

ANNUAL LANDFILL REPORTS AND SOLID WASTE MANAGEMENT PLANS

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House Bill 4486

Sponsor: Rep. Kate Ebli

Committee: Great Lakes and Environment

Complete to 3-28-07

A SUMMARY OF HOUSE BILL 4486 AS INTRODUCED 3-20-07

The bill would amend Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act (NREPA) to do the following things:

- Require an annual report from landfill owners or operators and counties regarding landfill capacity.
- Require counties to update solid waste plans every five years, and stagger the due dates of updates so approximately 20 percent of the plans would be updated each year.
- Revise procedures for the development and adoption of county solid waste management plans.

More detail is provided below.

Annual reports by landfill owners and operators.

Section 11507a of NREPA requires a landfill owner or operator to submit an annual report to the DEQ, the county, and the municipality in which the landfill is located. Among other things, the report must disclose the amount of solid waste received by the landfill during the previous year broken down by county, state, or country of origin, where possible. Under the bill, the annual report would also have to include:

- The "landfill disposal capacity" (defined in House Bill 4485 to which the bill is tie-barred).
- The "remaining landfill disposal capacity" (defined in House Bill 4485).
- The "guaranteed landfill disposal capacity" allocated annually to each county for which the landfill owner or operator expects to serve (defined in House Bill 4485).
- A balance sheet showing that the total capacity guaranteed to counties being served by the landfill does not exceed the landfill's disposal capacity.

The report would be due 30 days (instead of 45) after the end of the state fiscal year. The DEQ would still be obligated to summarize the information contained in these reports and submit a report to the legislature by January 31 of each year.

Annual reports by counties.

The bill would add a new requirement that every county submit an annual report to the DEQ, on a form provided by the DEQ, by February 28 of each year. The report would have to include both:

- Estimated "excess landfill disposal capacity" in the county (defined in House Bill 4485)
- Documentation of the county's "guaranteed landfill disposal capacity" (defined in House Bill 4485).

Eliminate provision concerning counties with sufficient disposal capacity.

The bill would delete Section 11526a(2) under which a county that has sufficient disposal capacity for its needs within 150 miles: (1) is not required to identify a site for a new landfill in its solid waste management plan; (2) does not have to have an operative interim siting mechanism; and (3) the DEQ is not required to issue a construction permit for a new landfill in that county.

County solid waste management plans.

- Under Section 11533, each Michigan county would be required to have a solid waste management plan.
- Plans would have to comply with both Section 11538 and the rules promulgated under the section by the DEQ.
- In general, the entire territory of a county would be included in the planning area of a single solid waste management plan.
- Two or more counties could create a single solid waste management plan if the planning entities for those counties agreed to the joint exercise of their powers and performance of their duties.
- If the regional solid waste management planning agency or the DEQ is responsible for preparing the plan for two or more counties, the regional agency or the DEQ could determine that those counties must be included in a single solid waste management plan.
- A municipality located in two counties could request that the entire municipality be included in the planning area of only one of the counties and excluded from the other county's planning area. Likewise, a municipality that borders a municipality in another county may request to be included in the planning area of the solid waste management plan for the neighboring county. A request to be included in a different county's plan would have to be approved by the board of commissioners of both affected counties. If a county board failed to approve a request within 90 days, the municipality could appeal to the DEQ. The DEQ's decision would be due within 45 days and would be final.

Procedures for amending solid waste management plans.

- Changes to a solid waste management plan could only be made two ways: (1) a comprehensive plan update or (2) a plan amendment.
- A comprehensive plan update would have to be adopted through the procedure set forth in this section and Sections 11534 to 11437.

- A plan update would have to be adopted through the same procedure with the following exceptions: (1) A plan amendment could be adopted at any time; and (2) a plan amendment would have to be initiated by the planning entity.

Scheduled updates for county solid waste plans.

- Each solid waste plan would have to be reviewed and updated on a five-year cycle. Plans would be staggered so approximately 20 percent of the plans would be updated each year.
- At least 120 days before initiating the update process, the director of the DEQ would submit a proposed schedule to each designated planning agency and to the county board of commissioners for each county. The schedule would specify when each county's solid waste management plan would be due during the five-year cycle and would be open for comments for 60 days. The DEQ would have to provide planning agencies and counties with the final schedule at least 45 days before initiating the update process. Proposed and final schedules would have to be posted on the DEQ website.

Initiation of plan update process and assignment of responsibility for plan preparation.

- The DEQ director would initiate the update process for a county by notifying it in writing that it is required to prepare a solid waste management plan.
- Within 30 days of receiving an update notification, the county could file with the DEQ (and with each municipality within the county) a notice that the county intends to assume overall responsibility for preparation of the plan. The notice of intent would have to designate the agency responsible for preparing the solid waste management plan.
- If a county did not file a timely notice of intent to assume responsibility for preparation of the plan, the DEQ would (1) notify each municipality within the county that the county had not assumed responsibility for the plan, (2) request that the municipalities prepare the plan, and (3) convene a meeting to discuss preparation of the plan.
- Within four months of the DEQ's notice, the municipalities would have to decide (by majority vote) if they were willing to file a notice of intent to assume overall responsibility for preparation of the solid waste management plan.
- If the municipalities did not file a timely notice of intent, the DEQ would request the regional solid waste management planning agency for the region in which the county is located to be responsible for preparing the plan. The regional planning agency would have 90 days to respond to this request.
- If the regional solid waste management planning agency declines to prepare the plan, the DEQ would prepare the solid waste management plan for the county and that plan would be final.
- A designated planning agency would be obligated to submit progress reports on preparation of the plan when requested by the DEQ.

Appointment and composition of planning committees. A planning committee would be appointed by the county executive (in the case of a charter county with an elected

executive), the board of commissioners (for all other counties), or the municipalities, depending on which level of government has assumed responsibility for the plan.

Committees for areas with a population of 100,000 or more would have 14 members:

- Solid waste management industry (4 representatives)
- Environmental groups (2 representatives)
- County government (1 representative)
- City government (1 representative)
- Township government (1 representative)
- Regional solid waste management planning agency (1 representative)
- Industrial waste generators (1 representative)
- General public (3 representatives)

Duties of planning committees. The planning committee would assist the designated planning agency. If the appointment of a planning committee is required, the plan would not take effect unless it had been approved by a majority of the members of the planning committee.

Duties of planning agencies. Among other things, a designated planning agency preparing a plan would have to:

- Solicit the advice of and consult periodically with: (1) the county; (2) the municipalities, appropriate organizations, and the private sector in the county, as provided in administrative rules; (3) the regional solid waste management planning agency (if that agency is not itself preparing the plan); and (4) adjacent counties and municipalities that may be significantly affected by the plan.
- Prepare the plan with the advice, consultation and assistance of the planning committee, if one has been appointed.

Local plan approval procedures.

- If the county is preparing the plan, it would have to conduct at least one public hearing.
- If municipalities are preparing the plan, those municipalities that voted in favor of filing a notice of intent to prepare the plan would have to jointly conduct at least one public hearing on the plan.
- Either a county or group of municipalities would have to take formal action on the plan within 190 days after the completion of public hearings but only after the plan has been approved by the planning committee. If a plan is rejected by the county board of commissioners or by a majority of the municipalities that voted in favor of filing a notice of intent to prepare the plan, it would be returned to the planning committee along with a written statement of objections to the plan. The planning committee would have to review the objections and return the plan with recommendations.
- Within 10 days after a plan is approved by a county, group of municipalities, or regional solid waste management planning agency, the designated planning agency would be required to submit the plan to the governing bodies of all the

municipalities within the county. Each governing body would have 120 days to approve or disapprove the plan.

- A governing body rejecting a plan would have to state in writing the specific reasons for its disapproval.
- A plan would have to be approved by the governing bodies of at least 67 percent of the municipalities within each respective county that voted within the 120-day period.
- If the governing bodies of at least 67 percent of the municipalities that timely voted have not approved a plan, the DEQ would approve a plan for the county, including those municipalities that disapproved the plan. The DEQ's plan would be final.

DEQ plan approval procedures.

Once a county plan is approved through the process described above, the designated planning agency would submit it to the DEQ.

- The DEQ would have to approve or disapprove the plan within 6 months.
- The DEQ could not approve a plan that does not meet the requirements of Part 115 and rules promulgated under Part 115.
- The DEQ could approve a plan with modifications to bring it into compliance with Part 115 and its rules.
- If the DEQ returns the plan to the designated planning agency for clarification or for agreement with the modifications, the 6-month approval process could be extended for up to 6 more months, at the request of the designated planning agency.

Administrative rules pertaining to solid waste plans.

Under Section 11538(b) the DEQ is authorized to promulgate rules pertaining to solid waste management plans and is directed to require certain features in every plan.

- Under Section 11538(1)(b), every plan contains 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. The bill would allow a planning entity to make some assumptions about the volume of various kinds of wastes to be disposed of: *full achievement of volume reduction goals could be assumed if the plan identifies a detailed approach to enforce and achieve these goals through solid waste diversion programs.*
- Under Section 11538(1)(c), every plan must contain an evaluation and selection of technically and economically feasible solid waste management options. The bill would amend this section to include "sanitary landfills, incinerators, solid waste diversion, or a combination thereof" among the possible options for evaluation.
- Under Section 11538(1)(d), every plan must contain an inventory and description of all existing facilities for the treatment, processing, or disposal of waste and a

description of the deficiencies of these facilities, if any. This section would be amended to require an inventory and description of "solid waste disposal facilities, solid waste diversion facilities, and specific solid waste diversion programs." The plan would have to evaluate the deficiencies, if any, of these facilities or programs in meeting the county's waste management needs.

Identification of disposal sites or use of interim siting mechanisms.

The bill would eliminate current Section 11538(2) which:

- Requires every plan to identify disposal sites for the five years after approval of a plan or a plan update.
- Restricts allowable assumptions about waste reduction through efforts such as composting, recycling, and incineration to levels that can be currently demonstrated or that can be reasonably expected to be achieved through current programs.
- Requires an interim siting mechanism and an annual certification process for the planning period if the plan does not identify specific sites for solid waste disposal areas.

Proposed Section 11538(2) would do the following:

- *For the first five years after approval of the plan*, the plan would have to identify specific landfills with sufficient guaranteed landfill disposal capacity for solid waste to be generated during that period (to the extent that landfills are used to meet the 10-year waste management requirement under Section 11533).
- *For the second five years*, the plan would either (1) identify specific landfills with sufficient guaranteed landfill disposal capacity, or (2) include an interim siting mechanism and annual certification process.

Prevention of duplicate counting of the same capacity and securing excessive landfill capacity.

Each plan would be required to include information and documentation demonstrating the county's guaranteed landfill disposal capacity to preclude duplicate counting of the same capacity by more than one planning entity. On the other hand, a planning entity may not have agreements with landfills that provide guaranteed landfill disposal capacity in a cumulative amount that is more than 125 percent of the capacity needed to meet the 10-year waste management requirement.

Plans without interim siting mechanisms.

If an interim siting mechanism is not included in the plan, then a disposal area would have to be specifically identified to be consistent with the plan. In addition, if there is no interim siting mechanism, and guaranteed landfill disposal capacity falls to less than that required for five years of the county's landfill disposal needs, the shortfall would have to be addressed by amending the plan to: (1) identify specific landfills with sufficient guaranteed landfill disposal capacity, (2) increase solid waste diversion, or (3) adopt an interim siting mechanism.

Plans with interim siting mechanisms.

If an interim siting mechanism is included in the plan, it would be required to identify any authorized disposal area types that may be sited utilizing the interim siting mechanism, among other things. The mechanism would be operative upon the call of the county board of commissioners or whenever the county's guaranteed landfill disposal capacity dipped to less than 66 months of its needs in which case the siting mechanism would become operative. The planning entity would then receive applications for a finding of consistency from persons proposing new landfill disposal capacity. Once operative, the siting mechanism would remain operative for at least 90 days or until at least 66 months worth of landfill disposal capacity is secured through approving an application of a request for consistency or by adoption of a new annual certification process showing that the guaranteed landfill disposal capacity in place would provide for at least 66 months of the county's disposal needs.

Annual certification of guaranteed landfill disposal capacity.

Counties are required to conclude an annual certification process by June 30 of each year. The bill would require that the certification process examine the guaranteed landfill disposal capacity for solid wastes generated within the planning area. Failure of a county board of commissioners to approve an annual certification by June 30, would be deemed a finding that guaranteed landfill disposal capacity is not sufficient, in which case the interim siting mechanism would become operative..

A county board of commissioners may adopt a new certification at any time. A new certification supersedes all previous certifications, takes effect 30 days after adoption, and remains in effect until a subsequent certification is adopted.

Requirements for a landfill to be considered "consistent with the plan." A plan would be required to specify the name, the solid waste boundary, the landfill disposal capacity, and the remaining landfill disposal capacity that each landfill, or expansion thereof, in the county would have for that landfill to be considered consistent with the plan (as is required for a construction permit). If the "remaining landfill disposal capacity" conflicts with the "landfill disposal capacity," the "remaining landfill disposal capacity" would be relied on for a determination of consistency with the plan.

Transfer facilities not needing permits or licenses must be consistent with plan.

The location or development of a solid waste transfer facility that is exempt from needing a construction permit or operating license under Section 11529, would still have to be "consistent with the plan" and could be regulated by an ordinance, rule, or regulation of a municipality, county, or governmental authority if the ordinance or rule is included in and consistent with the county's plan.

Standard format for solid waste management plans.

The DEQ would prepare a standard format for the submittal of waste management plans and provide a copy to each designated planning agency that it knows will be preparing a plan, and to any other person upon request. The standard format would no longer be required to be submitted to the legislature for a 30 day review and comment period.

FISCAL IMPACT:

The fee adjustments made through these tie-barred bills (House Bills 4485 and 4486) may affect the amount of revenue realized by the state and paid by local governments, but no significant increase or decrease in state or local revenue is expected. There would be no need to increase staff or department spending to meet administrative requirements, and local payments would not be significantly changed.

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■ 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.