

HOUSE BILL NO. 6313

June 30, 2022, Introduced by Reps. Aiyash, Brabec, Rabhi, Cavanagh, Young, Pohutsky, Weiss, Hope and Thanedar and referred to the Committee on Energy.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 11123 and 11124 (MCL 324.11123 and 324.11124),
section 11123 as amended by 2014 PA 254 and section 11124 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)~~ **(9)** or a rule promulgated under section 11127(4), a person
3 shall not establish, construct, conduct, manage, maintain, or

1 operate a treatment, storage, or disposal facility within this
2 state without an operating license from the department.

3 (2) The department shall not approve an application for an
4 operating license for the expansion or enlargement of a treatment
5 or storage facility beyond its original authorized design capacity
6 or beyond the area specified in an existing operating license,
7 original construction permit, or other authorization.

8 (3) ~~(2)~~ An application for an operating license for a proposed
9 treatment, storage, or disposal facility or the ~~expansion,~~
10 ~~enlargement, or alteration,~~ **consistent with subsection (2),** of a
11 treatment, storage, or disposal facility ~~beyond its original~~
12 ~~authorized design capacity or beyond the area specified in an~~
13 ~~existing operating license, original construction permit, or other~~
14 ~~authorization~~ shall be submitted on a form provided by the
15 department and contain all of the following:

16 (a) The name and ~~residence~~ **address** of the applicant.

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

19 (c) A copy of an actual published notice that the applicant
20 published, at least 30 days before ~~submittal of~~ **submitting** the
21 application in a newspaper having major circulation in the
22 municipality ~~and the immediate vicinity of~~ **in which** the proposed
23 treatment, storage, or disposal facility project **is to be located**
24 **and in the immediate vicinity of the project.** The notice shall
25 contain a map indicating the location of the proposed treatment,
26 storage, or disposal facility project and information on the nature
27 and size of the proposed ~~facility.~~ **project.** In addition, as
28 provided by the department, the notice shall contain a description
29 of the application review process, the location where the complete

1 application may be reviewed, and an explanation of how copies of
2 the complete application may be obtained.

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

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

11 (f) An environmental assessment. The environmental assessment
12 shall include, at a minimum, ~~an~~ **both of the following:**

13 (i) **An** evaluation of the proposed facility's impact on the air,
14 water, and other natural resources of this state. ~~, and also shall~~
15 ~~contain an~~

16 (ii) **An** environmental failure mode assessment.

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

18 (h) An engineering plan.

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

21 (j) An application fee. The application fee shall be deposited
22 in the environmental pollution prevention fund created in section
23 11130. Pursuant to procedures established by rule, the application
24 fee shall be \$25,000.00 plus all of the following, as applicable:

25 (i) For a landfill, surface impoundment, land
26 treatment, or waste pile facility \$ 9,000.00

27 (ii) For an incinerator or treatment facility
28 other than a treatment facility described
29 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 and, 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) For each person required to be listed under this subdivision, a list of all convictions for criminal violations of any statute enacted by a federal, state, Canadian, or Canadian provincial agency 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 more than 5 years before the application is ~~filed,~~ **submitted**, or if the violation was a felony committed in furtherance of obtaining an operating license under this part not more than 10 years before the application is ~~filed.~~ **submitted**. 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. The department shall submit to the legislature a report on ~~the 2014 act that~~ **PA 254, which** amended this subparagraph, including the number of permits denied as a result of that act and whether this subparagraph should be further amended. The report shall cover the 5-year period after ~~the effective date of that act~~ **June 30, 2014** and shall be submitted ~~within 60 days after the expiration of that 5-year period.~~ **by August 29, 2019**. The report may be submitted electronically.

(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~~ **if** public funds were used to finance an activity to mitigate the threat or potential threat to the environment. ~~7 except~~ **This subparagraph does not apply** if the public funds expended to facilitate the mitigation of environmental contamination were voluntarily and expeditiously ~~recovered from~~ **reimbursed by** the applicant or other listed person without

1 litigation.

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

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

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

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

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

17 (A) The natural environment and ecology.

18 (B) Public health and safety.

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

20 (D) Water and air quality and wildlife.

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

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

26 (i) Any changes in, or additions to, the previously submitted
27 disclosure ~~information, statement,~~ or a certification that the
28 disclosure ~~listings-statement~~ previously submitted ~~continue~~
29 **continues** to be **complete and** correct, ~~following-after~~ completion of

1 construction of the treatment, storage, or disposal facility.

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

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

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

11 (4) ~~(3)~~ If any information required to be included in the
12 disclosure statement under subsection ~~(2) (k)~~ **(3) (k)** changes ~~or is~~
13 ~~supplemented~~ after the ~~filing of the statement~~ **is submitted**, the
14 applicant or licensee shall provide ~~that~~ **the updated or**
15 **supplemented** information to the department in writing not later
16 than 30 days after the change or addition.

17 (5) ~~(4)~~ Notwithstanding any other provision of law, the
18 department may deny an application for an operating license if
19 there are any listings pursuant to subsection ~~(2) (k) (ii)~~, **(3) (k) (ii)**,
20 **(iii)**, or **(iv)** as originally disclosed or as supplemented.

21 (6) ~~(5)~~ The application for an operating license for a
22 proposed limited storage facility, which is subject to the
23 requirements pertaining to storage facilities, shall be submitted
24 on a form provided by the department and contain all of the
25 following:

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

27 (b) The location of the proposed facility.

28 (c) A determination of existing hydrogeological
29 characteristics specified in a hydrogeological report and

1 monitoring program consistent with rules promulgated under this
2 part.

3 (d) An environmental assessment. The environmental assessment
4 shall include, at a minimum, ~~an~~ **both of the following:**

5 (i) **An** evaluation of the proposed facility's impact on the air,
6 water, and other natural resources of this state. ~~, and also shall~~
7 ~~contain an~~

8 (ii) **An** environmental failure mode assessment.

9 (e) The procedures for closure.

10 (f) An engineering plan.

11 (g) Proof of financial responsibility.

12 (h) A resolution or other formal determination of the
13 governing body of each municipality in which the proposed limited
14 storage facility would be located indicating that the limited
15 storage facility is compatible with the zoning ordinance of that
16 municipality, if any. However, ~~in the absence of~~ **if a governing**
17 **body does not adopt** a resolution or other formal determination
18 **indicating whether the limited storage facility is compatible with**
19 **the zoning ordinance of the municipality,** the application shall
20 include a copy of a registered letter sent to the municipality at
21 least 60 days before the application ~~submittal, indicating was~~
22 **submitted. The letter must indicate** the intent to construct a
23 limited storage facility ~~, and requesting~~ **must request** a formal
24 determination on whether the proposed facility is compatible with
25 the zoning ordinance of that municipality, if any, in effect on the
26 date the letter is received. ~~, and indicating that failure to pass~~
27 **The letter must also explain that, if** a resolution or ~~make a other~~
28 formal determination **is not adopted** within 60 days ~~of receipt of~~
29 **after the municipality receives** the letter, ~~means that the proposed~~

1 facility ~~is to~~ **will** be considered compatible with any applicable
 2 zoning ordinance. If, within 60 days ~~of receiving a~~ **after the**
 3 **municipality receives the** registered letter, ~~a the~~ municipality
 4 does not make a formal determination ~~concerning whether~~ a proposed
 5 limited storage facility is compatible with a zoning ordinance of
 6 that municipality as in effect on the date the letter is received,
 7 **both of the following apply:**

8 (i) **The** limited storage facility is considered compatible with
 9 any zoning ordinance of that municipality. ~~and incompatibility~~

10 (ii) **Incompatibility** with a zoning ordinance of that
 11 municipality is not a basis for the department to deny the license.

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

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

17 (7) ~~(6)~~ The application for an operating license for a
 18 treatment, storage, or disposal facility other than a facility
 19 identified in subsection ~~(2) or (5)~~ **(3) or (6)** shall be made on a
 20 form provided by the department and include all of the following:

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

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

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

27 (d) Proof of financial responsibility. An applicant for an
 28 operating license for a treatment, storage, or disposal facility
 29 that is a surface impoundment, landfill, or land treatment facility

1 shall demonstrate financial responsibility for claims arising from
 2 nonsudden and accidental occurrences relating to the operation of
 3 the facility that cause injury to persons or property.

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

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

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

21 (a) A complete operating license application is **timely**
 22 submitted ~~within 180 days of the date requested by the department~~
 23 under subsection ~~(7)~~—(8).

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

26 (c) The person qualifies for interim status as defined in the
 27 solid waste disposal act, is in compliance with interim status
 28 standards established by federal regulation under subtitle C of the
 29 solid waste disposal act, 42 USC 6921 to ~~6939e~~, **6939g**, and has not

1 had interim status terminated.

2 (10) ~~(9)~~ A person may request to be placed on a department-
3 organized mailing list to be kept informed of any rules, plans,
4 operating license applications, contested case hearings, public
5 hearings, or other information or procedures relating to the
6 administration of this part. The department may charge a fee to
7 cover the cost of the materials.

8 Sec. 11124. (1) ~~Following~~ **After** the construction of the
9 proposed treatment, storage, or disposal facility or, **subject to**
10 **section 11123(2)**, the expansion, enlargement, or alteration of a
11 treatment, storage, or disposal facility beyond its original
12 authorized design capacity or beyond the area specified in an
13 existing operating license, original construction permit, or other
14 authorization, and **after** the receipt of the postconstruction
15 documentation required under section 11123, the department shall
16 inspect the site and determine if the proposed treatment, storage,
17 or disposal facility complies with this part, the rules promulgated
18 under this part, and the stipulations included in the approved
19 treatment, storage, or disposal facility operating license. An
20 inspection report ~~shall~~ **must** be filed in writing by the department
21 before ~~issuing~~ **the department issues** final authorization to manage,
22 maintain, and operate the treatment, storage, or disposal facility.
23 ~~and shall be made~~ **The department shall make the inspection report**
24 available for public review.

25 (2) Upon receipt of an operating license application meeting
26 the requirements of section ~~11123(6)~~, **11123(7)**, the department
27 shall inspect the site and determine if the treatment, storage, or
28 disposal facility complies with this part and the rules promulgated
29 under this part. ~~An~~ **The department must file an** inspection report

- 1 ~~shall be filed in writing by the department~~ before issuing an
- 2 operating license.