

Act No. 359
Public Acts of 1996
Approved by the Governor
July 1, 1996
Filed with the Secretary of State
July 1, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Rep. Alley

ENROLLED HOUSE BILL No. 5867

AN ACT to amend sections 11502, 11503, 11504, 11523, 11525, and 11542 of Act No. 451 of the Public Acts of 1994, 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, and assessments; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," being sections 324.11502, 324.11503, 324.11504, 324.11523, 324.11525, and 324.11542 of the Michigan Compiled Laws; and to add sections 11507a, 11523a, and 11523b.

The People of the State of Michigan enact:

Section 1. Sections 11502, 11503, 11504, 11523, 11525, and 11542 of Act No. 451 of the Public Acts of 1994, being sections 324.11502, 324.11503, 324.11504, 324.11523, 324.11525, and 324.11542 of the Michigan Compiled Laws, are amended and sections 11507a, 11523a, and 11523b are added to read as follows:

Sec. 11502. (1) "Applicant" includes any person.

(2) "Ashes" means the residue from the burning of wood, coal, coke, refuse, wastewater sludge, or other combustible materials.

(3) "Bond" means a financial instrument executed on a form approved by the department, including a surety bond from a surety company authorized to transact business in this state, a certificate of deposit, a cash bond, an irrevocable letter of credit, insurance, a trust fund, an escrow account, or a combination of any of these instruments in favor of the department. The owner or operator of a disposal area who is required to establish a bond under other state or federal statute may petition the department to allow such a bond to meet the requirements of this part. The department shall approve a bond established under other state or federal statute if the bond provides equivalent funds and access by the department as other financial instruments allowed by this subsection.

(4) "Certificate of deposit" means a negotiable certificate of deposit held by a bank or other financial institution regulated and examined by a state or federal agency, the value of which is fully insured by an agency of the United States government. A certificate of deposit used to fulfill the requirements of this part shall be in the sole name of the department with a maturity date of not less than 1 year and shall be renewed not less than 60 days before the maturity date. An applicant who uses a certificate of deposit as a bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department.

(5) "Certified health department" means a city, county, or district department of health that is specifically delegated authority by the department to perform designated activities as prescribed by this part.

(6) "Coal or wood ash" means either or both of the following:

(a) The residue remaining after the ignition of coal or wood, or both, and may include noncombustible materials, otherwise referred to as bottom ash.

(b) The airborne residues from burning coal or wood, or both, that are finely divided particles entrained in flue gases arising from a combustion chamber, otherwise referred to as fly ash.

(7) "Collection center" means a tract of land, building, unit, or appurtenance or combination thereof that is used to collect junk motor vehicles and farm implements under section 11530.

(8) "Consistency review" means evaluation of the administrative and technical components of an application for a permit, license, or for operating conditions in the course of inspection, for the purpose of determining consistency with the requirements of this part, rules promulgated under this part, and approved plans and specifications.

(9) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of constituents, as defined in a facility's approved hydrogeological monitoring plan, released into the environment from a disposal area, or the taking of other actions related to the release as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources that is consistent with subtitle D of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6941 and 6942 to 6949a or regulations promulgated pursuant to that act.

Sec. 11503. (1) "Department" means the department of environmental quality.

(2) "Director" means the director of the department.

(3) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the environment which is or may become injurious to the public health, safety, or welfare, or to the environment.

(4) "Disposal area" means 1 or more of the following at a location as defined by the boundary identified in its construction permit or engineering plans approved by the department:

(a) A solid waste transfer facility.

(b) Incinerator.

(c) Sanitary landfill.

(d) Processing plant.

(e) Other solid waste handling or disposal facility utilized in the disposal of solid waste.

(5) "Enforceable mechanism" means a legal method whereby the state, a county, a municipality, or a person is authorized to take action to guarantee compliance with an approved county solid waste management plan. Enforceable mechanisms include contracts, intergovernmental agreements, laws, ordinances, rules, and regulations.

(6) "Escrow account" means an account managed by a bank or other financial institution whose account operations are regulated and examined by a federal or state agency and which complies with section 11523b.

(7) "Financial assurance" means the mechanisms used to demonstrate that the funds necessary to meet the cost of closure, postclosure maintenance and monitoring, and corrective action will be available whenever they are needed.

(8) "Financial test" means a corporate or local government financial test or guarantee approved for type II landfills under subtitle D of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6945. An owner or operator may use a single financial test for more than 1 facility. Information submitted to the department to document compliance with the test shall include a list showing the name and address of each facility and the amount of funds assured by the test for each facility. For purposes of the financial test, the owner or operator shall aggregate the sum of the closure, postclosure, and corrective action costs it seeks to assure with any other environmental obligations assured by a financial test under state or federal law.

(9) "Garbage" means rejected food wastes including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attends the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetable matter.

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 C.F.R. 258.74(d) provided by an insurer who has a certificate of authority from the Michigan commissioner of insurance 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 C.F.R. 258.74(c).
- (6) "Medical waste" means that term as it is defined in part 138 of the public health code, Act No. 378 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.
- (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 assure 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 C.F.R. 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 perpetual care fund provided for in section 11525.
- (10) "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. 11507a. (1) The owner or operator of a landfill shall annually submit a report to the state and the county and municipality in which the landfill is located that contains information on the amount of solid waste received by the landfill during the year itemized, to the extent possible, by county, state, or country of origin.

(2) By September 1, 1996, the department shall develop and submit to the legislature a plan to gather data on the amount of recyclable materials recovered in the state itemized, to the extent possible, by county, state, or country of origin.

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 which 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 which 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. A minimum amount equal to the remaining financial assurance requirement divided by the term of the operating license shall be paid to the department prior to licensure. Subsequent payments to the department shall be made annually in an amount equal to the remaining financial assurance requirement divided by the number of years remaining until the operating license expires, until the required amount is attained. An owner or operator of a disposal area who elects to post cash as 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 of such request provided all waste and waste residues have been removed from the disposal area and that 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 following issuance of a notice of violation or other order by the department which alleges violation of this part and rules promulgated under this part and provides 7 days' notice and opportunity for hearing.

(5) Under the terms of a surety bond, letter of credit, or insurance policy, 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 by the issuing institution, the department may draw on the 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 U.S.C. 101 to 1330, 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 value 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 as prepared 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 which are preexisting units, the amount of money in 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 in 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 requirement of this section.

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, as prepared 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 in lieu 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) In lieu of using some or all of the standardized costs specified in subsection (2) of this section, 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. A third party is a party who is neither a parent corporation or a subsidiary of the owner or operator. 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 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 such 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 as prepared 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) 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. If that review is approved, the department shall notify the owner or operator that he or she may reduce the closure estimate by 100%. The department shall provide within 60 days 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 provided in writing 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 required amount under section 11523a, the department shall approve the request.

(7) An owner or operator requesting that the department approve a financial assurance reduction for performance of the activities specified in subsection (5) or due to excess financial assurance specified in subsection (6) shall do so on a form consistent with this part as prepared 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. 11523b. (1) The owner or operator of a landfill may establish a trust fund or escrow account to fulfill the requirements of sections 11523 and 11523a. The trust fund or escrow account shall be executed on a form provided by the department.

(2) Payments into a trust fund or escrow account shall be made annually over the term of the first operating license issued after the effective date of this section. The first payment into a trust fund or escrow account shall be made prior to licensure and shall be at least equal to the portion of the financial assurance requirement to be covered by the trust fund or escrow account divided by the term of the operating license. Subsequent payments shall be equal to the remaining financial assurance requirement divided by the number of years remaining until the license expires.

(3) If the owner or operator of a landfill establishes a trust fund or escrow account after having used one or more alternate forms of financial assurance, the initial payment into the trust fund or escrow account shall be at least the amount the fund would contain if the fund were established initially and annual payments made according to subsection (2).

(4) All earnings and interest from a trust fund or escrow account shall be credited to the fund or account. However, the custodian may be compensated for reasonable fees and costs for his or her responsibilities as custodian. The custodian shall ensure the filing of all required tax returns for which the trust fund or escrow account is liable and shall disburse funds from earnings to pay lawfully due taxes owed by the trust fund or escrow account, without permission of the department.

(5) The custodian shall annually, 30 days preceding the anniversary date of establishment of the fund, furnish to the owner or operator and to the department a statement confirming the value of the fund or account as of the end of that month.

(6) The owner or operator may request that the department authorize the release of funds from a trust fund or escrow account. The department shall grant the request if the owner or operator demonstrates that the value of the fund or account exceeds the owner's or operator's financial assurance obligation. A payment or disbursement from the fund or account shall not be made without the prior written approval of the department.

(7) The owner or operator shall receive all interest or earnings from a trust fund or escrow account upon its termination.

(8) For purposes of this section, the term "custodian" means the trustee of a trust fund or escrow agent of an escrow account.

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 or an escrow account 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 deposit into its 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. The deposits shall be made not less than semiannually until the fund reaches the maximum required fund amount. As of the effective date of 1996 amendments to this part, 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.

(3) The owner or operator of a landfill that is used for the disposal of the following materials shall deposit into 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 or wood ash that is disposed of in a landfill that is used only for the disposal of coal or wood ash, 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 deposit into 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 the effective date of the 1996 amendments to this section.

(5) Money is not required to be deposited into a perpetual care fund for materials that are regulated under part 631.

(6) The owner or operator of a landfill may contribute additional amounts into the perpetual care fund at his or her discretion.

(7) The custodian of a perpetual care fund 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 reaches the maximum required fund amount, the custodian of a perpetual care fund shall credit interest and earnings of the perpetual care fund to the perpetual care fund. After the perpetual care fund reaches the maximum required fund amount, earnings shall be distributed as directed by the owner or operator. The agreement governing the operation of the perpetual care fund shall be executed on a form consistent with this part as prepared 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 shall annually make an accounting to the department within 30 days following the close of the 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 specified in subsection (2). The department shall approve the disbursement provided 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 administrative fee due the department under this part within 90 days of the request, then the department may require the disbursement of money from the perpetual care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action, as necessary. The department may assess 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 disposal area unless a contract between the owner and the operator of the disposal area 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 time in which a perpetual care fund is established.

(12) This section does not relieve an owner or operator of a disposal area that is 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 a perpetual care fund.

Sec. 11542. (1) Except as provided in subsection (9), municipal solid waste incinerator ash shall be disposed of in 1 of the following:

(a) A landfill that meets all of the following requirements:

(i) The landfill is in compliance with this part and the rules promulgated under this part.

(ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.

(C) A compacted clay liner of 5 feet or more with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second.

(D) A leak detection and leachate collection system.

(E) A compacted clay liner at least 3 feet thick with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second or a synthetic liner at least 40 mils thick.

(b) A landfill that meets all of the following requirements:

(i) The landfill is in compliance with this part and the rules promulgated under this part.

(ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A composite liner, as defined in R 299.4102 of the Michigan administrative code.

(C) A leak detection and leachate collection system.

(D) A second composite liner.

(iv) If contaminants that may threaten the public health, safety, or welfare, or the environment are found in the leachate collection system described in subparagraph (iii)(C), the owner or operator of the landfill shall determine the source and nature of the contaminants and make repairs, to the extent practicable, that will prevent the contaminants from entering the leachate collection system. If the department determines that the source of the contaminants is caused by a design failure of the landfill, the department, notwithstanding an approved construction permit or operating license, may require landfill cells at that landfill that will be used for the disposal of municipal solid waste incinerator ash, which are under construction or will be constructed in the future at the landfill, to be constructed in conformance with improved design standards approved by the department. However, this subparagraph does not require the removal of liners or leak detection and leachate collection systems that are already in place in a landfill cell under construction.

(c) A landfill that is a monitorable unit, as defined in R 299.4104 of the Michigan administrative code, and that meets all of the following requirements:

(i) The landfill is in compliance with this part and the rules promulgated under this part.

(ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.

(C) Immediately below the synthetic liner, either 2 feet of compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second or a bentonite geocomposite liner, as specified in R 299.4914 of the Michigan administrative code.

(D) At least 10 feet of either natural or compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second, or equivalent.

(d) A landfill with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subdivisions (a) to (c).

(e) A type II landfill, as defined in R 299.4105 of the Michigan administrative code, if both of the following conditions apply:

(i) The ash was generated by a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit.

(ii) The ash from any individual municipal solid waste incinerator is disposed of pursuant to this subdivision for a period not to exceed 60 days.

(3) Except as provided in subsection (4), a landfill that is constructed pursuant to the design described in subsection (1) shall be capped following its closure by all of the following in descending order:

- (a) Six inches of top soil with a vegetative cover.
- (b) Two feet of soil to protect against animal burrowing, temperature, erosion, and rooted vegetation.
- (c) An infiltration collection system.
- (d) A synthetic liner at least 30 mils thick.
- (e) Two feet of compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second.

(4) A landfill that receives municipal solid waste incinerator ash under this section may be capped with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subsection (3).

(5) If leachate is collected from a landfill under this section, the leachate shall be monitored and tested in accordance with this part and the rules promulgated under this part.

(6) As an alternative to disposal described in subsection (1), the owner or operator of a municipal solid waste incinerator may process municipal solid waste incinerator ash through mechanical or chemical methods, or both, to substantially diminish the toxicity of the ash or its constituents or limit the leachability of the ash or its constituents to minimize threats to human health and the environment, if processing is performed on the site of the municipal solid waste incinerator or at the site of a landfill described in subsection (1), if the process has been approved by the department as provided by rule, and if the ash is tested after processing in accordance with a protocol approved by the department as provided by rule. The department shall approve the process and testing protocol under this subsection only if the process and testing protocol will protect human health and the environment. In making this determination, the department shall consider all potential pathways of human and environmental exposure, including both short-term and long-term, to constituents of the ash that may be released during the reuse or recycling of the ash. The department shall consider requiring methods to determine the leaching, total chemical analysis, respirability, and toxicity of reused or recycled ash. A leaching procedure shall include testing under both acidic and native conditions. If municipal solid waste incinerator ash is processed in accordance with the requirements of this subsection and the processed ash satisfies the testing protocol approved by the department as provided by rule, the ash may be disposed of in a municipal solid waste landfill, as defined by R 299.4104 of the Michigan administrative code, licensed under this part or may be used in any manner approved by the department. If municipal solid waste incinerator ash is processed as provided in this subsection, but does not satisfy the testing protocol approved by the department as provided by rule, the ash shall be disposed of in accordance with subsection (1).

(7) The disposal of municipal solid waste incinerator ash within a landfill that is in compliance with subsection (1) does not constitute a new proposal for which a new construction permit is required under section 11510, if a construction permit has previously been issued under section 11509 for the landfill and the owner or operator of the landfill submits 6 copies of an operating license amendment application to the department for approval. The operating license amendment application shall include revised plans and specifications for all facility modifications including a leachate disposal plan, an erosion control plan, and a dust control plan which shall be part of the operating license amendment. The dust control plan shall contain sufficient detail to ensure that dust emissions are controlled by available control technologies that reduce dust emissions by a reasonably achievable amount to the extent necessary to protect human health and the environment. The dust control plan shall provide for the ash to be wet during all times that the ash is exposed to the atmosphere at the landfill or otherwise to be covered by daily cover material; for dust emissions to be controlled during dumping, grading, loading, and bulk transporting of the ash at the landfill; and for dust emissions from access roads within the landfill to be controlled. With the exception of a landfill that is in existence on June 12, 1989 that the department determines is otherwise in compliance with this section, the owner or operator of the landfill shall obtain the operating license amendment prior to initiating construction. Prior to operation, the owner or operator of a landfill shall submit to the department certification from a licensed professional engineer that the landfill has been constructed in accordance with the approved plan and specifications. At the time the copies are submitted to the department, the owner or operator of the landfill shall send a copy of the operating license amendment application to the municipality where the landfill is located. At least 30 days prior to making a final decision on the operating license amendment, the department shall hold at least 1 public meeting in the vicinity of the landfill to receive public comments. Prior to a public meeting, the department shall publish notice of the meeting in a newspaper serving the local area. The department shall issue a final decision on an operating license amendment application within 120 days after the department receives an administratively complete application.

(8) The owner or operator of a municipal solid waste incinerator or a disposal area that receives municipal solid waste incinerator ash shall allow the department access to the facility for the purpose of supervising the collection of samples or obtaining samples of ash to test or to monitor air quality at the facility.

(9) As used in subsection (1), "landfill" means a landfill or a specific portion of a landfill.

Section 2. This amendatory act shall not take effect unless Senate Bill No. 941 of the 88th Legislature is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.