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BILL ANALYSIS

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Senate Bill 513 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Alan Sanborn
Committee: Natural Resources and Environmental Affairs

Date Completed: 7-5-07

RATIONALE

Current law encourages composting by prohibiting the disposal of yard clippings in Michigan landfills. While composting, or biological decomposition, occurs naturally, waste from human activity, such as food residuals and yard trimmings, can be composted in a variety of settings ranging from residential backyard compost piles to large-scale commercial and municipal operations. The growth of the compost industry has been accompanied by some people who fraudulently present themselves to the public as legitimate composting facilities and, for a fee, accept yard waste on property designated for agricultural use. Rather than using proper composting processes, they merely stockpile the yard clippings and allow them to decompose on their own. In such large quantities, the decomposing yard clippings can pose contamination problems and result in unpleasant odors. These clippings can create a nuisance for nearby residents and have a negative effect on their property values. Some people are concerned that existing law does not give State agencies sufficient authority to take action against rogue composters in a timely fashion. To address these concerns, it has been suggested that the law should prescribe the conditions under which composting may be conducted.

CONTENT

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

- **Establish regulations pertaining to the management of yard clippings.**
- **Prescribe criteria for a site to qualify as a composting facility, including a requirement that the site owner or operator register with the Department of Environmental Quality (DEQ) and pay a \$600 triennial registration fee.**
- **Allow the temporary accumulation of yard clippings at a site not designed for composting under certain circumstances.**
- **Allow the composting of yard clippings on a farm if done in accordance with generally accepted agricultural and management practices, under certain circumstances.**
- **Permit yard clippings composed of invasive species to be disposed of in a landfill or incinerator.**

Management of Yard Clippings

Under the bill, yard clippings would have to be managed by one of the following means:

- Composted on the property where the clippings were generated.
- Temporarily accumulated, as described in the bill.
- Composted at a site containing a maximum of 25 cubic yards of yard clippings, if decomposition occurred without creating a nuisance.
- Composted on a farm, as described in the bill.
- Composted at a site that qualified as a composting facility, as described in the bill.

- Decomposed in a controlled manner using a closed container to create and maintain anaerobic conditions, if in compliance with Part 55 (Air Pollution Control) and otherwise approved by the DEQ Director.
- Composted and used as part of normal operations by a municipal solid waste landfill if the composting and use took place on property described in the landfill construction permit, were described in and consistent with the landfill operation plans, and were otherwise in compliance with the Act.
- Processed at a processing plant in accordance with Part 115 and the rules promulgated under it.
- Disposed of in a landfill or incinerator, but only if the yard clippings were diseased or infested, or were composed of invasive plants, such as garlic mustard, purple loosestrife, or spotted knapweed, that were collected through an eradication control program, included not more than a de minimis amount of other yard clippings, and were inappropriate to compost.

A person temporarily could accumulate yard clippings at a site not designed for composting if the accumulation did not otherwise result in a violation of the Act, and the clippings were moved to another location and managed as otherwise provided above within 90 days of being placed on the site. The site owner or operator would have to maintain records necessary to demonstrate that this requirement was met.

(Currently, "de minimis" means incidental disposal of small amounts of materials that are commingled with other solid waste. Under the bill, the term would refer to a small amount of material or number of items, as applicable, commingled and incidentally disposed of with other solid waste. "Yard clippings" means leaves, grass clippings, vegetable or other garden debris, shrubbery, or brush or tree trimmings, less than four feet in length and two inches in diameter, that can be converted to compost humus. The term does not include stumps, agricultural waste, animal waste, roots, sewage sludge, or garbage.)

Composting on a Farm

A person could compost yard clippings on a farm if the composting did not otherwise result in a violation of the Act and were done

in accordance with generally accepted agricultural and management practices under the Michigan Right to Farm Act, and if 1) only yard clippings generated on the farm were composted; 2) there were less than 5,000 cubic yards of yard clippings on the farm; or 3) there were at least 5,000 cubic yards of clippings on the farm at any time and all of the following requirements were met:

- The farm operation accepted clippings generated at a location other than the farm only to assist in management of waste material generated by the farming operation.
- The farm operation did not accept clippings generated at a location other than the farm for monetary or other valuable consideration.
- The farm owner or operator registered with the Michigan Department of Agriculture and certified that the farm operation met and would continue to meet these requirements.

("Farm" would mean that term as defined in the Michigan Right to Farm Act, i.e., the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activity, machinery, equipment, and other appurtenances used in the commercial production of farm products. "Farm operation" also would have the same definition as under the Right to Farm Act, i.e., the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products. The term includes marketing produce at roadside stands or farm markets; the generation of noise, odors, dust, fumes, and other associated conditions; and the operation of machinery and equipment necessary for a farm.)

Yard Clippings Composed of Invasive Species

Part 115 prohibits a person from knowingly delivering to a landfill or municipal solid waste incinerator for disposal, and a landfill or municipal incinerator owner or operator from knowingly permitting disposal in the landfill or incinerator of, more than a de minimis amount of yard clippings, unless they are diseased or infested.

The bill also would make an exception for yard clippings composed of invasive species, as described above.

Composting Facility Criteria

In order to qualify as a composting facility, a site owner or operator would have to register as a composting facility with the DEQ and report to the Department within 30 days after the end of each State fiscal year the amount of yard clippings composted in the previous State fiscal year. The registration and reporting would have to be done on forms provided by the Department, and the registration would have to be accompanied by a fee of \$600. The registration would be for three years. The registration fees would have to be forwarded to the State Treasurer for deposit in the solid waste staff account of the Solid Waste Management Fund.

(That Fund includes a staff account and a perpetual care account. Money may be spent from the staff account, upon appropriation, only for the following purposes:

- Preparing generally applicable guidance regarding the solid waste permit and license program or its implementation or enforcement.
- Reviewing and acting on any application for a permit or license or permit or license revision or renewal.
- Performing an advisory analysis required for the submission of a construction permit application for a new disposal area.
- General administrative costs of running the permit and license program.
- Inspection of licensed disposal areas and open dumps.
- Implementing and enforcing the conditions of any permit or license.
- Groundwater monitoring audits at licensed disposal areas.
- Reviewing and acting upon corrective action plans for licensed disposal areas.
- Review of certifications of closure.
- Postclosure maintenance and monitoring inspections and review.
- Review of bonds and financial assurance documentation of licensed disposal areas.)

Additionally, if the site began operation after the bill's effective date, the management or

storage of yard clippings, compost, and residuals would have to occur in an area that was not in the 100-year floodplain and was at least the following applicable distance from any of the following features:

- 50 feet from a property line.
- 100 feet from a body of surface water, including a lake, stream, or wetland.
- 2,000 feet from a type I or type IIA water supply well.
- 800 feet from a type IIB or type III water supply well.
- 500 feet from a church or other house of worship, school, hospital, nursing home, or licensed day care center.
- Four feet above groundwater.

(The bill would define "type I public water supply", "type IIA public water supply", "type IIB public water supply", and "type III public water supply" as they are described in R 325.10502 of the Michigan Administrative Code.)

Composting and management of the site would have to occur in a manner that met all of the following requirements:

- Did not violate the Act or create a facility as defined in Part 201 (Environmental Remediation).
- Unless approved by the DEQ, did not result in more than 5,000 cubic yards of yard clippings, compost, and residuals present on any acre of property where those materials were managed or stored.
- Resulted in finished compost with not more than 1%, by weight, of foreign matter that would remain on a four-millimeter screen.
- If yard clippings were collected in bags other than paper bags, debagged the clippings by the end of each business day.
- Prevented the pooling of water by maintaining proper slopes and grades.
- Properly managed storm water runoff.
- Did not attract or harbor rodents or other vectors.

The manner of composting and management of the site also could not result in an accumulation of yard clippings for more than three years unless the site had the capacity to compost the clippings and the site owner or operator could demonstrate, beginning in the third year of operation and then annually, that the amount of clippings and

compost that was transferred off-site in a calendar year was not less than 75% by weight or volume, accounting for natural volume reduction, of the amount of yard clippings and compost that was on-site at the beginning of the calendar year.

(Under Part 201, "facility" means any area, place, or property where a hazardous substance in excess of concentrations that satisfy the requirements established by the DEQ for residential facilities, or the cleanup criteria for unrestricted residential use under Part 213 (Leaking Underground Storage Tanks), has been released, deposited, or disposed of, or otherwise comes to be located.)

The site owner or operator would have to maintain, and make available to the DEQ, all of the following records:

- Records identifying the volume of yard clippings accepted by the facility and the volume of clippings and compost transferred off-site each month.
- Records demonstrating that conditions in each compost pile, including carbon to nitrogen ratio, temperature, and moisture content, allowed for proper composting and prevented anaerobic decomposition.

The bill specifies that a site at which yard clippings were managed in accordance with these provisions, other than a site described in Section 11521(1)(g),(h), or (i), would not be a disposal area (a solid waste transfer facility, an incinerator, a sanitary landfill, a processing plant, or other solid waste handling or disposal facility).

(Subsection (1)(g) refers to a site at which yard clippings were composted and used as part of normal operations by a municipal solid waste landfill. Subsection (1)(h) refers to clippings processed at a processing plant in accordance with Part 115 and rules promulgated under it. Subsection (1)(i) refers to clippings that were diseased, infested, or composed of invasive plants disposed of in a landfill or incinerator.)

Except with respect to subsection (1)(h) and (i), management of yard clippings in accordance with the bill would not be considered disposal for purposes of Section 11538(6). (Under that section, in order for a disposal area to serve the disposal needs of another county, State, or country, the

service must be authorized explicitly in the approved solid waste management plan of the receiving county. With regard to intercounty service within Michigan, the service also must be authorized explicitly in the solid waste management plan of the exporting county.)

Solid Waste

Under Part 115, "solid waste" does not include site separated material. Part 115 defines "site separated material" as glass, metal, wood, paper products, plastics, rubber, textiles, garbage, yard clippings, or any other material approved by the DEQ that is separated from solid waste for the purpose of conversion into raw materials or new products. The bill would delete the reference to yard clippings.

MCL 324.11503 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Composting, rather than disposal, provides numerous environmental benefits and adds economic value to what otherwise would be trash. According to the U.S. Environmental Protection Agency, compost can be used to suppress plant diseases and pests; reduce or eliminate the need for chemical fertilizers; promote higher crop yields; facilitate reforestation, wetlands restoration, and habitat revitalization efforts; remediate contaminated soil; and capture and destroy volatile organic chemicals that pollute the air.

There is no statutory framework under which their composting may be regulated, however, although disposing of yard clippings in landfills is prohibited. Some property owners simply wishing to turn a profit are stockpiling clippings inappropriately on their land and claiming protection under the Michigan Right to Farm Act when neighbors voice nuisance complaints. The Michigan Department of Agriculture, however, does not consider these operations to be of an agricultural nature subject to that Act, but sees them as commercial operations that fall within the purview of the DEQ. Without specific

regulations regarding composting practices, however, the DEQ cannot take enforcement action, either, until a property owner's actions violate air or water pollution provisions under NREPA.

The bill would establish specific criteria for commercial composting and composting on farms, and would authorize the DEQ to address illegitimate composting operations in a timely fashion, before these situations had serious adverse impacts on the environment, public safety, and the quality of life of nearby residents. By specifying conditions under which composting would not be subject to regulation, the bill would help prevent mismanagement without being overly burdensome.

Response: The bill would set a threshold of 5,000 cubic yards for the regulation of yard clippings on a farm. This amount is equivalent to 120 truckloads of yard clippings. Perhaps a lower threshold should be considered.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would require owners and operators of sites that accept yard clippings for composting to register with the Department of Environmental Quality and pay a registration fee of \$600. This registration fee would cover the facility for a term of three years. Revenue from the fee would be forwarded to the State Treasurer for deposit in the solid waste staff account of the Solid Waste Management Fund. It is unknown how many facilities would register as composting facilities. The Department of Environmental Quality and the Department of Agriculture would incur small amounts of administrative costs for establishing and maintaining registries. These costs would be paid from existing resources unless additional appropriations were provided.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.