

Act No. 44
Public Acts of 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senators Gilbert, Patterson and Birkholz

ENROLLED SENATE BILL No. 715

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 11533 and 11538 (MCL 324.11533 and 324.11538).

The People of the State of Michigan enact:

Sec. 11533. (1) Each solid waste management plan shall include an enforceable program and process to assure that the nonhazardous solid waste generated or to be generated in the planning area for a period of 10 years or more is collected and recovered, processed, or disposed of at disposal areas that comply with state law and rules promulgated by the department governing location, design, and operation of the disposal areas. Each solid waste management plan may include an enforceable program and process to assure that only items authorized for disposal in a disposal area under this part and the rules promulgated under this part are disposed of in the disposal area.

(2) An initial solid waste management plan shall be prepared and approved under this section and shall be submitted to the director not later than January 5, 1984. Following submittal of the initial plan, the solid waste management plan shall be reviewed and updated every 5 years. An updated solid waste management plan and an amendment to a solid waste management plan shall be prepared and approved as provided in this section and sections 11534, 11535, 11536, 11537, and 11537a. The solid waste management plan shall encompass all municipalities within the county. The solid waste management plan shall at a minimum comply with the requirements of sections 11537a and 11538. The solid waste management plan shall take into consideration solid waste management plans in contiguous counties and existing local approved solid waste management plans as they relate to the county's needs. At a minimum, a county preparing a solid waste management plan shall consult with the regional planning agency from the beginning to the completion of the plan.

(3) Not later than July 1, 1981, each county shall file with the department and with each municipality within the county on a form provided by the department, a notice of intent, indicating the county's intent to prepare a solid waste management plan or to upgrade an existing solid waste management plan. The notice shall identify the designated agency which shall be responsible for preparing the solid waste management plan.

(4) If the county fails to file a notice of intent with the department within the prescribed time, the department immediately shall notify each municipality within the county and shall request those municipalities to prepare a solid waste management plan for the county and shall convene a meeting to discuss the plan preparation. Within 4 months

following notification by the department, the municipalities shall decide by a majority vote of the municipalities in the county whether or not to file a notice of intent to prepare the solid waste management plan. Each municipality in the county shall have 1 vote. If a majority does not agree, then a notice of intent shall not be filed. The notice shall identify the designated agency which is responsible for preparing the solid waste management plan.

(5) If the municipalities fail to file a notice of intent to prepare a solid waste management plan with the department within the prescribed time, the department shall request the appropriate regional solid waste management planning agency to prepare the solid waste management plan. The regional solid waste management planning agency shall respond within 90 days after the date of the request.

(6) If the regional solid waste management planning agency declines to prepare a solid waste management plan, the department shall prepare a solid waste management plan for the county and that plan shall be final.

(7) A solid waste management planning agency, upon request of the department, shall submit a progress report in preparing its solid waste management plan.

Sec. 11538. (1) Not later than September 11, 1979, the director shall promulgate rules for the development, form, and submission of initial solid waste management plans. The rules shall require all of the following:

(a) The establishment of goals and objectives for prevention of adverse effects on the public health and on the environment resulting from improper solid waste collection, processing, or disposal including protection of surface and groundwater quality, air quality, and the land.

(b) An evaluation of waste problems by type and volume, including residential and commercial solid waste, hazardous waste, industrial sludges, pretreatment residues, municipal sewage sludge, air pollution control residue, and other wastes from industrial or municipal sources.

(c) An evaluation and selection of technically and economically feasible solid waste management options, which may include sanitary landfill, resource recovery systems, resource conservation, or a combination of options.

(d) An inventory and description of all existing facilities where solid waste is being treated, processed, or disposed of, including a summary of the deficiencies, if any, of the facilities in meeting current solid waste management needs.

(e) The encouragement and documentation as part of the solid waste management plan, of all opportunities for participation and involvement of the public, all affected agencies and parties, and the private sector.

(f) That the solid waste management plan contain enforceable mechanisms for implementing the plan, including identification of the municipalities within the county responsible for the enforcement and may contain a mechanism for the county and those municipalities to assist the department and the state police in implementing and conducting the inspection program established in section 11526(2) and (3). This subdivision does not preclude the private sector's participation in providing solid waste management services consistent with the solid waste management plan for the county.

(g) Current and projected population densities of each county and identification of population centers and centers of solid waste generation, including industrial wastes.

(h) That the solid waste management plan area has, and will have during the plan period, access to a sufficient amount of available and suitable land, accessible to transportation media, to accommodate the development and operation of solid waste disposal areas, or resource recovery facilities provided for in the plan.

(i) That the solid waste disposal areas or resource recovery facilities provided for in the solid waste management plan are capable of being developed and operated in compliance with state law and rules of the department pertaining to protection of the public health and the environment, considering the available land in the plan area, and the technical feasibility of, and economic costs associated with, the facilities.

(j) A timetable or schedule for implementing the solid waste management plan.

(2) Each solid waste management plan shall identify specific sites for solid waste disposal areas for a 5-year period after approval of a plan or plan update. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed by the planning entity. In addition, if the solid waste management plan does not also identify specific sites for solid waste disposal areas for the remaining portion of the entire planning period required by this part after approval of a plan or plan update, the solid waste management plan shall include an interim siting mechanism and an annual certification process as described in subsections (3) and (4). In calculating the capacity of identified disposal areas to determine if disposal needs are met for the entire required planning period, full achievement of the solid waste management plan's volume reduction goals may be assumed by the planning entity if the plan identifies a detailed programmatic approach to achieving these goals. If a siting mechanism is not included, and disposal capacity falls to less than 5 years of capacity, a county shall amend the solid waste management plan for that county to resolve the shortfall.

(3) An interim siting mechanism shall include both a process and a set of minimum siting criteria, both of which are not subject to interpretation or discretionary acts by the planning entity, and which if met by an applicant submitting a disposal area proposal, will guarantee a finding of consistency with the plan. The interim siting mechanism shall be operative upon the call of the board of commissioners or shall automatically be operative whenever the annual certification process shows that available disposal capacity will provide for less than 66 months of disposal needs. In the latter event, applications for a finding of consistency from the proposers of disposal area capacity will be received by the planning agency commencing on January 1 following completion of the annual certification process. Once operative, an interim siting mechanism will remain operative for at least 90 days or until more than 66 months of disposal capacity is once again available, either by the approval of a request for consistency or by the adoption of a new annual certification process which concludes that more than 66 months of disposal capacity is available.

(4) An annual certification process shall be concluded by June 30 of each year, commencing on the first June 30 which is more than 12 months after the department's approval of the solid waste management plan or plan update. The certification process will examine the remaining disposal area capacity available for solid wastes generated within the planning area. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed. The annual certification of disposal capacity shall be approved by the board of commissioners. Failure to approve an annual certification by June 30 is equivalent to a finding that less than a sufficient amount of capacity is available and the interim siting mechanism will then be operative on the first day of the following January. As part of the department's responsibility to act on construction permit applications, the department has final decision authority to approve or disapprove capacity certifications and to determine consistency of a proposed disposal area with the solid waste management plan.

(5) A board of commissioners may adopt a new certification of disposal capacity at any time. A new certification of disposal capacity shall supersede all previous certifications, and become effective 30 days after adoption by the board of commissioners and remain in effect until subsequent certifications are adopted.

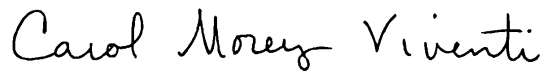
(6) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county. With regard to intercounty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

(7) A person shall not dispose of, store, or transport solid waste in this state unless the person complies with the requirements of this part.

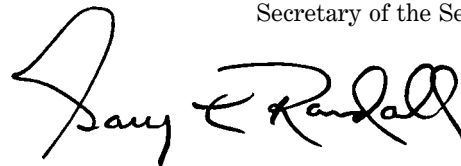
(8) An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute, which prohibits or regulates the location or development of a solid waste disposal area, and which is not part of or not consistent with the approved solid waste management plan for the county, shall be considered in conflict with this part and shall not be enforceable.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 499 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor