

# Legislative Analysis



## PROHIBIT BURNING SOME HOUSEHOLD WASTE AND PROHIBIT DEQ FROM BANNING MORE BY RULE

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House Bill 4207 as enacted

Public Act 102 of 2012

Sponsor: Rep. Kenneth Kurtz

House Committee: Natural Resources, Tourism, and Outdoor Recreation

Senate Committee: Natural Resources, Environment, and Great Lakes

### Second Analysis (8-21-12)

**BRIEF SUMMARY:** The bill would amend Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act (NREPA) to prohibit the open burning of some household waste materials and to prevent the Department of Environmental Quality (DEQ) from promulgating rules to prohibit the open burning of materials not enumerated in the bill.

**FISCAL IMPACT:** The bill would have no significant fiscal impact on the Department of Environmental Quality. Currently, the DEQ has no rule in place that would prohibit the open burning of household waste at family dwellings and has no rule to prohibit the open burning of materials beyond those listed in House Bill 4207.

Any civil infraction fines collected on second or subsequent violations would benefit local libraries.

### THE APPARENT PROBLEM:

It is widely believed that the open burning of household trash releases dangerous compounds (arsenic, carbon monoxide, benzene, styrene, lead, etc.) into the environment that can harm the health of people exposed to the smoke. According to the Department of Environmental Quality, open burning is the burning of unwanted materials such as paper, trees, brush, leaves, grass, and other debris, where smoke and other emissions are released directly into the air without passing through a chimney or stack. It can also include incineration devices that do not control the combustion air to maintain an adequate temperature and do not provide sufficient residence time for complete combustion. Open burning pollutes the air and poses a fire hazard. The smoke and pollution that result can irritate eyes and lungs, impair visibility, create odors, and can pose a threat to individuals with respiratory conditions.

The composition of household trash has changed dramatically in the last 40 years. Now, residents throw away a more diverse range of materials including plastic, rubber, treated lumber, and materials containing other potentially hazardous substances. While it was once acceptable to openly burn most household trash, many states, including most in the Great Lakes region, have banned the practice (see [Background Information](#)). Currently, Section 11522 of NREPA prohibits the open burning of grass clippings or leaves in any

municipality having a population of 7,500 or more, unless specifically authorized by local ordinance. However, there is no prohibition against the open burning of common household wastes, including metals, diapers, plastics, and other potentially hazardous materials. The open burning of household waste releases contaminants into the air that have potential short and long term health effects. According to the DEQ, fine particulate matter created from burning can be hazardous and is not contained solely on the property where the burning takes place. As air circulates the smoke and odor resulting from the burning travels and produces numerous complaints filed with the department and with local law enforcement.

Generally speaking, Michigan air quality and solid waste regulations prohibit open burning that creates smoke or odor nuisances. Currently, however, Michigan law allows the burning of trash from a family dwelling provided it is done in an approved container located on the property, and as long as the burning does not violate air pollution rules. Local communities have the ability to enact and enforce ordinances banning the open burning of household waste. Since 1995, residents have been prohibited from the open burning of grass clippings and leaves in municipalities with a population of 7,500 or more, unless the municipality has enacted an ordinance allowing it. The open burning of trees and brush is prohibited only in portions of certain counties<sup>1</sup> and cannot take place within 1,400 feet of the boundary of an incorporated city or village. Municipalities have the ability to enact and enforce ordinances banning the open burning of brush and trees.

The DEQ had begun the process of amending the open burn regulations but have since suspended the rule package pending further review. According to its website, the department had been proposing to phase out historic exemptions that allow households to burn their trash, which may include items such as plastics, rubber, furniture, electronics, chemicals, and other materials that may release harmful emissions when burned. The proposed change would still have allowed the burning of grass clippings, leaves, trees, and yard waste in communities that have ordinances in place allowing it.

This bill would restrict what types of materials can be burned in an attempt to update the open burning rules. According to the department, these changes reflect an increased knowledge of the risks associated with burning potentially hazardous materials and the changes that have taken place in the availability of waste disposal across Michigan. Additionally, the bill would prohibit the department from promulgating rules that would prohibit the open burning of materials not mentioned in the bill.

### ***THE CONTENT OF THE BILL:***

Beginning 180 days after the effective date of the bill, individuals would be prohibited from conducting the open burning of household waste that contains plastic, rubber, foam, chemically treated wood, textiles, electronics, chemicals, or hazardous materials. Anyone in violation of this prohibition would be responsible for a state civil infraction and subject to the following penalties:

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<sup>1</sup> According to the DEQ, the burning of brush and trees is prohibited in parts of Bay, Calhoun, Delta, Genesee, Lapeer, Macomb, Manistee, Midland, Monroe, Muskegon, Saginaw, St. Clair, and Wayne counties.

- A warning for a first offense within a 3-year period.
- A maximum \$75 civil fine for a second offense within a 3-year period.
- A maximum \$150 civil fine for a third offense within a 3-year period.
- A maximum \$300 civil fine for a fourth or subsequent offense within a 3-year period.

Further, the bill specifies that the DEQ would be prohibited from promulgating or enforcing a rule that extends the prohibition of open burning to any materials not listed above. This applies notwithstanding Section 5512 (which grants general rulemaking authority to the department to address air pollution and air quality and to comply with the federal Clean Air Act).

The prohibition established above, Part 55, or the promulgated rules would not prohibit a person from conducting the open burning of wooden fruit or vegetable storage bins constructed from untreated lumber if the following conditions are met:

- The burning is conducted for disease or pest control.
- The burning is not conducted within (1) a priority I area as listed in Table 33 or a priority II area as listed in Table 34 of R 336.1310 of the Administrative Code, (2) a city or village, or (3) within 1,400 feet outside the boundary of a city or village.<sup>2</sup>

The bill would not authorize open burning that is prohibited by a local ordinance.

The bill would also exempt a congressionally chartered patriotic organization that disposes of an unserviceable flag of the United States by burning it from regulation or penalty for violating a state law or local ordinance pertaining to the open burning of materials or substances. (A similar existing provision would be repealed.)

Currently, Section 11522 of NREPA prohibits the open burning of grass clippings or leaves in any municipality having a population of 7,500 or more, unless specifically authorized by local ordinance. This does not permit a county to authorize open burning of grass clippings or leave by an ordinance that would otherwise be prohibited under Part 55 or rules promulgated under this section. These provisions would remain in place.

MCL 324.5512 and 324.11522

### ***BACKGROUND INFORMATION:***

The following is an overview of open burning regulations from surrounding Great Lakes states.

#### Wisconsin

Wisconsin law prohibits the burning of asphalt, garbage, metal, petroleum products, plastics, rubber, or painted or treated wood, recyclable paper or cardboard, among other

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<sup>2</sup> For a detailed list of Priority I and II areas visit:

[http://www.michigan.gov/documents/deq/deq-ess-caap-tables33and34\\_312462\\_7.pdf](http://www.michigan.gov/documents/deq/deq-ess-caap-tables33and34_312462_7.pdf)

things.<sup>3</sup> The burning of brush, leaves, grass, and clean wood is permitted with a Department of Natural Resources annual permit where not prohibited by local ordinance.

### Ohio

Ohio law prohibits the burning of the following materials anywhere in the state at any time: garbage; any wastes created in the process of handling, preparing cooking, or consuming food; materials containing rubber, grease, or asphalt; materials made from petroleum; dead animals.

The following open fires are permitted in Ohio:

- Barbeques, campfires, cookouts (with size restrictions)
- Agricultural waste (agricultural waste and plant matter, including tree trimmings, brush, and leaves, among other things; subject to distance restrictions)
- Land-clearing waste (only allowed outside a village or city limits with prior Ohio EPA approval)
- Residential waste (plant matter, leaves, grass, wood, and paper products among other things; only allowed outside a village or city limits and subject to setback restrictions)
- Ceremonial fires (subject to size and time restrictions; prior Ohio EPA approval if taking place inside city or village limits)
- Occupational fires (clean wood contained in a 55-gallon drum)
- Firefighter training and explosive material disposal (Requires prior written approval from the Ohio EPA)
- Horticultural, silvicultural, or wildlife management practices (requires prior written approval from the Ohio EPA)
- Disease or pest control (requires verification from health department or Department of Agriculture that open burning is the only appropriate control method)

### Indiana

Indiana allows some types of residential open burning of clean wood but allows local communities to adopt ordinances to ban or restrict the practice. The open burning of yard waste appears to be permitted on a community-by-community basis. Indiana law does not allow the open burning of garbage, including household garbage, construction debris, and tires.

### Illinois

Illinois law prohibits the burning of waste by a business, except for landscape waste and agricultural waste, under certain conditions. Commercial waste, household garbage, construction debris, tires, and materials containing asbestos can never be burned. It is also illegal to burn anything except for landscape waste within one mile of a town of 1,000 or more residents. There is no state law or regulatory ban on leaf burning. However, local governments have the right to enact and enforce ordinances prohibiting the practice. If permitted, the open burning of leaves must adhere to the established guidelines.

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<sup>3</sup> All burning prohibitions in Wisconsin apply to individual property owners, renters, businesses, and industry.

## ***ARGUMENTS:***

### ***For:***

The uncontrolled burning of household waste can cause fine particulate matter to be released into the air that is potentially harmful to people with certain health conditions. According to testimony, over 60% of Michigan residents live in counties that currently exceed the allowable levels of particulate matter in the air. Limiting the types of materials that can be openly burned may help to reduce the amount of pollution released into the air.

On the other hand, burning household waste is common in many rural areas because of a lack of other disposal options. Many see the bill as necessary in protecting individual's ability to dispose of non-hazardous waste in a cost effective manner. Prohibiting the open burning of many household wastes could lead to additional unnecessary costs for families.

### ***Against:***

As noted above, the open burning of household waste can lead to health and environmental damage. There are concerns about limiting the department's ability to restrict the open burning of materials not listed in the bill. Those opposed to the bill feel it will hamper the department's ability to protect the public health and to limit the amount of potentially hazardous materials that are released into the air.

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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.