

HOUSE BILL No. 5566

April 14, 2016, Introduced by Reps. LaVoy, Dianda, Love, LaGrand, Sarah Roberts, Irwin, Lane, Moss, Chirkun, Robinson, Geiss, Driskell, Darany, Kivela, Webber, Canfield, Potvin, Howell, Cochran, Plawecki, Neeley, Brunner, Garrett, Rutledge, Pagan, Heise, Phelps, Greimel, Chang, Singh, Kosowski and Zemke and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled
 "Natural resources and environmental protection act,"
 by amending sections 11121, 11123, and 11125 (MCL 324.11121,
 324.11123, and 324.11125), sections 11121 and 11125 as amended by
 2010 PA 357 and section 11123 as amended by 2014 PA 254.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11121. (1) A local ordinance, **INCLUDING, BUT NOT LIMITED**
 2 **TO, A LOCAL** permit requirement ~~, or other requirement, does not~~
 3 **SHALL NOT BE CONSTRUED TO** prohibit the construction of a treatment,
 4 storage, or disposal facility. ~~, except as otherwise provided in~~
 5 ~~section 11123.~~

6 (2) **SUBSECTION (1) IS SUBJECT TO SECTION 11123.**

7 Sec. 11123. (1) Unless a person is complying with subsection
 8 (8) or a rule promulgated under section 11127(4), a person shall

1 not establish, construct, conduct, manage, maintain, or operate a
2 treatment, storage, or disposal facility within this state without
3 an operating license from the department.

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

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

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

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

26 (d) A written summary of the comments received at the public
27 preapplication meeting required by rule and the applicant's

1 response to the comments, including any revisions to the
2 application.

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

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

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

13 (h) An engineering plan.

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

16 (j) An application fee. The application fee shall be deposited
17 in the environmental pollution prevention fund created in section
18 11130. Pursuant to procedures established by rule, the application
19 fee ~~shall be~~ **IS** \$25,000.00 plus all of the following, as
20 applicable:

21 (i) For a landfill, surface impoundment,
22 land treatment, or waste pile
23 facility..... \$ 9,000.00

24 (ii) For an incinerator or treatment
25 facility other than a treatment facility
26 described in subparagraph (i)..... \$ 7,200.00

27 (iii) For a storage facility, other than

1 storage that is associated with
2 treatment or disposal activities that
3 may be regulated under a single license.. \$ 500.00

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

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

8 (A) The applicant.

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

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

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

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

26 (ii) For each person required to be listed under this
27 subdivision, a list of all convictions for criminal violations of

1 any statute enacted by a federal, state, Canadian, or Canadian
2 provincial agency if the statute is an environmental statute, if
3 the violation was a misdemeanor committed in furtherance of
4 obtaining an operating license under this part not more than 5
5 years before the application is filed, or if the violation was a
6 felony committed in furtherance of obtaining an operating license
7 under this part not more than 10 years before the application is
8 filed. If debt liability is held by a chartered lending
9 institution, information required in this subparagraph and
10 subparagraphs (iii) and (iv) is not required from that institution.
11 The department shall submit to the legislature a report on ~~the 2014~~
12 ~~act that 2014 PA 254, WHICH~~ amended this subparagraph, including
13 the number of permits denied as a result of that act and whether
14 this subparagraph should be further amended. The report shall cover
15 the 5-year period after ~~the effective date of that act~~ **JUNE 30,**
16 **2014** and shall be submitted ~~within 60 days after the expiration of~~
17 ~~that 5-year period.~~ **BY AUGUST 29, 2019.** The report may be submitted
18 electronically.

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

23 (iv) A list of all activities at property owned or operated by
24 each person required to be listed under this subdivision that
25 resulted in a threat or potential threat to the environment and for
26 which public funds were used to finance an activity to mitigate the
27 threat or potential threat to the environment, except if the public

1 funds expended to facilitate the mitigation of environmental
2 contamination were voluntarily and expeditiously recovered from the
3 applicant or other listed person without litigation.

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

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

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

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

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

19 (A) The natural environment and ecology.

20 (B) Public health and safety.

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

22 (D) Water and air quality and wildlife.

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

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

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

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

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

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

15 (O) FOR A FACILITY THAT INCLUDES AN INJECTION WELL, A
16 RESOLUTION OR OTHER FORMAL DETERMINATION OF THE GOVERNING BODY OF
17 EACH MUNICIPALITY AND THE COUNTY IN WHICH THE FACILITY WOULD BE
18 LOCATED INDICATING THAT THE FACILITY IS COMPATIBLE WITH ANY ZONING
19 ORDINANCE AND OTHER APPLICABLE ORDINANCES OF THAT MUNICIPALITY OR
20 COUNTY, RESPECTIVELY. HOWEVER, IN THE ABSENCE OF A RESOLUTION OR
21 OTHER FORMAL DETERMINATION, THE APPLICATION SHALL INCLUDE A COPY OF
22 A REGISTERED LETTER SENT TO EACH MUNICIPALITY AND THE COUNTY IN
23 WHICH THE FACILITY WOULD BE LOCATED AT LEAST 60 DAYS BEFORE THE
24 APPLICATION SUBMITTAL, INDICATING THE INTENT TO CONSTRUCT A
25 FACILITY THAT INCLUDES AN INJECTION WELL, AND REQUESTING A FORMAL
26 DETERMINATION ON WHETHER THE PROPOSED FACILITY IS COMPATIBLE WITH
27 ANY ZONING ORDINANCE AND OTHER APPLICABLE ORDINANCES OF THAT

1 MUNICIPALITY OR COUNTY, IF ANY, IN EFFECT ON THE DATE THE LETTER IS
2 RECEIVED, AND INDICATING THAT FAILURE TO PASS A RESOLUTION OR MAKE
3 A FORMAL DETERMINATION WITHIN 60 DAYS OF RECEIPT OF THE LETTER
4 MEANS THAT THE PROPOSED FACILITY IS TO BE CONSIDERED COMPATIBLE
5 WITH ANY ZONING ORDINANCE AND OTHER APPLICABLE ORDINANCES OF THAT
6 MUNICIPALITY OR COUNTY. IF, WITHIN 60 DAYS OF RECEIVING A
7 REGISTERED LETTER, A MUNICIPALITY OR COUNTY DOES NOT MAKE A FORMAL
8 DETERMINATION AS DESCRIBED IN THIS SUBDIVISION, THE FACILITY IS
9 CONSIDERED COMPATIBLE WITH ANY ZONING ORDINANCE AND OTHER
10 APPLICABLE ORDINANCES OF THAT MUNICIPALITY OR COUNTY, AND
11 INCOMPATIBILITY WITH A ZONING ORDINANCE OF THAT MUNICIPALITY OR
12 COUNTY IS NOT A BASIS FOR THE DEPARTMENT TO DENY THE LICENSE.

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

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

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

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

27 (b) The location of the proposed facility.

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

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

10 (e) The procedures for closure.

11 (f) An engineering plan.

12 (g) Proof of financial responsibility.

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

1 of receiving a registered letter, a municipality does not make a
2 formal determination ~~concerning whether a proposed limited storage~~
3 ~~facility is compatible with a zoning ordinance of that municipality~~
4 ~~as in effect on the date the letter is received, AS DESCRIBED IN~~
5 **THIS SUBDIVISION**, the limited storage facility is considered
6 compatible with any zoning ordinance of that municipality, and
7 incompatibility with a zoning ordinance of that municipality is not
8 a basis for the department to deny the license.

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

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

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

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

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

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

24 (d) Proof of financial responsibility. An applicant for an
25 operating license for a treatment, storage, or disposal facility
26 that is a surface impoundment, landfill, or land treatment facility
27 shall demonstrate financial responsibility for claims arising from

1 nonsudden and accidental occurrences relating to the operation of
2 the facility that cause injury to persons or property.

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

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

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

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

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

25 (c) The person qualifies for interim status as defined in the
26 solid waste disposal act, is in compliance with interim status
27 standards established by federal regulation under subtitle C of the

1 solid waste disposal act, 42 USC 6921 to ~~6939e~~, **6939G**, and has not
2 had interim status terminated.

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

9 Sec. 11125. (1) Upon receipt of an operating license
10 application that complies with the requirements of section
11 11123(2), the department shall do all of the following:

12 (a) Notify the municipality and county in which the treatment,
13 storage, or disposal facility is located or proposed to be located;
14 ~~a local soil erosion and sedimentation control agency appointed~~ **THE**
15 **COUNTY ENFORCING AGENCY OR MUNICIPAL ENFORCING AGENCY DESIGNATED**
16 pursuant to part 91; each division within the department that has
17 responsibility in land, air, or water management; a regional
18 planning agency established by executive directive of the governor;
19 and other appropriate agencies. The notice shall describe the
20 procedure by which the license may be approved or denied.

21 (b) Review the plans of the proposed treatment, storage, or
22 disposal facility to determine if the proposed operation complies
23 with this part and the rules promulgated under this part. The
24 review shall be made within the department. The review shall
25 include, but need not be limited to, a review of air quality, water
26 quality, waste management, hydrogeology, and the applicant's
27 disclosure statement. A written and signed review by each person

1 within the department reviewing the application and plans shall be
2 received and filed in the department's license application records
3 before an operating license is issued or denied by the department.

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

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

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

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

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

18 (4) The department shall make a final decision on an operating
19 license application within 140 days after the department receives a
20 complete application. However, if ~~the~~**THIS** state's hazardous waste
21 management program is authorized by the United States ~~environmental~~
22 ~~protection agency~~**ENVIRONMENTAL PROTECTION AGENCY** under section
23 3006 of subtitle C of the solid waste disposal act, 42 USC 6926,
24 the department may extend the deadline beyond the limitation
25 provided in this section in order to fulfill the public
26 participation requirements of the solid waste disposal act. The
27 operating license may contain stipulations specifically applicable

1 to site and operation.

2 (5) A local ordinance, permit, or other requirement shall not
3 prohibit the operation of a licensed treatment, storage, or
4 disposal facility. **THIS SUBSECTION DOES NOT APPLY TO AN ORDINANCE,
5 PERMIT REQUIREMENT, OR OTHER REQUIREMENT OF A MUNICIPALITY OR
6 COUNTY AS IT PERTAINS TO AN INJECTION WELL.**

7 (6) If any information required to be included in the
8 disclosure statement required under section 11123 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 within 30 days after the change or addition.

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

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

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

27 (a) Updated disclosure information or a certification as

1 described in section 11123(2) (n) (i) .

2 (b) A certification of construction as described in section
3 11123(2) (n) (ii) . The department shall require additional
4 certification periodically during the operation or in order to
5 verify proper closure of the site.

6 (c) A certification of capability signed and sealed by a
7 licensed professional engineer as described in section
8 11123(2) (n) (iii) .

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

11 (e) Proof of financial responsibility.

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.