

SOLID WASTE IMPORTATION

Senate Bill 4 (Substitute H-3) First Analysis (2-17-98)

Sponsor: Senator Loren Bennett
House Committee: Conservation,
Environment and Recreation
Senate Committee: Natural Resources
And Environmental Affairs

THE APPARENT PROBLEM:

Michigan's Solid Waste Management Act was enacted in 1978, and was recodified in 1994 as Part 115 of the Natural Resources and Environmental Protection Act [NREPA]). The act required that each county estimate the amount of solid waste that would be generated in the county in the next 20 years and prepare a 20-year management plan that addressed its waste disposal needs and capacity, and that complied with state health standards. Amendments adopted in 1988 generally prohibit a person from disposing of waste in a county where the waste was not generated, unless that county's solid waste management plan authorizes its acceptance. These amendments were the subject of litigation that was resolved by the U.S. Supreme Court in *Fort Gratiot Sanitary Landfill, Inc. v Michigan Department of Natural Resources*, 504 US 353; 112 S Ct 2019 119 L.Ed.2d 139 (1992). The court held that the 1988 "...Waste Import Restrictions unambiguously discriminate against interstate commerce and are appropriately characterized as protectionist measures that cannot withstand scrutiny under the Commerce Clause".

Although a county may not constitutionally refuse to accept solid waste simply because it was generated outside of Michigan, the "Waste Import Restrictions" remain in the statute, and the Michigan Court of Appeals held in 1995 that the invalid application of those amendments can be severed from the remainder of the act (*Citizens for Logical Alternatives and Responsible Environment v Clare County Board of Commissioners*, 211 Mich App 494). Despite the U.S. Supreme Court ruling, many people believe that Michigan should be able to limit the importation of out-of-state waste, at least to the extent permitted by federal law. It has been suggested that statutory language to this effect would set the stage for state regulation in the event of Congressional action, and could bring the issue to the attention of federal legislators.

THE CONTENT OF THE BILL:

The bill would amend Part 115 of the Natural Resources and Environmental Protection Act (NREPA), which regulates solid waste management practices, to restrict the importation of out-of-state solid waste when the U.S. Congress enacts legislation authorizing the states to regulate its transportation and disposal. In addition, the bill would prohibit solid waste haulers and disposal areas from hauling or accepting solid waste that was generated outside of Michigan unless the waste came from a state or country whose solid waste disposal regulatory system was as stringent as Michigan's, and would require a person disposing of the waste to provide certification to a landfill owner or operator that it did not contain materials whose disposal was prohibited under the provisions of the act. The bill would also establish a penalty for making a false representation in a certification, and would provide for the disposition of civil fines that were collected for violations of Part 115.

Certification. Under the bill, a landfill owner or operator could not accept solid waste or municipal solid waste incinerator ash unless the person disposing of the waste certified, prior to the disposal, that it did not contain materials or substances whose disposal was prohibited under the NREPA. Further, a person disposing of the waste would have to provide certification, on a form provided by the Department of Environmental Quality (DEQ), to a landfill owner or operator that it did not contain materials whose disposal was prohibited under the provisions of the act. The certification provided to the landfill owner or operator would then have to be forwarded to the DEQ.

List of Allowable States or Countries. The bill would require that the DEQ compile a list of those states or countries whose solid waste disposal regulatory systems were at least as stringent and protective of the public health, safety, and welfare, and the environment, as

Michigan's, in terms of what waste was allowed in its waste stream. Solid waste and municipal solid waste incinerator ash would be accepted from a state or country on the DEQ list, and a person disposing of such waste would not have to provide certification. If a country or state wished to be included on the list, it could supply the DEQ with supporting documentation that included copies of pertinent statutes and rules. The department would be required to provide a copy of the list to each person licensed to operate a disposal area or municipal solid waste incinerator in Michigan.

Penalties. A person who made a false representation in a certification would be guilty of a misdemeanor, punishable by a fine of up to \$50,000, imprisonment for up to one year, or both.

Disposition of Civil Fines. The bill would specify that all civil fines collected for violations of Part 115 of the NREPA would be deposited as follows:

- 75 percent in the general fund, to be used by the DEQ to enforce the provisions of Part 115 of the act.
- 25 percent in the general fund to be used for volunteer river, stream, and creek cleanup programs, and distributed on a statewide basis to volunteer organization through a simplified application process that provided up to \$5,000 to organizations that contributed a 50 percent match. Priority would be given to existing volunteer organizations and targeted to those watersheds with documented pollution problems.

Limitations. The prohibitions established under the bill would not apply unless the U.S. Congress enacted legislation allowing each state to regulate the transportation and disposal of solid waste, and would apply only to the extent and in a fashion authorized by federal law. Also, if any provisions of the bill or Part 115 were for any reason held to be invalid or unconstitutional, that holding would not affect the validity of the remaining provisions.

MCL 324.11514a et al.

BACKGROUND INFORMATION:

The sections of the Natural Resources and Environmental Protection Act that contain the 1988 waste import restrictions are as follows:

Sec. 11513. A person shall not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the

county is explicitly authorized in the approved county solid waste management plan . . .

Sec. 11515 . . . (6) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county . . .

FISCAL IMPLICATIONS:

According to the House Fiscal Agency (HFA), the bill would result in an indeterminate loss of revenues to the state, since, under the bill, twenty-five percent of the civil fines collected for violations of solid waste management regulations would be distributed to volunteer organizations for stream, river, and creek cleanup projects. (2-13-98)

ARGUMENTS:

For:

In Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources, 504 US 353, 112 S Ct 2019, 119 L.Ed.2d 139 (1992), the U.S. Supreme Court held that Michigan law concerning the "acceptance of waste or ash generated outside the county of disposal area" discriminated against interstate commerce." However, in his opinion, Judge Stevens wrote, "Of course, our conclusion would be different if the imported waste raised health or other concerns not presented by Michigan waste." Many people believe that Michigan's imported waste does raise these concerns. In the 1995-96 fiscal year, Michigan landfills accepted 42.4 million cubic yards of solid waste, which included 5.7 million cubic yards of out-of-state waste, according to figures of the Department of Environmental Quality (DEQ). (Statistics for the 1996-97 fiscal year are not yet available). Moreover, although Michigan law restricts the disposal of materials that might pollute groundwater, as noted in written testimony presented to the House committee by the Michigan Environmental Council, approximately 2.5 million cubic yards of the out-of-state waste originated in Illinois, Indiana, and Ohio -- states that do not ban motor oil from landfill disposal. And, as indicated by the DEQ in testimony before the committee, there is concern that potentially dangerous materials, such as batteries and solvents, are entering Michigan in shipments from Canada right now. Furthermore, the amount imported from Canada has unquestionably increased since the Metro Toronto council awarded a multimillion dollar contract to Browning-Ferris Industries (BFI) to haul the region's garbage to the Arbor Hills landfill in Washtenaw County, according to an article in the *Lansing State Journal* (2-24-97)

For:

Although at present Michigan cannot regulate or prohibit the disposal in Michigan of out-of-state waste, the bill would enable the state to refuse out-of-state waste at the borders if Congress acted to permit the interstate regulation of waste transfers. While the bill would apply only to the extent allowed by federal law, in the meantime it would place specific prohibitions on the books and could bring the issue to the attention of federal decision-makers.

Response:

Michigan's solid waste management act specifies that counties serve as the primary planning units for managing solid waste. However, by enacting an outright ban on the disposal in Michigan of out-of-state waste (to the extent authorized by federal law), the bill could undermine the ability of individual counties to accept out-of-state waste. This prohibition runs counter to provisions in current law that allow county plans to permit imported waste. An alternative version of Senate Bill 4, which was considered, but not adopted by the House committee, would have specified, instead, that a solid waste disposal area could not accept out-of-state waste unless its disposal was authorized in a host community agreement (HCA) between a municipality and the owner or operator of the disposal area. Adoption of this amendment would assure that counties retain control of solid waste management planning.

Against:

Controlling the flow of out-of-state waste into local communities could jeopardize the future of many privately-owned landfills. Although some of these facilities could rely on locally generated waste, others would not remain profitable enough to justify the large capital costs and potential long-term liability involved in operating a landfill. For residents and businesses in Michigan, decreased competition would mean higher disposal fees, which would lead to greater manufacturing costs and consumer prices. As private landfill operators left the scene, local and county governments would have to step in and provide necessary solid waste disposal and recycling services. This in turn could lead to increased governmental involvement, higher taxes, and the taxpayers' assumption of the long-term liability. Furthermore, the proposed controls are largely unnecessary. To address community concerns, more and more landfill operators reportedly are voluntarily developing mutually beneficial host community agreements that provide the community with attractive financial benefits and give the local government a stronger voice in issues like traffic, odor, noise, pests, and operating hours.

POSITIONS:

The Michigan United Conservation Clubs (MUCC) supports the bill. (2-12-98)

The Michigan Environmental Council (MEC) supports the bill. (2-11-98)

The Michigan Townships Association supports the bill. (2-12-98)

The Ecology Center of Ann Arbor, a regional environmental organization with 5,000 members in Southeast Michigan, supports the bill.

NO WASTE of Michigan (Network of Waste Activists Stopping Trash Exports), an educational environmental organization whose focus is on lobbying against the importation of out-of-state waste and on promoting recycling, supports the bill. (2-12-98)

The Michigan Association of Counties (MAC) supports the concept of Senate Bill 4. (2-12-98)

The Michigan Waste Industries Association (MWIA) opposes the bill. (2-12-98)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.