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BILL



ANALYSIS

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Senate Bill 513 (as enacted)

**PUBLIC ACT 212 of 2007**

Sponsor: Senator Alan Sanborn

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Great Lakes and Environment

Date Completed: 1-30-09

**RATIONALE**

Michigan law encourages composting by prohibiting the disposal of yard clippings in 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. As the compost industry has grown, so have opportunities for fraud. Some people falsely 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 were concerned that the law did not give State agencies sufficient authority to take action against rogue composters in a timely fashion. To address these concerns, it was suggested that the law should prescribe the conditions under which composting could be conducted.

**CONTENT**

**The bill amended 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.

The bill took effect on March 26, 2008.

**Management of Yard Clippings**

**Management Methods.** Under the bill, yard clippings must be managed by one of the following means:

- Composted on the property where the clippings are generated.
- Temporarily accumulated, as described in the bill.
- Composted at a composting facility containing a maximum of 200 cubic yards of yard clippings, if decomposition occurs without creating a nuisance.

- Composted on a farm, as described in the bill.
- Composted at a site that qualifies as a registered 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 under Part 115.
- Composted and used as part of normal operations by a municipal solid waste landfill if the composting and use take place on property described in the landfill construction permit, are described in and consistent with the landfill operation plans, and are otherwise in compliance with the Act.
- Processed at a processing plant in accordance with Part 115 and the rules promulgated under it.

Yard clippings also may be disposed of in a landfill or incinerator, but only if they are diseased or infested, or are composed of invasive plants, such as garlic mustard, purple loosestrife, or spotted knapweed, that are collected through an eradication control program, include not more than a de minimis amount of other yard clippings, and are inappropriate to compost.

Part 115 defines "yard clippings" as 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.

The bill defines "composting facility" as a facility where composting of yard clippings or other organic materials occurs using mechanical handling techniques such as physical turning, windrowing, or aeration or using other management techniques approved by the DEQ Director.

Previously, "de minimis" meant incidental disposal of small amounts of materials that were commingled with other solid waste. Under the bill, the term refers to a small amount of material or number of items, as applicable, commingled and incidentally disposed of with other solid waste.

Temporary Accumulation. A person temporarily may accumulate yard clippings at a site not designed for composting if all of the following requirements are met:

- The accumulation does not create a nuisance or otherwise result in a violation of the Act.
- The clippings are not mixed with other compostable materials.
- Not more than 1,000 cubic yards are placed on a site unless the DEQ approves a greater volume.

In addition, clippings placed on a site on or after April 1 but before December 1 must be moved to another location and managed as provided above within 30 days of being placed on the site (although the DEQ Director may approve a longer time period based on a demonstration that additional time is necessary). Clippings placed on a site on or after December 1 but before the next April 1 must be moved to another location and managed as provided above by the next April 10 after the yard clippings are placed on the site.

The site owner or operator must maintain and make available to the DEQ records necessary to demonstrate that these requirements are met.

#### Composting on a Farm

The bill allows a person to compost yard clippings on a farm if the composting does not otherwise result in a violation of NREPA and is 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 are composted; 2) there are not more than 5,000 cubic yards of yard clippings on the farm; or 3) if there are more than 5,000 cubic yards of clippings on the farm at any time, all of the following requirements are met:

- The farm operation accepts 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 does not accept clippings generated at a location other than the farm for monetary or other valuable consideration.

- The farm owner or operator registers with the Michigan Department of Agriculture and certifies that the farm operation meets and will continue to meet these requirements.

(Under the bill "farm" means 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 has 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 prohibits 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 makes an exception for yard clippings composed of invasive species, as described above.

#### Composting Facility Criteria

Under the bill, in order to qualify as a registered composting facility, a site owner or operator must 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 and other compostable material composted in the previous State fiscal year. The registration and reporting must be done on forms provided by the Department, and the registration must be accompanied by a fee of \$600. The registration is valid for three years. The registration fees must 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 was in operation on December 1, 2007, the management or storage of yard clippings, compost, and residuals may not expand from its location on that date to an area that is within the following distances from each of the following features:

- 50 feet from a property line.
- 200 feet from a residence.
- 100 feet from a body of surface water, including a lake, stream, or wetland.

For a site beginning operation after December 1, 2007, the management or storage of yard clippings, compost, and residuals must occur in an area that is not in the 100-year floodplain and is at least the following distance from each of the following features:

- 50 feet from a property line.

- 200 feet from a residence.
- 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, hospital, nursing home, or licensed day care center, or school (other than a home school).
- 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 must occur in a manner that meets all of the following requirements:

- Does not violate NREPA or create a facility as defined in Part 201 (Environmental Remediation).
- Unless approved by the DEQ, does not result in the presence of more than 5,000 cubic yards of yard clippings and other compostable material, compost, and residuals on any acre of property at the site.
- Results in finished compost with not more than 1%, by weight, of foreign matter that will remain on a four-millimeter screen.
- If yard clippings are collected in bags other than paper bags, debags the clippings by the end of each business day.
- Prevents the pooling of water by maintaining proper slopes and grades.
- Properly manages storm water runoff.
- Does not attract or harbor rodents or other vectors.

The manner of composting and management of the site also may not result in an accumulation of yard clippings for more than three years unless the site has the capacity to compost the clippings and the site owner or operator can demonstrate, beginning in the third year of operation and then annually (unless the DEQ Director approves a longer time), that the amount of clippings and compost that is transferred off-site in a calendar year is 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 must maintain, and make available to the DEQ, all of the following records:

- Records identifying the volume of yard clippings and other compostable material accepted by the facility and the volume of clippings and other compostable material and compost transferred off-site each month.
- Records demonstrating that the composting operation is being performed in a manner that prevents nuisances and minimizes anaerobic conditions.

Unless other records are approved by the DEQ, these records must include records of carbon-to-nitrogen ratios, the amount of leaves and the amount of grass in tons or cubic yards, temperature readings, moisture content readings, and lab analysis of finished products.

#### Disposal

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

(Subsection (1)(g) refers to a site at which yard clippings are 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 are diseased, infested, or composed of invasive plants disposed of in a landfill or incinerator.)

Except with respect to subsections (1)(h) and (i), management of yard clippings in accordance with the bill is not 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. "Site separated material" means glass, metal, wood, paper products, plastics, rubber, textiles, garbage, 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. Previously, this definition also referred to yard clippings.

MCL 324.11052 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.

Michigan, however, previously had no statutory framework under which the composting of yard clippings could be regulated, although disposal in landfills was prohibited. Some property owners simply wishing to turn a profit were stockpiling clippings inappropriately on their land and claiming protection under the Michigan Right to Farm Act when neighbors lodged nuisance complaints. The Michigan Department of Agriculture, however, did not consider these

operations to be of an agricultural nature subject to that Act, but saw them as commercial operations that fell within the purview of the DEQ. Without specific regulations regarding composting practices, though, the DEQ could not take enforcement action, either, until a property owner's practices violated air or water pollution provisions under NREPA.

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

**Response:** The bill sets 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 requires 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 covers the facility for a term of three years. Revenue from the fee must be forwarded to the State Treasurer for deposit into the solid waste staff account of the Solid Waste Management Fund. It is unknown how many facilities will register as composting facilities. The Department of Environmental Quality and the Department of Agriculture will incur small amounts of administrative costs for establishing and maintaining registries. These costs will be paid from the additional revenue received by the Solid Waste Management Fund from the registration fees or paid from existing resources. Additional appropriations may be necessary to reflect the new responsibilities.

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.