

Part 115 Update

*West Michigan Chapter of the Air and Waste
Management Association Technical Session*

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The Five Priorities

Update solid waste law to focus on reuse rather than disposal

Inform and engage residents on the importance of recycling

Establish funding model to ensure success

Grow markets in Michigan for recycled materials

Increase recycling in state facilities

Where it all started...



Both reports can be found at www.Michigan.gov/swra

Summary of the Report Outcomes

Gap 6

Michigan needs policies that support both the supply and demand side of the recycling/circular economy. Policies must foster a robust and sustainable materials management system that ensures a strong supply chain even during harsh downturns in commodity value. These policies must support economies of scale, market density, and uniformity that make for strong, sustainable, end market driven recycling systems.

Recommendations

6.1 The MDEQ should work with MEDC to develop and adopt a strategy to target key gaps in Michigan's recycling supply and demand system and bridge those gaps through public private partnerships.

Estimated Cost: \$50,000 annually

Estimated Timeframe: Immediate

6.2 The DEQ should evaluate strategies and consider proposing development and adoption of approaches for managing and recycling hard-to-recycle materials (to include batteries, latex paint, e-scrap, mattresses, tires, pharmaceuticals, etc.), such as producer responsibility mechanisms that engage those relevant industry stakeholders with the task of developing, funding, and executing comprehensive and effective sustainable materials management solutions. The MDEQ should evaluate and consider proposing amending the current Electronics Take Back Law to put more requirements on manufacturers to increase the percent of material recycled and better define what is convenient in terms of take back. Note that while Michigan has a very successful Scrap Tire Program that has effectively addressed large scrap tire piles and ongoing generation of scrap tires in the state, there continues to be concern about markets for scrap tires and dumping in many urban and rural areas. A producer responsibility approach for scrap tires would need to be carefully considered and layered onto the existing Scrap Tire Program to maintain and enhance program effectiveness.

Estimated Cost: \$200,000 one time

Estimated Timeframe: Short-term

Gap 7

There is a lack of policies and practices that encourage state agencies to lead by example and use or purchase recycled content materials. State agencies can be a critical initial demonstration of commitment that can seed development of stronger market connections and higher volumes to grow large enough for buyers that have strong drivers for recycled content.

Recommendations

7.1 The MDEQ, through its Recycling Markets Initiative partners, should encourage adoption of policies, technical assistance tools, and incentives that drive demand for recycled materials including engaging government, institutions, and businesses in initiatives to incorporate recycled materials in existing products and to expand production of new recycled content products.

Estimated Cost: Existing Staff Resources plus 4.1

Estimated Timeframe: medium term

Michigan's Scrap Tire Program, including its funding mechanism, demonstrates the impact that is possible with pro-active intervention in state level partnerships with a specific industry. Michigan went from 31 million passenger tire equivalents (PTEs) in piles around the state in 1991 to an estimated 360,000 PTEs at the end of 2015. This is a result of our Cleanup Grant Program and compliance and enforcement efforts under the Scrap Tire Program. And in 2016 alone, nine rubber modified asphalt paving projects were funded at \$2.9 million under the Scrap Tire Market Development Grant Program made possible via the funding mechanism that makes the Scrap Tire Program work.

Authorizations

The management of solid waste must be authorized under Part 115. Current provisions include: construction permits and operating licenses for the transfer, processing, and disposal of solid waste; registrations; and exemptions, with or without written approval and conditions. The authorization provisions under Part 115 should be amended to support the solid waste policy, clarify and improve requirements, and eliminate unnecessary regulations, as follows:

- **P10:** A general permit concept should be established for certain materials management activities. This should include minimal location, design, construction, and operating standards.
- **P11:** A Type II landfill should be allowed to solidify industrial waste sludges onsite in containment and not require a separate construction permit and operating license for processing, if the activity is described in the operations plan.
- **P12:** Part 115 should contemplate and allow for research, demonstration, and development of new and innovative technologies or practices (e.g. pyrolysis, gasification, plasma arc, landfill reclamation, processing reclaimed materials, organics management). This may require special provisions in solid waste management plans and minimum standards for protection of public health and the environment to enable the DEQ to authorize these projects through permits, licenses, or other mechanisms.
- **P13:** The exemption that landfills have from needing a separate construction permit and operating license for processing when removing recyclable materials should also be extended to licensed (and generally permitted) transfer facilities, if they have the activity described in their operations plan.

As part of its review of the current permit system, the SWSAP agreed that opportunities for public input, beginning with the solid waste management plan, are fine. The SWSAP also agreed that the application processes and permit and license durations are fine. Still, the SWSAP recommends the DEQ evaluate the dual permitting system of a construction permit and operating license to determine whether a single permit system would add administrative efficiencies and maintain the protections under the current system. When making the permit system more amenable to other research, demonstration, and development projects, the SWSAP agreed that the current provisions under MCL 324.11511b enabling the DEQ to order a failing bioreactor project to cease would also apply to any other types of projects.

The SWSAP agreed that the 10 percent disposal threshold is not a barrier to establishing materials recovery facilities (MRFs). An MRF is not currently required to have a construction permit and operating license if more than 10 percent of the material processed for recycling is not disposed. Otherwise, it would also have to be recognized in the solid waste management plan. Current MRFs generally either work within that threshold or have been able to pursue siting or amendment of solid waste management plan and obtain the construction permit and operating license. The proposal to allow transfer facilities to remove recyclable materials without requiring a separate construction permit and operating license diminishes the significance of the 10 percent threshold as well.



A hauler unloading at an active landfill.

Part 115 MATERIALS MANAGEMENT FACILITY UNIVERSE

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graph TD; A[Part 115 MATERIALS MANAGEMENT FACILITY UNIVERSE] --> B[Solid Waste Disposal Area]; A --> C[Materials Utilization Facility]; A --> D[Waste Diversion Center]; B --> B1[Sanitary Landfill]; B --> B2[Processing and Transfer Facility]; B --> B3[Incinerator]; C --> C1[Materials Recovery Facility]; C --> C2[Compost Facility]; C --> C3[Anaerobic Digester]; C --> C4[Innovative Technology or Practice Facility]; D --> D1[Hazardous Material]; D --> D2[Liquid Waste]; D --> D3[Pharmaceuticals]; D --> D4[Electronics]; D --> D5[Batteries]; D --> D6[Light Bulbs]; D --> D7[Pesticides]; D --> D8[Devices with Mercury]; D --> D9[Sharps]; D --> D10[Other approved wastes];
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Solid Waste Disposal Area

- Sanitary Landfill
- Processing and Transfer Facility
- Incinerator

Materials Utilization Facility

- Materials Recovery Facility
- Compost Facility
- Anaerobic Digester
- Innovative Technology or Practice Facility

Waste Diversion Center

- Hazardous Material
- Liquid Waste
- Pharmaceuticals
- Electronics
- Batteries
- Light Bulbs
- Pesticides
- Devices with Mercury
- Sharps
- Other approved wastes

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Benefits of the Proposed Changes to Individuals

- Expansion of recycling options in communities
- An increase in job opportunities and a stronger local economy
- Increased regulatory oversight of materials management facilities to decrease nuisance conditions and risks

Benefits of the Proposed Changes to Local Governments

- Elimination of regulatory requirements to manage the import and export of waste
- Reduced county-level effort to ensure disposal capacity and siting of landfills
- Fewer local resources needed to manage materials management facilities
- Increased tools to establish recycling collection systems and coordination with the private sector
- Valuable materials will continue to be utilized and circulated in the local economies

Benefits of the Proposed Changes to Businesses

- Additional options for, and focus on managing waste as a resource
- Increased ability to meet zero landfill goals
- More recycled and previously utilized materials available within Michigan, with a cost savings over raw materials
- Broader disposal options, when needed, due to the elimination of the import/export provisions on landfilled waste
- More level playing field for businesses interested in investing in materials utilization facilities, equipment and technology

The Process to Update the Statute...

(iii) Within 1,400 feet outside the boundary of a city or village.

(7) Subsections (5) and (6) do not authorize open burning that is prohibited by a local ordinance.

(8) A congressionally chartered patriotic organization that disposes of an unserviceable flag of the United States by burning that flag is not subject to regulation or penalty for violating a state law or local ordinance pertaining to open burning of materials or substances.

History: 1994, Act 451, Eff. Mar. 30, 1995; Am. 2012, Act 102, Imd. Eff. Apr. 19, 2012.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11523 Financial assurance; cash bond; interest; reduction in bond; termination; noncompliance with closure and postclosure monitoring and maintenance requirements; expiration or cancellation notice; effect of bankruptcy action; perpetual care fund; alternate financial assurance.

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 ~~CLOSED PRIOR TO (date is tied to enactment of the changes – recommend 2 years but not more than 5 years after enactment)~~ or a preexisting unit at a type II landfill ~~and until OR A TYPE II LANDFILL CLOSED PRIOR TO~~ 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 ~~OR TYPE III~~ landfill that 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 that is an existing unit or new unit shall demonstrate financial assurance in accordance with section 11523a. ~~TYPE III LANDFILLS SHALL PROVIDE FINANCIAL ASSURANCE IN ACCORDANCE WITH SECTION 11523A AS PART OF THE APPLICATION FOR A LICENSE SUBMITTED AFTER DATE, AND COMPLY WITH THE REQUIREMENTS OF SECTION 11523A NO LATER THAN DATE. (we want to phase in the financial assurance increases over time. This language attempts to indicate that while they need to continue to apply for a license renewal on their same schedule, the updated financial requirement should be in place no sooner than 2 years after enactment and not later than 5 years)~~

(c) Financial assurance established for a ~~LICENSED~~ solid waste ~~PROCESSING AND~~ transfer facility, incinerator, ~~OR WASTE UTILIZATION FACILITY NEEDING A GENERAL PERMIT 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% of the construction cost of the facility, but shall not be less than \$4,000.00 OF \$20,000.00~~ and shall be continued in effect for a period of 2 years after the disposal area is closed.

~~(2) THE DEPARTMENT SHALL NOT ISSUE A GENERAL PERMIT TIER 1 OR TIER 2 FOR ANY MATERIALS MANAGEMENT FACILITY UNTIL THE APPLICANT HAS FILED, AS A PART OF THE APPLICATION FOR THE GENERAL PERMIT, EVIDENCE OF ADEQUATE FINANCIAL ASSURANCE.~~

~~(A) FINANCIAL ASSURANCE ESTABLISHED FOR A MATERIALS RECOVERY FACILITY, ANAEROBIC DIGESTER, OR GASIFICATION/PYROLYSIS FACILITY THAT REQUIRES A GENERAL PERMIT TIER 1 SHALL BE CONTINUED IN EFFECT FOR A PERIOD OF 2 YEARS AFTER THE FACILITY HAS CEASED ACCEPTING MATERIAL, REMOVED ALL MANAGED MATERIAL FROM THE SITE, AND HAD CLOSURE CERTIFIED BY THE DEPARTMENT.~~

~~(B) FINANCIAL ASSURANCE ESTABLISHED FOR A COMPOST FACILITY GENERAL PERMIT TIER 1 SHALL BE CONTINUED IN EFFECT FOR A PERIOD OF 2 YEARS AFTER THE FACILITY HAS CEASED ACCEPTING COMPOSTABLE MATERIALS, HAS REMOVED ANY FINISHED OR PARTIALLY FINISHED COMPOST FROM THE FACILITY, AND HAS HAD CLOSURE CERTIFIED BY THE DEPARTMENT.~~

~~(D) FINANCIAL ASSURANCE ESTABLISHED FOR A COMPOST FACILITY GENERAL PERMIT TIER 2 SHALL BE \$20,000. IN ADDITION TO THIS AMOUNT OF FINANCIAL ASSURANCE, \$5 PER CUBIC YARD OF COMPOSTABLE MATERIAL THAT DOES NOT CONSTITUTE FINISHED COMPOST THAT REMAINS ON SITE AFTER SEPTEMBER 30 OF EACH YEAR SHALL BE PROVIDED. THE~~

Changes to the “Traditional” Solid Waste Program

- Processing Plants and Transfer Facilities are combined under one permit and license umbrella to better reflect current solid waste management realities
- Updated post-closure section, including functional stability evaluations and the introduction of a custodial care concept
- Financial Assurance requirements were updated to better reflect the true cost of closing a facility
- The county planning process has been simplified
 - Solid waste import/export restrictions have been eliminated
 - In many cases, compliance with local zoning requirements will be the main siting criteria for a facility

Materials Utilization Facilities Updated or Brought Under Part 115

- Composting
- Anaerobic Digesters
- Materials Recovery Facilities
- Innovative Technologies or Practices for Waste Utilization

Authorization Levels – Notification

- All Waste Diversion Centers
- Smaller Material Recovery Facilities, Compost Facilities and Anaerobic Digesters
- Requires an annual notification on a form and format designated by the Department

Requirements for Facilities that Notify

- Comply with local zoning
- Do not create nuisance conditions
- Comply with water quality standards
- Report on a yearly basis the amount of material managed at the site

Authorization Levels – Registration

- Mid-sized Material Recovery Facilities, Compost Sites and some Anaerobic Digesters
- Submission of a Registration Form every 5 years on a form and format provided by the Department
- Submission of certain materials management data annually on a form and format provided by the Department
- Application fee of \$750.00

Requirements for Facilities that Register

- Comply with local zoning
- Do not create nuisance conditions
- Comply with water quality standards
- Report on a yearly basis the amount of material managed at the site
- Participate in an annual inspection by the DEQ

Authorization Levels – General Permit

- Large Material Recovery Facilities, Compost Sites
- Anaerobic Digesters that accept off site, source separated materials
- Innovative Technologies or Practices
- Submission of a Permit Application every 5 years on a form and format provided by the Department, Financial Assurance requirements, annual inspection by the DEQ
- Submission of certain materials management data annually on a form and format provided by the Department
- Application fee of \$2,500.00

Requirements for Facilities that need a General Permit

- Must meet local zoning or be consistent with the County Materials Management Plan
- Must develop and submit plans for review and approval that may include:
 - Operations plan
 - Site Plan
 - Marketing plan
 - Training plan

Materials Management Planning

- Broadened to address managed materials versus solid waste
- Regional approaches are encouraged
- No longer have import/export authorizations
- Local zoning is the “siting process” for most facilities
- Updated siting process
- No new “greenfield” landfills or incinerators unless a need is shown by the County.

Funding Considerations

- Grants to Counties or other Planning Entities to fund the development and management of Materials Management Plans (\$5 Million)
- Competitive grants for Outreach and Education for citizens and communities to encourage increased recycling and to reduce material contamination (\$8 Million)
- Aid for Market Development to attract businesses using recycled materials and to better support business-to-business recycled materials exchanges (\$2 Million)
- Additional technical assistance from the DEQ to address a re-invigorated planning process and to manage the additional facilities that will be regulated

For Further Information

Information about the Solid Waste and Sustainability Advisory Panel (SWSAP) and Governor's Recycling Council (GRC) Reports and current membership list for the DEQ's Solid Waste and Recycling Advisors (SWRA) can be found at:

www.michigan.gov/swra

