



# HOUSE BILL No. 5866

May 9, 1996, Introduced by Rep. Alley and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 11511, 11516, 11517, 11519, 11529, 11532, and 11541 of Act No. 451 of the Public Acts of 1994, entitled

"Natural resources and environmental protection act,"

being sections 324.11511, 324.11516, 324.11517, 324.11519,

324.11529, 324.11532, and 324.11541 of the Michigan Compiled

Laws; to add sections 11531a, 11532a, and 20115b; and to repeal

acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 11511, 11516, 11517, 11519, 11529,  
2 11532, and 11541 of Act No. 451 of the Public Acts of 1994, being  
3 sections 324.11511, 324.11516, 324.11517, 324.11519, 324.11529,  
4 324.11532, and 324.11541 of the Michigan Compiled Laws, are  
5 amended and sections 11531a, 11532a, and 20115b are added to read  
6 as follows:

1       Sec. 11511. (1) The department shall make a final decision  
2 as to whether to issue a construction permit within 120 days  
3 after the department receives an administratively complete  
4 application. The decision of the department and the reasons for  
5 the decision shall be in writing WITH SPECIFIC REFERENCE TO THIS  
6 PART OR RULES PROMULGATED UNDER THIS PART FOR ANY SUBSTANTIATION  
7 OF DENIAL OF THE PERMIT APPLICATION and shall be sent by  
8 first-class mail to the clerk of the municipality in which the  
9 disposal area is proposed to be located and to the applicant  
10 within 10 days after the final decision is made. If the depart-  
11 ment fails to make a final decision within 120 days, the permit  
12 shall be considered issued.

13       (2) A construction permit shall expire 1 year after the date  
14 of issuance, unless development under the construction permit is  
15 initiated within that year. A construction permit that has  
16 expired may be renewed upon payment of a permit renewal fee and  
17 submission of any additional information the department may  
18 require.

19       ~~(3) Except as otherwise provided in this subsection, the~~  
20 ~~department shall not issue a construction permit for a disposal~~  
21 ~~area within a planning area unless a solid waste management plan~~  
22 ~~for that planning area has been approved pursuant to sections~~  
23 ~~11536 and 11537 and unless the disposal area complies with and is~~  
24 ~~consistent with the approved solid waste management plan. The~~  
25 ~~department may issue a construction permit for a disposal area~~  
26 ~~designed to receive ashes produced in connection with the~~  
27 ~~combustion of fossil fuels for electrical power generation in the~~

~~1 absence of an approved county solid waste management plan, upon  
2 receipt of a letter of approval from whichever county or coun-  
3 ties, group of municipalities, or regional planning agency has  
4 prepared or is preparing the county solid waste management plan  
5 for that planning area under section 11533 and from the munici-  
6 pality in which the disposal area is to be located.~~

7       Sec. 11516. (1) Subject to subsection (4), the department  
8 shall CONDUCT A CONSISTENCY REVIEW AND make a final decision on a  
9 license application within 90 days after the department receives  
10 ~~the~~ AN ADMINISTRATIVELY COMPLETE application. The decision of  
11 the department and the reasons for the decision shall be  
12 DOCUMENTED in writing WITH SPECIFIC REFERENCE TO THIS PART OR  
13 RULES PROMULGATED UNDER THIS PART and shall be sent by  
14 first-class mail to the clerk of the municipality in which the  
15 disposal area is located and to the applicant within 10 days  
16 after the final decision is made. If the department fails to  
17 make a final decision within 90 days, the license is considered  
18 issued.

19       (2) An operating license shall expire 2 years after the date  
20 of issuance. An operating license may be renewed before expira-  
21 tion upon payment of a renewal application fee ~~of \$100.00~~  
22 SPECIFIED IN SECTION 11512 if the licensee is in compliance with  
23 this part and the rules promulgated under this part.

24       (3) The issuance of ~~a~~ THE OPERATING license UNDER THIS  
25 PART empowers the department or a health officer or an authorized  
26 representative of a health officer to enter at any reasonable  
27 time, pursuant to law, in or upon private or public property

1 licensed under this part for the purpose of inspecting or  
2 investigating conditions relating to the storage, processing, or  
3 disposal of any material.

4 ~~-(4) Except as otherwise provided in this subsection, the~~  
5 ~~department shall not issue an operating license for a new dis-~~  
6 ~~posal area within a planning area unless a solid waste management~~  
7 ~~plan for that planning area has been approved pursuant to~~  
8 ~~sections 11536 and 11537 and unless the disposal area complies~~  
9 ~~with and is consistent with the approved solid waste management~~  
10 ~~plan. The department may issue an operating license for a dis-~~  
11 ~~posal area designed to receive ashes produced in connection with~~  
12 ~~the combustion of fossil fuels for electrical power generation in~~  
13 ~~the absence of an approved county solid waste management plan,~~  
14 ~~upon receipt of a letter of approval from whichever county or~~  
15 ~~counties, group of municipalities, or regional planning agency~~  
16 ~~has prepared or is preparing the county solid waste management~~  
17 ~~plan for that planning area under section 11533 and from the~~  
18 ~~municipality in which the disposal area is to be located.~~

19 (4) SUBJECT TO SECTION 11532A, ISSUANCE OF AN OPERATING  
20 LICENSE BY THE DEPARTMENT AUTHORIZES THE LICENSEE TO ACCEPT WASTE  
21 FOR DISPOSAL IN CERTIFIED PORTIONS OF THE DISPOSABLE AREA FOR  
22 WHICH A BOND WAS ESTABLISHED UNDER SECTION 11523 AND, FOR TYPE II  
23 LANDFILLS, FOR WHICH FINANCIAL ASSURANCE WAS DEMONSTRATED UNDER  
24 SECTION 11523A. IF THE CONSTRUCTION OF A PORTION OF A LANDFILL  
25 LICENSED UNDER THIS SECTION IS NOT COMPLETE AT THE TIME OF  
26 LICENSE APPLICATION, THE OWNER OR OPERATOR OF THE LANDFILL SHALL  
27 SUBMIT A CERTIFICATION UNDER THE SEAL OF A LICENSED PROFESSIONAL

1 ENGINEER VERIFYING THAT THE CONSTRUCTION OF THAT PORTION OF THE  
2 LANDFILL HAS PROCEEDED ACCORDING TO THE APPROVED PLANS AT LEAST  
3 60 DAYS PRIOR TO THE ANTICIPATED DATE OF WASTE DISPOSAL IN THAT  
4 PORTION OF THE LANDFILL. IF THE DEPARTMENT DOES NOT DENY THE  
5 CERTIFICATION WITHIN 60 DAYS OF RECEIPT, THE OWNER OR OPERATOR  
6 MAY ACCEPT WASTE FOR DISPOSAL IN THE CERTIFIED PORTION. IN THE  
7 CASE OF A DENIAL, THE DEPARTMENT SHALL, ISSUE A WRITTEN STATEMENT  
8 STATING THE REASONS WHY THE CONSTRUCTION OR CERTIFICATION IS NOT  
9 CONSISTENT WITH THIS PART OR RULES PROMULGATED UNDER THIS PART OR  
10 THE APPROVED PLANS.

11       Sec. 11517. (1) Within 9 months after the completion of  
12 construction of a municipal solid waste incinerator, the owner or  
13 operator of a municipal solid waste incinerator shall submit a  
14 plan to the department for a program that, to the extent practi-  
15 cable, reduces the incineration of noncombustible materials and  
16 dangerous combustible materials and their hazardous by-products  
17 at the incinerator. The department shall approve or disapprove  
18 the plan submitted under this subsection within 30 days after  
19 receiving it. In reviewing the plan, the department shall con-  
20 sider the ~~current county solid waste management plan,~~ available  
21 markets for separated materials, disposal alternatives for the  
22 separated materials, and collection practices for handling such  
23 separated materials. If the department disapproves a plan, the  
24 department shall notify the owner or operator submitting the plan  
25 of this fact, and shall provide modifications that, if included,  
26 would result in the plan's approval. If the department  
27 disapproves a plan, the owner or operator of a municipal solid

1 waste incinerator shall within 30 days after receipt of the  
2 department's disapproval submit a revised plan that addresses all  
3 of the modifications provided by the department. The department  
4 shall approve or disapprove the revised plan within 30 days after  
5 receiving it, and approval of the revised plan shall not be  
6 unreasonably withheld.

7 (2) Not later than 6 months after the approval of the plan  
8 by the department under subsection (1), the owner or operator  
9 shall implement the plan in accordance with the implementation  
10 schedule set forth in the plan. The operation of a municipal  
11 solid waste incinerator without an approved plan under this sec-  
12 tion shall subject the owner or operator, or both, to all of the  
13 sanctions provided by this part.

14 Sec. 11519. (1) The department shall specify, in writing,  
15 the reasons for denial of a construction permit or an operating  
16 license, further specifying those particular sections of this  
17 part or rules promulgated under this part that may be violated by  
18 granting the application and the manner in which the violation  
19 may occur.

20 (2) The health officer or department may issue a cease and  
21 desist order specifying a schedule of closure or remedial action  
22 in accordance with this part and rules promulgated under this  
23 part or may establish a consent agreement specifying a schedule  
24 of closure or remedial action in accordance with this part and  
25 rules promulgated under this part to a person who establishes,  
26 constructs, conducts, manages, maintains, or operates a disposal  
27 area without a permit or license or to a person who holds a

1 permit or license but establishes, constructs, conducts, manages,  
2 maintains, or operates a disposal area contrary to ~~an approved~~  
3 ~~solid waste management plan or contrary to~~ the permit or license  
4 issued under this part.

5 (3) The department may issue a final order revoking, sus-  
6 pending, or restricting a permit or license after a contested  
7 case hearing as provided in the administrative procedures act of  
8 1969, Act No. 306 of the Public Acts of 1969, being sections  
9 24.201 to 24.328 of the Michigan Compiled Laws, if the department  
10 finds that the disposal area is not being constructed or operated  
11 in accordance with ~~the approved plans,~~ the conditions of a  
12 permit or license, this part, or the rules promulgated under this  
13 part. A final order issued pursuant to this section is subject  
14 to judicial review as provided in Act No. 306 of the Public Acts  
15 of 1969. The department or a health officer shall inspect and  
16 file a written report not less than 4 times per year for each  
17 licensed disposal area. The department or the health officer  
18 shall provide the municipality in which the licensed disposal  
19 area is located with a copy of each written inspection report if  
20 the municipality arranges with the department or the health offi-  
21 cer to bear the expense of duplicating and mailing the reports.

22 (4) The department, after consultation with the director of  
23 ~~public~~ COMMUNITY health or a designated representative of the  
24 director of ~~public~~ COMMUNITY health, may issue an order summar-  
25 ily suspending a permit or license if the department determines  
26 that a violation of this part or rules promulgated under this  
27 part has occurred which, in the department's opinion, constitutes

1           Sec. 11532. (1) Except as provided in subsection (3), a  
2 municipality may impose an impact fee of not more than 10 cents  
3 per cubic yard on solid waste that is disposed of in a landfill  
4 located within the municipality that is utilized by the public  
5 and utilized to dispose of solid waste collected from 2 or more  
6 persons. However, if the landfill is located within a village,  
7 the impact fee provided for in this subsection shall be imposed  
8 by the township in agreement with the village. The impact fee  
9 shall be assessed uniformly on all wastes accepted for disposal.

10           (2) Except as provided in subsection (3), a municipality may  
11 impose an impact fee of not more than 10 cents per cubic yard on  
12 municipal solid waste incinerator ash that is disposed of in a  
13 landfill located within the municipality that is utilized to dis-  
14 pose of municipal solid waste incinerator ash. However, if the  
15 landfill is located within a village, the impact fee provided for  
16 in this subsection shall be imposed by the township in agreement  
17 with the village.

18           (3) ~~A~~ AS PART OF A HOST COMMUNITY AGREEMENT UNDER SECTION  
19 11532A, A municipality may enter into an agreement with the owner  
20 or operator of a landfill to establish a higher impact fee than  
21 those provided for in subsections (1) and (2).

22           (4) The impact fees imposed under this section shall be col-  
23 lected by the owner or operator of a landfill and shall be paid  
24 to the municipality OR MUNICIPALITIES quarterly by the thirtieth  
25 day after the end of each calendar quarter. However, the impact  
26 fees allowed to be assessed to each landfill under this section  
27 shall be reduced by any amount of revenue paid to or available to



1 the municipality OR MUNICIPALITIES from the landfill under the  
2 terms of any preexisting agreements, including, but not limited  
3 to, contracts, special use permit conditions, court settlement  
4 agreement conditions, and trusts.

5       (5) Unless a trust fund is established by a municipality  
6 pursuant to subsection (6), the revenue collected by a municipal-  
7 ity under subsections (1) and (2) shall be deposited in its gen-  
8 eral fund to be used for any purpose that promotes the public  
9 health, safety, or welfare of the citizens of the municipality.  
10 However, revenue collected pursuant to this section shall not be  
11 used to bring or support a lawsuit or other legal action against  
12 an owner or operator of a landfill who is collecting an impact  
13 fee pursuant to subsection (4) unless the owner or operator of  
14 the landfill has instituted a lawsuit or other legal action  
15 against the municipality.

16       (6) The municipality may establish a trust fund to receive  
17 revenue collected pursuant to this section. The trust fund shall  
18 be administered by a board of trustees. The board of trustees  
19 shall consist of the following members:

20       (a) The chief elected official of the municipality creating  
21 the trust fund.

22       (b) An individual from the municipality appointed by the  
23 governing board of the municipality.

24       (c) An individual approved by the owners or operators of the  
25 landfills within the municipality and appointed by the governing  
26 board of the municipality.

1 (7) Individuals appointed to serve on the board of trustees  
2 under subsection (6)(b) and (c) shall serve for terms of  
3 2 years.

4 (8) Money in the trust fund may be expended, pursuant to a  
5 majority vote of the board of trustees, for any purpose that pro-  
6 motes the public health, safety, or welfare of the citizens of  
7 the municipality. However, revenue collected pursuant to this  
8 section shall not be used to bring or support a lawsuit or other  
9 legal action against an owner or operator of a landfill who is  
10 collecting an impact fee pursuant to subsection (4) unless the  
11 owner or operator of the landfill has instituted a lawsuit or  
12 other legal action against the municipality.

13 SEC. 11532A. (1) NOTWITHSTANDING ANY-OTHER PROVISION OF  
14 THIS PART, PRIOR TO RECEIVING A CONSTRUCTION PERMIT UNDER THIS  
15 PART, OR PRIOR TO THE EXPANSION OF A DISPOSAL AREA'S APPROVED  
16 ACREAGE, VOLUME, OR CAPACITY BEYOND WHAT IS AUTHORIZED IN THE  
17 SOLID WASTE MANAGEMENT PLAN, THE OWNER OR OPERATOR OF A DISPOSAL  
18 AREA SHALL ENTER INTO A HOST COMMUNITY AGREEMENT WITH THE MUNICI-  
19 PALITY IN WHICH THE DISPOSAL AREA IS LOCATED OR IS PROPOSED TO BE  
20 LOCATED REGARDING OPERATIONS AT THAT DISPOSAL AREA. AT THE  
21 OPTION OF THE MUNICIPALITY, THE MUNICIPALITY MAY REQUEST THAT THE  
22 COUNTY IN WHICH THE MUNICIPALITY IS LOCATED BE A PARTY TO THE  
23 HOST COMMUNITY AGREEMENT. UPON ENTERING INTO A HOST COMMUNITY  
24 AGREEMENT WITH THE MUNICIPALITY, THE OWNER OR OPERATOR OF THE  
25 DISPOSAL AREA SHALL PROVIDE THE DEPARTMENT WITH EVIDENCE THAT THE  
26 AGREEMENT HAS BEEN ENTERED INTO.

1 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), ALL DISPOSAL AREAS  
2 IN THE STATE THAT ARE LICENSED UNDER THIS PART ON THE EFFECTIVE  
3 DATE OF THIS SECTION MAY CONTINUE TO OPERATE WITHIN THE TERMS OF  
4 THE DISPOSAL AREAS' APPROVED ACREAGE, VOLUME, OR CAPACITY AS  
5 AUTHORIZED IN THE SOLID WASTE MANAGEMENT PLAN, SUBJECT TO THE  
6 FOLLOWING:

7 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), THE DISPOSAL AREA  
8 SHALL BE OPERATED IN COMPLIANCE WITH THE SOLID WASTE MANAGEMENT  
9 PLAN.

10 (B) EXCEPT AS PROVIDED IN SECTION 11531A, ANY PROVISIONS OF  
11 THE SOLID WASTE MANAGEMENT PLAN UNDER SUBDIVISION (A) RELATED TO  
12 THE LOCATION OR LOCATIONS WHERE SOLID WASTE MUST BE DISPOSED OF  
13 DO NOT APPLY.

14 (3) THE OWNER OR OPERATOR OF A DISPOSAL AREA MAY AT ANY TIME  
15 ENTER INTO A HOST COMMUNITY AGREEMENT WITH THE MUNICIPALITY IN  
16 WHICH THE DISPOSAL AREA IS LOCATED REGARDING OPERATIONS AT THE  
17 DISPOSAL AREA. AT THE OPTION OF THE MUNICIPALITY, THE MUNICIPAL-  
18 ITY MAY REQUEST THAT THE COUNTY IN WHICH THE MUNICIPALITY IS  
19 LOCATED BE A PARTY TO THE HOST COMMUNITY AGREEMENT. IF THE OWNER  
20 OR OPERATOR OF A DISPOSAL AREA ENTERS INTO A HOST COMMUNITY  
21 AGREEMENT WITH THE MUNICIPALITY, THIS HOST COMMUNITY AGREEMENT  
22 SUPERSEDES THE PROVISIONS OF SUBSECTION (2). UPON ENTERING INTO  
23 A HOST COMMUNITY AGREEMENT WITH A MUNICIPALITY, THE OWNER OR  
24 OPERATOR OF THE DISPOSAL AREA SHALL PROVIDE THE DEPARTMENT WITH  
25 EVIDENCE THAT THE AGREEMENT HAS BEEN ENTERED INTO.

26 (4) AS USED IN THIS SECTION, "SOLID WASTE MANAGEMENT PLAN"  
27 MEANS THE SOLID WASTE MANAGEMENT PLAN FOR THE JURISDICTION IN

1 WHICH A DISPOSAL AREA IS LOCATED THAT WAS IN EFFECT IMMEDIATELY  
2 PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, WHICH SOLID WASTE  
3 MANAGEMENT PLAN IS HEREBY INCORPORATED BY REFERENCE.

4       Sec. 11541. ~~(1) The state solid waste management plan~~  
5 ~~shall consist of the state solid waste plan and all county plans~~  
6 ~~approved or prepared by the department. (2) The department shall~~  
7 ~~consult and assist in the preparation and implementation of the~~  
8 ~~county solid waste management plans. (3) The department may~~  
9 ~~undertake or contract for studies or reports necessary or useful~~  
10 ~~in the preparation of the state solid waste management plan.~~  
11 ~~(4) The department shall develop a strategy to PROMOTE POLI-~~  
12 ~~CIES THAT encourage resource recovery and establishment of~~  
13 ~~waste-to-energy facilities. By March 30, 1989, the department~~  
14 ~~shall submit to the legislature a report on the details of the~~  
15 ~~strategy. The report shall recommend public and private sector~~  
16 ~~incentives and suggest potential regulatory relief to remove con-~~  
17 ~~straints on the siting of waste to energy and resource recovery~~  
18 ~~facilities. The strategy and report shall be prepared with the~~  
19 ~~goal of reducing land disposal to unusable residuals by the year~~  
20 ~~2005. The report shall include specific recommendations for nec-~~  
21 ~~essary legislation to implement the strategy.~~

22       SEC. 20115B. (1) NOTWITHSTANDING ANY OTHER PROVISION OF  
23 THIS PART, IF A RELEASE AT A DISPOSAL AREA LICENSED UNDER PART  
24 115 IS SOLELY A RELEASE FROM THAT DISPOSAL AREA AND THE RELEASE  
25 IS DISCOVERED THROUGH THE DISPOSAL AREA'S HYDROGEOLOGICAL MONI-  
26 TORING PLAN, THE RESPONSE ACTIVITIES IMPLEMENTED AT THE DISPOSAL  
27 AREA SHALL BE THE CORRECTIVE ACTIONS REQUIRED UNDER PART 115.

1 THIS SECTION DOES NOT APPLY TO RELEASES FROM A DISPOSAL AREA  
2 AFTER COMPLETION OF THE POSTCLOSURE MONITORING PERIOD OF THE DIS-  
3 POSAL AREA.

4 (2) AS USED IN THIS PART, "CORRECTIVE ACTION" MEANS AN  
5 ACTION DETERMINED BY THE DEPARTMENT TO BE NECESSARY TO PROTECT  
6 THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT, AND  
7 INCLUDES, BUT IS NOT LIMITED TO, INVESTIGATION, EVALUATION,  
8 CLEANUP, REMOVAL, REMEDIATION, MONITORING, CONTAINMENT, ISOLA-  
9 TION, TREATMENT, STORAGE, MANAGEMENT, TEMPORARY RELOCATION OF  
10 PEOPLE, AND PROVISION OF ALTERNATIVE WATER SUPPLIES, OR ANY COR-  
11 RECTIVE ACTION ALLOWED UNDER SUBTITLE D OF THE SOLID WASTE DIS-  
12 POSAL ACT, TITLE II OF PUBLIC LAW 89-272, 42 U.S.C. 6941 AND 6942  
13 TO 6949a OR REGULATIONS PROMULGATED PURSUANT TO THAT ACT.

14 Section 2. Sections 11513, 11524, 11531, 11533, 11534,  
15 11535, 11536, 11537, 11537a, 11538, 11539, 11539a, and 11547 of  
16 Act No. 451 of the Public Acts of 1994, being sections 324.11513,  
17 324.11524, 324.11531, 324.11533, 324.11534, 324.11535, 324.11536,  
18 324.11537, 324.11537a, 324.11538, 324.11539, 324.11539a, and  
19 324.11547 of the Michigan Compiled Laws, are repealed.

20 Section 3. This amendatory act shall take effect October 1,  
21 1996.