both the department and the owner or operator at least 120 days before the expiration date or any cancellation of the bond. If the owner or operator does not extend the effective date of the bond, or establish alternate financial assurance within 90 days after receipt of an expiration or cancellation notice from the issuing institution, all of the following apply:

(a) The department may draw on the bond.

(b) In the case of a perpetual care fund bond, the issuing institution shall deposit the proceeds into the standby trust or escrow account unless the department agrees to the expiration or cancellation of the perpetual care fund bond.

(6) The department shall not issue a construction permit or a new license to operate a disposal area to an applicant that is the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 USC 101 to 1532, or any other predecessor or successor statute.

(7) A person required under this section to provide financial assurance in the form of a bond for a landfill may request a reduction in the bond based upon the amount of the perpetual care fund established under section 11525. A person requesting a bond reduction shall do so on a form consistent with this part and provided by the department. The department shall grant this request unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the bond within 60 days after the request is made. If the department grants a request for a reduced bond, the department shall require a bond in an amount such that for type III landfills, and type II landfills that are preexisting units, the amount of the perpetual care fund plus the amount of the reduced bond equals the maximum amount required in a perpetual care fund in section 11525(2).

(8) The department shall release the bond required by this section if the amount of the perpetual care fund exceeds the amount of the financial assurance required under subsection (1).

(9) Prior to closure of a landfill, if money is disbursed from the perpetual care fund, then the department may require a corresponding increase in the amount of bonding required to be provided if necessary to meet the requirements of this section.

(10) If an owner or operator of a disposal area fulfills the financial assurance requirements of this part by obtaining a bond, including, but not limited to, a perpetual care fund bond, and the surety company, insurer, trustee, bank, or financial or other institution that issued or holds the bond becomes the subject of a bankruptcy action or has its authority to issue or hold the bond or to act as an escrow agent or trustee suspended or revoked, the owner or operator shall, within 60 days after receiving notice of that event, establish alternate financial assurance under this part.

Sec. 11523a. (1) Effective April 9, 1997, the department shall not issue a license to operate a type II landfill unless the applicant demonstrates that for any new unit or existing unit at the facility, the combination of the perpetual care fund established under section 11525, bonds, and the financial capability of the applicant as evidenced by a financial test, provides financial assurance in an amount not less than that required by this section. An applicant may utilize a financial test for an amount up to, but not exceeding 70% of the closure, postclosure, and corrective action cost estimate.

(2) An applicant may demonstrate compliance with this section by submitting evidence, with a form consistent with this part and provided by the department, that the applicant has financial assurance for any existing unit or new unit in an amount equal to or greater than the sum of the following standardized costs:

(a) A standard closure cost estimate. The standard closure cost estimate shall be based upon the sum of the following costs in 1996 dollars, adjusted for inflation and partial closures, if any, as specified in subsections (4) and (5):

- (i) A base cost of \$20,000.00 per acre to construct a compacted soil final cover using on-site material.
- (ii) A supplemental cost of \$20,000.00 per acre, to install a synthetic cover liner, if required by rules under this part.
- (iii) A supplemental cost of \$5,000.00 per acre, if low permeability soil must be transported from off-site to construct the final cover or if a bentonite geocomposite liner is used instead of low permeability soil in a composite cover.
- (iv) A supplemental cost of \$5,000.00 per acre, to construct a passive gas collection system in the final cover, unless an active gas collection system has been installed at the facility.

(b) A standard postclosure cost estimate. The standard postclosure cost estimate shall be based upon the sum of the following costs, adjusted for inflation as specified in section 11525(2):

- (i) A final cover maintenance cost of \$200.00 per acre per year.
- (ii) A leachate disposal cost of \$100.00 per acre per year.
- (iii) A leachate transportation cost of \$1,000.00 per acre per year, if leachate is required to be transported off-site for treatment.
- (iv) A groundwater monitoring cost of \$1,000.00 per monitoring well per year.
- (v) A gas monitoring cost of \$100.00 per monitoring point per year, for monitoring points used to detect landfill gas at or beyond the facility property boundary.

(c) The corrective action cost estimate, if any. The corrective action cost estimate shall be a detailed written estimate, in current dollars, of the cost of hiring a third party to perform corrective action in accordance with this part.

(3) Instead of using some or all of the standardized costs specified in subsection (2), an applicant may estimate the site specific costs of closure or postclosure maintenance and monitoring. A site specific cost estimate shall be a written estimate, in current dollars, of the cost of hiring a third party to perform the activity. For the purposes of this subsection, a parent corporation or a subsidiary of the owner or operator is not a third party. Site specific cost estimates shall be based on the following:

(a) For closure, the cost to close the largest area of the landfill ever requiring a final cover at any time during the active life, when the extent and manner of its operation would make closure the most expensive, in accordance with the approved closure plan. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of structures, land, equipment, or other assets associated with the facility at the time of final closure.

(b) For postclosure, the cost to conduct postclosure maintenance and monitoring in accordance with the approved postclosure plan for the entire postclosure period.

(4) The owner or operator of a landfill subject to this section shall, during the active life of the landfill and during the postclosure care period, annually adjust the financial assurance cost estimates and corresponding amount of financial

assurance for inflation. Cost estimates shall be adjusted for inflation by multiplying the cost estimate by an inflation factor derived from the most recent United States department of the interior; bureau of reclamation composite index published by the United States department of commerce or another index that is more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department. The owner or operator shall document the adjustment on a form consistent with this part as prepared by the department and shall place the documentation in the operating record of the facility.

(5) The owner or operator of a landfill subject to this section may request that the department authorize a reduction in the approved cost estimates and corresponding financial assurance for the landfill by submitting a form consistent with this part and provided by the department certifying completion of any of the following activities:

(a) Partial closure of the landfill. The current closure cost estimate for partially closed portions of a landfill unit may be reduced by 80%, if the maximum waste slope on the unclosed portions of the unit does not exceed 25%. The percentage of the cost estimate reduction approved by the department for the partially closed portion shall be reduced 1% for every 1% increase in the slope of waste over 25% in the active portion. An owner or operator requesting a reduction in financial assurance for partial closure shall enclose with the request a certification under the seal of a licensed professional engineer that certifies both of the following:

(i) That a portion of the licensed landfill unit has reached final grades and has had a final cover installed in compliance with the approved closure plan and rules promulgated under this part.

(ii) The maximum slope of waste in the active portion of the landfill unit at the time of partial closure.

(b) Final closure of the landfill. An owner or operator requesting a cost estimate reduction for final closure shall submit a certification under the seal of a licensed professional engineer that closure of that landfill unit has been fully completed in accordance with the approved closure plan for the landfill. Within 60 days of receiving a certification under this subsection, the department shall perform a consistency review of the submitted certification and do 1 of the following:

(i) Approve the certification and notify the owner or operator that he or she may reduce the closure cost estimate to zero.

(ii) Disapprove the certification and provide the owner or operator with a detailed written statement of the reasons why the department has determined that closure certification has not been conducted in accordance with this part, the rules promulgated under this part, or an approved closure plan.

(c) Postclosure maintenance and monitoring. The owner or operator of a landfill unit who has completed final closure of the unit may request a reduction in the postclosure cost estimate and corresponding financial assurance for 1 year or more of postclosure maintenance and monitoring if the landfill has been monitored and maintained in accordance with the approved postclosure plan. The department shall, within 60 days of receiving a cost estimate reduction request grant written approval or issue a written denial stating the reason for denial. The department shall grant the request and the owner or operator may reduce the postclosure cost estimate to reflect the number of years remaining in the postclosure period unless the department denies the request and the written denial states that the owner or operator has not performed the specific tasks consistent with this part, rules promulgated under this part, and an approved plan.

(6) The owner or operator of a landfill subject to this section may request a reduction in the amount of one or more of the financial assurance mechanisms in place. If the combined value of the remaining financial assurance mechanisms equals the amount required under this section, the department shall approve the request.

(7) An owner or operator requesting that the department approve a financial assurance reduction under subsection (5) or (6) shall do so on a form consistent with this part and provided by the department. The department shall grant written approval or, within 60 days of receiving a financial assurance reduction request, issue a written denial stating the reason for the denial.

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, an escrow account, or a perpetual care fund bond 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 increase the amount of 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 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. Increases to the amount of a perpetual care fund required under this subsection shall be calculated based on solid waste disposed of in the landfill as of the end of the state fiscal year and shall be made within 30 days after the end of each state fiscal year.

(3) The owner or operator of a landfill that is used for the disposal of the following materials shall increase the amount of 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 increase the amount of 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) The amount of a perpetual care fund is not required to be increased for materials that are regulated under part 631.

(6) The owner or operator of a landfill may increase the amount of the perpetual care fund above the amount otherwise required by this section at his or her discretion.

(7) The custodian of a perpetual care fund trust or escrow account 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 trust or escrow account reaches the maximum required fund amount, the custodian of a perpetual care fund trust or escrow account shall credit any interest and earnings of the perpetual care fund trust or escrow account to the perpetual care fund trust or escrow account. After the perpetual care fund trust or escrow account reaches the maximum required fund amount, any interest and earnings shall be distributed as directed by the owner or operator. The agreement governing the operation of the perpetual care fund trust or escrow account shall be executed on a form consistent with this part and provided 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 trust or escrow account shall make an accounting to the department within 30 days following the close of each 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. 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 if 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 draw on the perpetual care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action, as necessary. The department may draw on 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 period of existence of the perpetual care fund.

(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 any of the following:

- (a) A perpetual care fund that is established as a trust or escrow account.
- (b) A standby trust or escrow account for a perpetual care fund bond.

(15) A perpetual care fund that is established as a trust or escrow account may be replaced with a perpetual care fund that is established as a perpetual care fund bond that complies with this section. Upon such replacement, the director shall authorize the custodian of the trust or escrow account to disburse the money in the trust or escrow account to the owner of the landfill unless a contract between the owner and operator of the landfill specifies otherwise.

(16) An owner or operator of a landfill who uses a perpetual care fund bond to satisfy the requirements of this section shall also establish a standby trust or escrow account. All payments made under the terms of the perpetual care fund bond shall be deposited by the custodian directly into the standby trust or escrow account in accordance with instructions from the director. The standby trust or escrow account must meet the requirements for a trust or escrow account established as a perpetual care fund under subsection (1), except that until the standby trust or escrow account is funded pursuant to the requirements of this subsection, the following are not required:

- (a) Payments into the standby trust or escrow account as specified in subsection (2).
- (b) Annual accounting valuations as required in subsection (7).

Sec. 11525b. (1) The owner or operator of a disposal area shall provide continuous financial assurance coverage until released from these requirements by the department under the provisions of this part.

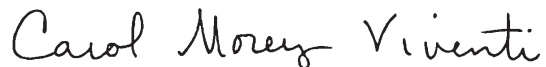
(2) The owner or operator of a landfill who has completed postclosure maintenance and monitoring of the landfill in accordance with this part, rules promulgated under this part, and approved postclosure plan may request that financial assurance required by sections 11523 and 11523a be terminated. A person requesting termination of bonding and financial assurance shall submit to the department a statement that the landfill has been monitored and maintained in accordance with this part, rules promulgated under this part, and the approved postclosure plan for the postclosure period specified in section 11523 and shall certify that the landfill is not subject to corrective action under section 11515. Within 60 days of receiving a statement under this subsection, the department shall perform a consistency review of the submitted statement and do 1 of the following:

(a) Approve the statement, notify the owner or operator that he or she is no longer required to maintain financial assurance, return or release all financial assurance mechanisms, and, if the perpetual care fund is established as a trust or escrow account, notify the custodian of the perpetual care fund that money from the fund shall be disbursed as provided in section 11525(10).

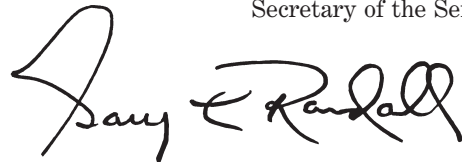
(b) Disapprove the statement and provide the owner or operator with a detailed written statement of the reasons why the department has determined that postclosure maintenance and monitoring and corrective action, if any, have not been conducted in accordance with this part, the rules promulgated under this part, or an approved postclosure plan.

Enacting section 1. Section 11524 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11524, is repealed.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor