

# HOUSE BILL No. 4338

February 27, 2013, Introduced by Rep. Geiss and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 11123 (MCL 324.11123), 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) or a rule promulgated under section 11127(4), a person shall  
3 not establish, construct, conduct, manage, maintain, or operate a  
4 treatment, storage, or disposal facility within this state  
5 without an operating license from the department.

6           (2) An application for an operating license for a proposed  
7 treatment, storage, or disposal facility or the expansion,  
8 enlargement, or alteration of a treatment, storage, or disposal  
9 facility beyond its original authorized design capacity or beyond

1 the area specified in an existing operating license, original  
2 construction permit, or other authorization shall be submitted on  
3 a form provided by the department and contain all of the  
4 following:

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

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

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

20 (d) A written summary of the comments received at the public  
21 preapplication meeting required by rule and the applicant's  
22 response to the comments, including any revisions to the  
23 application.

24 (e) A determination of existing hydrogeological  
25 characteristics specified in a hydrogeological report and  
26 monitoring program consistent with rules promulgated under this  
27 part.

1 (f) An environmental assessment. The environmental  
2 assessment shall include, at a minimum, an evaluation of the  
3 proposed facility's impact on the air, water, and other natural  
4 resources of this state, and also shall contain an environmental  
5 failure mode assessment.

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

7 (h) An engineering plan.

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

10 (j) An application fee. The application fee shall be  
11 deposited in the environmental pollution prevention fund created  
12 in section 11130. Pursuant to procedures established by rule, the  
13 application fee shall be ~~the sum of~~ \$25,000.00 plus all of the  
14 following, as applicable:

- 15 (i) For a landfill, surface impoundment,  
16 land treatment, or waste pile  
17 facility..... \$ 9,000.00
- 18 (ii) For an incinerator or treatment  
19 facility other than a treatment facility  
20 described in subparagraph (i)..... \$ 7,200.00
- 21 (iii) For a storage facility, other than  
22 storage that is associated with  
23 treatment or disposal activities that may  
24 be regulated under a single license..... \$ 500.00

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

27 (i) The full name and business address of all of the

1 following:

2 (A) The applicant.

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

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

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

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

20 (ii) ~~A~~ **FOR EACH PERSON REQUIRED TO BE LISTED UNDER THIS**  
21 **SUBDIVISION, A** list of all convictions for criminal violations of  
22 any ~~environmental~~ statute enacted by a federal, state, Canadian,  
23 or Canadian provincial agency ~~for each person required to be~~  
24 ~~listed under this subdivision.~~ **IF THE STATUTE IS AN ENVIRONMENTAL**  
25 **STATUTE OR IF THE VIOLATION WAS COMMITTED IN FURTHERANCE OF**  
26 **OBTAINING THE PERMIT FOR WHICH THE APPLICATION IS FILED.** If debt  
27 liability is held by a chartered lending institution, information

1 required in this subparagraph and subparagraphs (iii) and (iv) is  
2 not required from that institution.

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

8 (iv) A list of all activities at property owned or operated  
9 by each person required to be listed under this subdivision that  
10 resulted in a threat or potential threat to the environment and  
11 for which public funds were used to finance an activity to  
12 mitigate the threat or potential threat to the environment,  
13 except if the public funds expended to facilitate the mitigation  
14 of environmental contamination were voluntarily and expeditiously  
15 recovered from the applicant or other listed person without  
16 litigation.

17 (l) A demonstration that the applicant has considered each of  
18 the following:

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

22 (ii) The risk and impact of fires or explosions from improper  
23 treatment, storage, and disposal methods at the treatment,  
24 storage, or disposal facility.

25 (iii) The impact on the municipality where the proposed  
26 treatment, storage, or disposal facility is to be located in  
27 terms of health, safety, cost, and consistency with local

1 planning and existing development, including proximity to  
2 housing, schools, and public facilities.

3 (iv) The nature of the probable environmental impact,  
4 including the specification of the predictable adverse effects on  
5 each of the following:

6 (A) The natural environment and ecology.

7 (B) Public health and safety.

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

9 (D) Water and air quality and wildlife.

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

13 (n) A schedule for submittal of all of the following  
14 postconstruction documentation:

15 (i) Any changes in, or additions to, the previously submitted  
16 disclosure information, or a certification that the disclosure  
17 listings previously submitted continue to be correct, following  
18 completion of construction of the treatment, storage, or disposal  
19 facility.

20 (ii) A certification under the seal of a licensed  
21 professional engineer verifying that the construction of the  
22 treatment, storage, or disposal facility has proceeded according  
23 to the plans approved by the department and, if applicable, the  
24 approved construction permit, including as-built plans.

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

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

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

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

11 (5) ~~The application for an operating license for a proposed~~  
12 ~~limited storage facility, which~~ **A LIMITED STORAGE FACILITY** is  
13 subject to the requirements pertaining to storage facilities. ~~7~~  
14 **THE APPLICATION FOR AN OPERATING LICENSE FOR A PROPOSED LIMITED**  
15 **STORAGE FACILITY** shall be submitted on a form provided by the  
16 department and contain all of the following:

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

18 (b) The location of the proposed facility.

19 (c) A determination of existing hydrogeological  
20 characteristics specified in a hydrogeological report and  
21 monitoring program consistent with rules promulgated under this  
22 part.

23 (d) An environmental assessment. The environmental  
24 assessment shall include, at a minimum, an evaluation of the  
25 proposed facility's impact on the air, water, and other natural  
26 resources of this state, and also shall contain an environmental  
27 failure mode assessment.

1 (e) The procedures for closure.

2 (f) An engineering plan.

3 (g) Proof of financial responsibility.

4 (h) A resolution or other formal determination of the

5 governing body of each municipality in which the proposed limited

6 storage facility would be located indicating that the limited

7 storage facility is compatible with the zoning ordinance of that

8 municipality, if any. However, in the absence of a resolution or

9 other formal determination, the application shall include a copy

10 of a registered letter sent to the municipality at least 60 days

11 before the application submittal, indicating the intent to

12 construct a limited storage facility, and requesting a formal

13 determination on whether the proposed facility is compatible with

14 the zoning ordinance of that municipality, if any, in effect on

15 the date the letter is received, and indicating that failure to

16 pass a resolution or make a formal determination within 60 days

17 of receipt of the letter means that the proposed facility is to

18 be considered compatible with any applicable zoning ordinance.

19 If, within 60 days of receiving a registered letter, a

20 municipality does not make a formal determination concerning

21 whether a proposed limited storage facility is compatible with a

22 zoning ordinance of that municipality as in effect on the date

23 the letter is received, the limited storage facility is

24 considered compatible with any zoning ordinance of that

25 municipality, and incompatibility with a zoning ordinance of that

26 municipality ~~shall not be a basis for denial of the license by~~

27 ~~the department.~~ **IS NOT GROUNDS FOR THE DEPARTMENT TO DENY THE**



1 **LICENSE.**

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

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

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

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

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

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

17 (d) Proof of financial responsibility. An applicant for an  
18 operating license for a treatment, storage, or disposal facility  
19 that is a surface impoundment, landfill, or land treatment  
20 facility shall demonstrate financial responsibility for claims  
21 arising from nonsudden and accidental occurrences relating to the  
22 operation of the facility that cause injury to persons or  
23 property.

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

26 (7) The department shall establish a schedule for requiring  
27 each person subject to subsection (8) to submit an operating

1 license application. The department may adjust this schedule as  
2 necessary. Each person subject to subsection (8) shall submit a  
3 complete operating license application within 180 days of the  
4 date requested to do so by the department.

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

14 (a) A complete operating license application is submitted  
15 within 180 days of the date requested by the department under  
16 subsection (7).

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

19 (c) The person qualifies for interim status as defined in  
20 the solid waste disposal act, is in compliance with interim  
21 status standards established by federal regulation under subtitle  
22 C of the solid waste disposal act, 42 USC 6921 to 6939e, and has  
23 not had interim status terminated.

24 (9) A person may request to be placed on a department-  
25 organized mailing list to be kept informed of any rules, plans,  
26 operating license applications, contested case hearings, public  
27 hearings, or other information or procedures relating to the

- 1 administration of this part. The department may charge a fee to
- 2 cover the cost of the materials.