

HOUSE BILL No. 4311

February 23, 1989, Introduced by Reps. Griffin, Hoffman, Mathieu, Sikkema, Martin, Gire, Kosteva, Gilmer, Ostling, Bartnik, Niederstadt, Porreca, Brown, DeLange, Krause, Bandstra and Maynard and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend sections 5 and 11 of Act No. 641 of the Public Acts of 1978, entitled "Solid waste management act," as amended by Act No. 209 of the Public Acts of 1987, being sections 299.405 and 299.411 of the Michigan Compiled Laws; and to add section 32a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5 and 11 of Act No. 641 of the Public
2 Acts of 1978, as amended by Act No. 209 of the Public Acts of
3 1987, being sections 299.405 and 299.411 of the Michigan Compiled
4 Laws, are amended and section 32a is added to read as follows:

5 Sec. 5. (1) "Health officer" means a full-time administra-
6 tive officer of a certified city, county, or district department
7 of health.

1 (2) "Inert material" means a substance that will not
2 decompose, dissolve, or in any other way form a contaminated
3 leachate upon contact with water, or other liquids determined by
4 the director as likely to be found at the disposal area, perco-
5 lating through the substance.

6 (3) "MUNICIPAL SOLID WASTE INCINERATOR" MEANS AN INCINERATOR
7 THAT IS OWNED OR OPERATED BY ANY PERSON, AND MEETS BOTH OF THE
8 FOLLOWING REQUIREMENTS:

9 (A) THE INCINERATOR RECEIVES SOLID WASTE FROM OFF SITE AND
10 BURNS ONLY HOUSEHOLD WASTE FROM SINGLE AND MULTIPLE DWELLINGS,
11 HOTELS, MOTELS, AND OTHER RESIDENTIAL SOURCES, OR THIS HOUSEHOLD
12 WASTE TOGETHER WITH SOLID WASTE FROM COMMERCIAL, INSTITUTIONAL,
13 MUNICIPAL, COUNTY, OR INDUSTRIAL SOURCES THAT, IF DISPOSED OF,
14 WOULD NOT BE REQUIRED TO BE PLACED IN A DISPOSAL FACILITY
15 LICENSED UNDER THE HAZARDOUS WASTE MANAGEMENT ACT, ACT NO. 64 OF
16 THE PUBLIC ACTS OF 1979, BEING SECTIONS 299.501 TO 299.551 OF THE
17 MICHIGAN COMPILED LAWS.

18 (B) THE INCINERATOR HAS ESTABLISHED CONTRACTUAL REQUIREMENTS
19 OR OTHER NOTIFICATION OR INSPECTION PROCEDURES SUFFICIENT TO
20 ASSURE THAT THE INCINERATOR RECEIVES AND BURNS ONLY WASTE
21 REFERRED TO IN SUBDIVISION (A).

22 (4) "MUNICIPAL SOLID WASTE INCINERATOR ASH" MEANS THE SUB-
23 STANCES REMAINING AFTER COMBUSTION IN A MUNICIPAL SOLID WASTE
24 INCINERATOR.

25 (5) ~~-(3)-~~ "Municipality" means a city, township, or
26 village.

1 (6) ~~(4)~~ "Person" means an individual; sole proprietorship;
2 partnership; association; corporation, public or private,
3 organized or existing under the laws of this state or any other
4 state, including a federal corporation; this state or an agency
5 or department of this state; a municipality in this state; or a
6 county in this state.

7 Sec. 11. (1) Before the submission of a construction permit
8 application for a new disposal area, the applicant shall request
9 a health officer or the director to provide an advisory analysis
10 of the proposed disposal area. However, the applicant, not less
11 than 15 days after the request, and notwithstanding an analysis
12 result, may file an application for a construction permit.

13 (2) Upon receipt of a construction permit application, the
14 director or an authorized representative of the director shall:

15 (a) Immediately notify the clerk of the municipality in
16 which the disposal area is located or proposed to be located, the
17 local soil erosion and sedimentation control agency, each divi-
18 sion within the department that has responsibilities in land,
19 air, or water management, and the designated regional solid waste
20 management planning agency.

21 (b) Publish a notice in a newspaper having major circulation
22 in the vicinity of the proposed disposal area. The required pub-
23 lished notice shall contain a map indicating the location of the
24 proposed disposal area and shall contain a description of the
25 proposed disposal area and the location where the complete appli-
26 cation package may be reviewed and where copies may be obtained.

1 (c) Indicate in the public, departmental, and municipality
2 notice that the department shall hold a public hearing in the
3 area of the proposed disposal area if a written request is sub-
4 mitted by the applicant or a municipality within 30 days after
5 the date of publication of the notice, or by a petition submitted
6 to the department containing a number of signatures which is
7 equal to not less than 10% of the number of registered voters of
8 the municipality where the proposed disposal area is to be
9 located who voted in the last gubernatorial election. The peti-
10 tion shall be validated by the clerk of the municipality. The
11 public hearing shall be held after the director makes a prelimi-
12 nary review of the application and all pertinent data and before
13 a construction permit is issued or denied.

14 (d) Review the plans of the proposed disposal area to deter-
15 mine if it complies with this act and the rules promulgated under
16 this act. The review shall be made by persons qualified in
17 hydrogeology and sanitary landfill engineering. A written
18 approval by the persons qualified in hydrogeology and sanitary
19 landfill engineering shall be received before a construction
20 permit is issued. If the site review, plan review, and the
21 application meet the requirements of this act and the rules
22 promulgated under this act, the director shall issue a construc-
23 tion permit which may contain a stipulation specifically applica-
24 ble to the site and operation. ~~AN~~ EXCEPT AS OTHERWISE PROVIDED
25 IN SECTION 32A(9), AN expansion of the area of a disposal area,
26 an enlargement in capacity of a disposal area, or an alteration
27 of a disposal area to a different type of disposal area than had

1 been specified in the previous construction permit application
2 shall constitute a new proposal for which a new construction
3 permit is required. The upgrading of a disposal area type
4 required by the director to comply with this act or the rules
5 promulgated under this act or to comply with a consent order
6 shall not require a new construction permit.

7 (e) Notify the Michigan aeronautics commission if the dis-
8 posal area is a sanitary landfill proposed to be located within
9 10,000 feet of a runway or a proposed runway extension contained
10 in a plan approved by the Michigan aeronautics commission of an
11 airport licensed and regulated by the Michigan aeronautics
12 commission. The director shall make a copy of the application
13 available to the Michigan aeronautics commission. If, after a
14 period of time for review and comment not to exceed 60 days, the
15 Michigan aeronautics commission informs the director that it
16 finds that operation of the proposed disposal area would present
17 a potential hazard to air navigation and presents the basis for
18 its findings, the director may either recommend appropriate
19 changes in the location, construction, or operation of the pro-
20 posed disposal area or deny the application for a construction
21 permit. The director shall give an applicant an opportunity to
22 rebut a finding of the Michigan aeronautics commission that the
23 operation of a proposed disposal area would present a potential
24 hazard to air navigation.

25 SEC. 32A. (1) FOLLOWING THE EFFECTIVE DATE OF THIS SECTION,
26 THE GENERATION, TRANSPORTATION, TREATMENT, STORAGE, DISPOSAL,
27 REUSE, AND RECYCLING OF MUNICIPAL SOLID WASTE INCINERATOR ASH

1 SHALL BE REGULATED UNDER THIS ACT AND SHALL NOT BE REGULATED
2 UNDER THE HAZARDOUS WASTE MANAGEMENT ACT, ACT NO. 64 OF THE
3 PUBLIC ACTS OF 1979, BEING SECTIONS 299.501 TO 299.551 OF THE
4 MICHIGAN COMPILED LAWS.

5 (2) EXCEPT AS PROVIDED IN SUBSECTION (6), MUNICIPAL SOLID
6 WASTE INCINERATOR ASH SHALL BE DISPOSED OF IN 1 OF THE
7 FOLLOWING:

8 (A) A DISPOSAL AREA THAT MEETS THE FOLLOWING REQUIREMENTS:

9 (i) THE DISPOSAL AREA IS IN COMPLIANCE WITH THIS ACT AND THE
10 RULES PROMULGATED UNDER THIS ACT.

11 (ii) THE DISPOSAL AREA IS USED EXCLUSIVELY FOR THE DISPOSAL
12 OF MUNICIPAL SOLID WASTE INCINERATOR ASH.

13 (iii) THE DISPOSAL AREA HAS GROUNDWATER MONITORING AND A
14 LEACHATE COLLECTION SYSTEM. THE LEACHATE SHALL BE MONITORED AND
15 TESTED IN ACCORDANCE WITH THIS ACT AND THE RULES PROMULGATED
16 UNDER THIS ACT.

17 (iv) THE DISPOSAL AREA HAS EITHER A SINGLE COMPOSITE LINER,
18 OR A SINGLE LINER THAT IS AT LEAST 30 MILS THICK, AND AT LEAST 10
19 FEET OF CLAY WITH A HYDRAULIC CONDUCTIVITY OF NO MORE THAN 1×10^{-7}
20 CENTIMETERS PER SECOND BELOW THE LINER.

21 (B) A DISPOSAL AREA THAT MEETS ALL OF THE FOLLOWING
22 REQUIREMENTS:

23 (i) THE DISPOSAL AREA IS IN COMPLIANCE WITH THIS ACT AND THE
24 RULES PROMULGATED UNDER THIS ACT.

25 (ii) THE DISPOSAL AREA HAS GROUNDWATER MONITORING AND LEACH-
26 ATE COLLECTION SYSTEMS ABOVE AND BETWEEN THE LINERS. THE

1 LEACHATE SHALL BE MONITORED AND TESTED IN ACCORDANCE WITH THIS
2 ACT AND THE RULES PROMULGATED UNDER THIS ACT.

3 (iii) THE DISPOSAL AREA HAS 2 COMPOSITE LINERS.

4 (C) IN A DISPOSAL AREA UTILIZING AN ALTERNATIVE DESIGN IN
5 COMPLIANCE WITH SUBSECTION (4).

6 (3) AS USED IN SUBSECTION (2), "COMPOSITE LINER" MEANS A
7 LINER THAT CONSISTS OF 1 OR MORE FLEXIBLE MEMBRANE LINERS AND
8 COMPACTED CLAY OR OTHER MATERIAL WITH AN OVERALL HYDRAULIC CON-
9 DUCTIVITY OF NO MORE THAN 1×10^{-7} CENTIMETERS PER SECOND.

10 (4) THE DESIGN REQUIREMENTS OF SUBSECTION (2)(A) AND (B)
11 SHALL NOT APPLY IF THE OWNER OR OPERATOR OF A DISPOSAL AREA UTI-
12 LIZING AN ALTERNATIVE DESIGN DEMONSTRATES TO THE DIRECTOR, AND
13 THE DIRECTOR FINDS, THAT THE ALTERNATIVE DESIGN AND OPERATING
14 PRACTICES, TOGETHER WITH LOCATION CHARACTERISTICS, WILL PREVENT
15 THE MIGRATION OF ANY HAZARDOUS CONSTITUENT INTO THE GROUNDWATER
16 OR SURFACE WATER AT LEAST AS EFFECTIVELY AS THE DESIGN REQUIRE-
17 MENTS OF SUBSECTION (2)(A) AND (B).

18 (5) MUNICIPAL SOLID WASTE INCINERATOR ASH MAY BE LAWFULLY
19 STORED IN A DISPOSAL AREA THAT IS A SANITARY LANDFILL LICENSED
20 UNDER THIS ACT, AND THAT IS CREATED AS A RESULT OF VERTICAL
21 EXPANSION OF AN EXISTING SANITARY LANDFILL UNTIL 18 MONTHS AFTER
22 THE EFFECTIVE DATE OF THIS SECTION OR UNTIL THE EFFECTIVE DATE OF
23 RULES PROMULGATED UNDER THIS SECTION, WHICHEVER IS LATER.
24 HOWEVER, 18 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, OR
25 UNTIL THE EFFECTIVE DATE OF RULES PROMULGATED UNDER THIS SECTION,
26 WHICHEVER IS LATER, MUNICIPAL SOLID WASTE INCINERATOR ASH MAY NOT
27 BE STORED IN A SANITARY LANDFILL THAT IS CREATED AS A RESULT OF

1 VERTICAL EXPANSION OF AN EXISTING SANITARY LANDFILL UNLESS THE
2 PERSON PROPOSING THE STORAGE DEMONSTRATES, AND THE DIRECTOR
3 FINDS, THAT THERE WILL BE NO SETTLING OF THE WASTE UPON WHICH THE
4 PROPOSED DISPOSAL AREA IS BUILT THAT WOULD IMPAIR THE INTEGRITY
5 OF ANY LINER SYSTEM REQUIRED BY THIS ACT OR THE RULES PROMULGATED
6 UNDER THIS ACT.

7 (6) AS AN ALTERNATIVE TO DISPOSAL DESCRIBED IN
8 SUBSECTION (2), THE OWNER OR OPERATOR OF A MUNICIPAL SOLID WASTE
9 INCINERATOR MAY PROCESS MUNICIPAL SOLID WASTE INCINERATOR ASH
10 THROUGH MECHANICAL OR CHEMICAL METHODS, OR BOTH, TO LIMIT THE
11 LEACHABILITY OF CONSTITUENTS IF PROCESSING IS PERFORMED ON THE
12 SITE OF THE MUNICIPAL SOLID WASTE INCINERATOR; THE PROCESS HAS
13 BEEN APPROVED BY THE DIRECTOR; AND THE ASH IS TESTED AFTER PRO-
14 CESSING IN ACCORDANCE WITH A PROTOCOL APPROVED BY THE DIRECTOR.
15 IF MUNICIPAL SOLID WASTE INCINERATOR ASH IS PROCESSED IN ACCORD-
16 ANCE WITH THE REQUIREMENTS OF THIS SUBSECTION AND THE PROCESSED
17 ASH SATISFIES THE TESTING PROTOCOL APPROVED BY THE DIRECTOR, THE
18 ASH MAY BE DISPOSED OF IN A TYPE II LANDFILL LICENSED UNDER THIS
19 ACT. IF MUNICIPAL SOLID WASTE INCINERATOR ASH IS PROCESSED AS
20 PROVIDED IN THIS SUBSECTION, BUT DOES NOT SATISFY THE TESTING
21 PROTOCOL APPROVED BY THE DIRECTOR, THE ASH SHALL BE DISPOSED OF
22 IN ACCORDANCE WITH SUBSECTION (2).

23 (7) NOT LATER THAN 24 MONTHS AFTER THE EFFECTIVE DATE OF
24 THIS SECTION, THE DIRECTOR SHALL SUBMIT TO THE JOINT COMMITTEE ON
25 ADMINISTRATIVE RULES, RULES THAT ARE CONSISTENT WITH THIS SECTION
26 REGARDING ALL OF THE FOLLOWING:

1 (A) THE MANAGEMENT OF MUNICIPAL SOLID WASTE INCINERATOR ASH,
2 AS MAY BE NECESSARY TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT,
3 TAKING INTO ACCOUNT THE POTENTIAL ADVERSE EFFECTS ON HUMAN HEALTH
4 AND THE ENVIRONMENT.

5 (B) REQUIRING THE OWNER OR OPERATOR OF MUNICIPAL SOLID WASTE
6 INCINERATORS TO PREPARE AN ASH MANAGEMENT PLAN THAT INCLUDES A
7 REASONABLE DEMONSTRATION OF ADEQUATE CAPACITY TO RECYCLE, REUSE,
8 OR DISPOSE OF THE ASH PRODUCED BY THE INCINERATOR IN COMPLIANCE
9 WITH THE REQUIREMENTS OF THIS SECTION. FOR A NEW OR MODIFIED
10 MUNICIPAL SOLID WASTE INCINERATOR, THE PLAN SHALL DEMONSTRATE
11 ADEQUATE CAPACITY FOR THE 5-YEAR PERIOD FOLLOWING THE EFFECTIVE
12 DATE THE OF RULES PROMULGATED UNDER THIS SECTION OR THE DATE THE
13 INCINERATOR COMMENCES OPERATION, WHICHEVER IS LATER. AS USED IN
14 THIS SUBDIVISION, "MODIFIED" MEANS A PHYSICAL CHANGE IN, OR
15 CHANGE IN THE METHOD OF OPERATION OF, A MUNICIPAL SOLID WASTE
16 INCINERATOR THAT INCREASES THE AMOUNT OF ASH PRODUCED BY THE
17 INCINERATOR.

18 (C) THE REUSE AND RECYCLING OF MUNICIPAL SOLID WASTE INCIN-
19 ERATOR ASH AS MAY BE NECESSARY TO PROTECT HUMAN HEALTH AND THE
20 ENVIRONMENT. THE RULES SHALL INCLUDE CRITERIA AND TESTING PROCE-
21 DURES THAT MAY BE NECESSARY TO PROTECT HUMAN HEALTH AND THE ENVI-
22 RONMENT FROM RECYCLING OR REUSE OF MUNICIPAL SOLID WASTE INCINER-
23 ATOR ASH. IN DEVELOPING THE RULES, THE DIRECTOR SHALL CONSIDER
24 ALL POTENTIAL PATHWAYS OF HUMAN AND ENVIRONMENTAL EXPOSURE,
25 INCLUDING BOTH SHORT-TERM AND LONG-TERM PATHWAYS, TO HAZARDOUS
26 CONSTITUENTS OF THE ASH FROM RECYCLING OR REUSE. THE PATHWAYS TO
27 BE CONSIDERED SHALL INCLUDE, BUT NOT BE LIMITED TO, INHALATION,

1 INGESTION AS A CONSEQUENCE OF INCORPORATION OF THE ASH OR ANY
2 HAZARDOUS CONSTITUENT INTO THE FOOD CHAIN, INGESTION OF POTABLE
3 WATER OR AQUATIC ORGANISMS CONTAMINATED BY SURFACE RUNOFF, LEACH-
4 ING, OR PERCOLATION OF THE ASH OR ITS HAZARDOUS CONSTITUENTS INTO
5 GROUNDWATER OR SURFACE WATER, INGESTION OR INHALATION OF SOIL
6 PARTICLES CONTAMINATED WITH THE ASH, AND DERMAL CONTACT WITH THE
7 ASH. AT A MINIMUM THE DIRECTOR SHALL CONSIDER, WITH RESPECT TO
8 SUCH RECYCLING AND REUSE, APPROPRIATE METHODS TO DETERMINE LEACH-
9 ING, TOTAL CHEMICAL ANALYSIS, RESPIRABILITY, AND TOXICITY. THE
10 RULES SHALL SPECIFY LEVELS AND METHODS OF TREATMENT THAT ARE NEC-
11 ESSARY TO ACCOMPLISH ALL OF THE FOLLOWING:

12 (i) SUBSTANTIALLY REDUCE THE LIKELIHOOD OF MIGRATION OF ASH
13 OR ITS HAZARDOUS CONSTITUENTS SO THAT SHORT-TERM AND LONG-TERM
14 THREATS TO HUMAN HEALTH AND THE ENVIRONMENT ARE MINIMIZED.

15 (ii) SATISFY ANY CRITERIA AND TESTING PROCEDURES INCLUDED IN
16 THE RULES UNDER THIS SUBDIVISION.

17 (iii) ASSURE THAT THE RECYCLING OR REUSE OF THE ASH IS PRO-
18 TECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT.

19 (8) PRIOR TO AND AFTER THE EFFECTIVE DATE OF THE RULES
20 REQUIRED UNDER THIS SECTION, THE DISPOSAL OF MUNICIPAL SOLID
21 WASTE INCINERATOR ASH SHALL BE PERMITTED IN ACCORDANCE WITH SUB-
22 SECTIONS (1) TO (6), (9), AND (10).

23 (9) THE DISPOSAL OF MUNICIPAL SOLID WASTE INCINERATOR ASH
24 WITHIN A DISPOSAL AREA THAT IS IN COMPLIANCE WITH SUBSECTION (2)
25 SHALL NOT CONSTITUTE A NEW PROPOSAL FOR WHICH A NEW CONSTRUCTION
26 PERMIT IS REQUIRED UNDER SECTION 10, IF A CONSTRUCTION PERMIT HAS
27 PREVIOUSLY BEEN ISSUED UNDER SECTION 10 FOR THE DISPOSAL AREA.

1 (10) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR
2 ANY RULES PROMULGATED UNDER THIS SECTION, THE DISPOSAL OF MUNICI-
3 PAL SOLID WASTE INCINERATOR ASH MAY CONTINUE IN A SANITARY LAND-
4 FILL THAT IS USED EXCLUSIVELY FOR THE DISPOSAL OF MUNICIPAL SOLID
5 WASTE INCINERATOR ASH IF THE SANITARY LANDFILL MEETS ALL OF THE
6 FOLLOWING REQUIREMENTS:

7 (A) WAS LICENSED UNDER FORMER ACT NO. 87 OF THE PUBLIC ACTS
8 OF 1965.

9 (B) WAS LICENSED UNDER THIS ACT PRIOR TO THE EFFECTIVE DATE
10 OF THIS SECTION.

11 (C) IS OWNED AND OPERATED BY AN AUTHORITY CREATED UNDER
12 FORMER ACT NO. 179 OF THE PUBLIC ACTS OF 1947.

13 Section 2. This amendatory act shall not take effect unless
14 Senate Bill No. _____ or House Bill No. 4304 (request
15 no. 01829'89) of the 85th Legislature is enacted into law.