

Legislative Analysis



ANAEROBIC DIGESTER REGULATIONS

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<http://www.house.mi.gov/hfa>

House Bill 4257 as introduced
Sponsor: Rep. Jerry Neyer

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4265 as introduced
Sponsor: Rep. Joey Andrews

Committee: Agriculture
Revised 5-13-25

SUMMARY:

House Bills 4257 and 4265 would amend Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act (NREPA) to modify when an individual owning or operating an *anaerobic digester* needs to register their digester, as well as the application process for registration, under the act. House Bill 4257 would amend certain terms relating to digesters, while House Bill 4265 would amend provisions related to permitting of such a facility.

House Bill 4257 would amend or add definitions for the following terms:

Presently, an *anaerobic digester* means a facility that uses microorganisms to break down biodegradable material in the absence of oxygen, producing methane and an organic product. The bill would instead provide that *anaerobic digester* means a facility used for *anaerobic digestion*.

Anaerobic digestion would then be defined as the use of microorganisms in a controlled environment to break down biodegradable material in the absence of oxygen, producing biogas and another product.

Anaerobic digester digestate, or simply, *digestate*, would mean the product, other than biogas, remaining after the anaerobic digestion is complete, whether or not any liquid portion and any solid portion have been separated.

Finally, the bill would modify the definition of *disposal area* by specifying that a site at which anaerobic digester feedstock or digestate is managed in compliance with section 11568 of NREPA is not a disposal area (in accordance with provisions that would be added by House Bill 4265).

MCL 324.11502 and 324.11503

House Bill 4265 would modify the definition of *solid waste* to provide that it does not include digestate from an anaerobic digester that is registered, or for which notification has been submitted under section 11568 of NREPA, if that digestate is applied on farmland or forestland

for an agricultural or silvicultural purpose at an agronomic rate, consistent with generally accepted agricultural management practices (GAAMPs).¹

Under current law, an anaerobic digester falls under the definition of a ***materials utilization facility***, which means a facility that is any of the following:

- A materials recovery facility.
- A composting facility.
- An anaerobic digester, except at a manufacturing facility that generates its own feedstock.
- An innovative technology facility.

The bill would add language stating that the owner or operator of a materials utilization facility is not required to take any affirmative action to demonstrate it has not created a facility, as defined in section 20101 of NREPA (in this context, a *facility* means a site that requires environmental remediation due to the presence of certain substances considered hazardous when concentrated in specified quantities).

Generally, material collected by a materials utilization facility must be transported from that facility either for use in production of ultimate end use products or for disposal, unless the facility is a composting facility. The bill would extend the exemption to also include digestate managed at a registered anaerobic digester.

Registration of an anaerobic digester

Current law does not allow operation of an anaerobic digester if that digester manages source-separated material generated on-site and if up to 20% of the ***managed material*** is generated off-site, unless the owner or operator of that digester has notified the Department of Environment, Great Lakes, and Energy (EGLE). A digester that manages source separated material generated on-site with more than 20% of the managed material originating off-site must register with EGLE. Digesters that manage only source separated material, manure, bedding, or crop residuals that are generated off-site must be approved by EGLE under a general permit. The bill would eliminate the requirement for digesters managing off-site material to obtain a general permit and create new criteria for operation.

Managed material is presently defined as solid waste, diverted waste, or recyclable material, but does not include a material or product that contains iron, steel, or nonferrous metals and that is directed to or received by a scrap processor, as defined in section 3 of the Scrap Metal Regulatory Act,² or by a reuser of these metals.

Allowable feedstock for a digester

The bill would stipulate that if the owner or operator of an anaerobic digester land applies digestate, the application of that digestate cannot result in a violation of NREPA and must be done in accordance with the GAAMPs. Only one of the following material types can be used as feedstock, though it may come from one or more of the following sources:

- Livestock manure.
- Animal bedding.

¹ The 2025 GAAMPs currently in effect: <https://www.michigan.gov/mdard/environment/rtf/gaamps#current-gaamps>

² <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-445-423>

- Waste animal feed.
- Dead animals and paunch from ruminant animals, unless they are infectious or regulated under PA 239 of 1982.³
- Yard waste or grass clippings.
- Aquatic plants.
- Organic food waste processing residuals.
- Spent grain from breweries.
- Waste cooking grease or trap grease.
- Food waste.
- Crop residuals and other crop wastes, including those related to ethanol, biodiesel, and algal production.
- Curbside source separated organic material.
- Source separated material consisting of organics from commercial institutions, cafeterias, and supermarkets.
- Wastewater from food treatment facilities.
- Wastewater solids or dissolved air flotation materials from food.
- Out-of-date food or spoiled food products in packaging.
- Blood and blood water from animal slaughter operations.
- Pet food and pet food byproducts.
- Food ingredients.
- Leachate from composting operations.
- Other digester feedstocks as approved by the director of EGLE.
- A mixture of any of these materials.

Reporting requirements

Presently, the owner or operator of a digester must provide notification to EGLE within 45 days of the end of each state fiscal year of the amount of managed material at the digester in the prior fiscal year, if the digester manages source-separated material that is generated on-site and not more than 20% of the managed material is generated off-site. The bill would modify this notification requirement so it would only apply if either or both of the following occurred:

- The volume of digester feedstock accepted or anaerobic digestate transferred, sold, or land applied during the fiscal year increased by more than 10% over the previous fiscal year.
- The method of transport of digester feedstock or digestate changed during that fiscal year.

The owner or operator of an anaerobic digester that manages source-separated material that is generated on-site with more than 20% of the managed material generated off-site is required to register with EGLE. The bill would add a contingency plan to an application requirement to operate a digester under the bill. This contingency plan would have to include all of the following:

- How the anaerobic digester contents will be managed in the event of a biological failure or if operation is interrupted or terminated.
- How to restart the anaerobic digester, and the procedures that will be followed if the anaerobic digester cannot be restarted.

³ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-239-of-1982>

- The location of and emergency and nonemergency telephone numbers for the local police, the local fire department, and medical responders.
- The name, address, and telephone number of the person or persons responsible for operation of the anaerobic digester.
- An action plan for emergencies resulting from fire, wind, flood, or mechanical failures.
- Procedures for proper disposal of digestate and feedstock.
- Other relevant information required by EGLE.

The contingency plan requirement would become effective starting 90 days after the bill itself takes effect. The bill also would change reporting requirements so that the required information would have to be provided to EGLE on an annual basis, with information for a calendar year due to by the next January 31. Presently, the information is due to EGLE 45 days after the close of each state fiscal year (i.e., by November 14). The bill would remove a requirement that the combined weight of solid waste residuals, as measured on an annual basis, must be less than 15% of the total weight of materials received unless the facility is making reasonable efforts to reduce that amount and has an education program to reduce solid waste.

Feedstock generated off-site

The bill would also add new application requirements specific to the owners or operators of digesters that manage only feedstocks generated off-site. Owners and operators of a digester that fall under this category would not be required to obtain a permit under Part 31 of NREPA for land applying digestate.⁴

As part of the application, the owner or operator would have to submit a fee of \$750 (the same amount as for digesters with 20% or more of managed material generated off-site), along with the contingency plan described above.

Once registered, the owner or operator of an aerobic digester would have to do all of the following:

- Keep records, starting with the date of registration, of the results of testing of pathogens, total nitrogen, phosphorus, and potassium content, organic ammonia and nitrate forms, secondary and micronutrients, pH, total solids and moisture content, volatile solids, metals, physical contamination, soluble salts, and volatile fatty acid concentration. The testing would have to be conducted each quarter of the calendar year, based on the guidelines of the American Biogas Council Digestate Certification Program or a sampling and evaluation process approved by EGLE. The purpose of this testing would be to demonstrate compliance with the requirement that a materials utilization facility be maintained in a manner that does not create a nuisance or hazard to public health or the environment.
- Annually submit the required records and retain copies of those records for five years.
- Construct and operate the digester in compliance with "Conservation Practice Standard, Anaerobic Digester, Code 366" (October 2017 version) of the United States Department of Agriculture (USDA), Natural Resources Conservation Service, or a standard approved by EGLE. Siting and storage of feedstocks would have to comply with "Conservation Practice Standard, Waste Storage Facility, Code 313" (May 2016 version) of the USDA, Natural Resources Conservation Service or a standard approved

⁴ Part 31 permit information for land application of biosolids.

by EGLE. If the anaerobic digester is using a farm storage structure for storage of feedstocks or digestate, and the farm has a different owner and operator than the anaerobic digester, the anaerobic digester would then also have to submit to EGLE documentation of the storage structure's compliance with "Conservation Practice Standard, Waste Storage Facility, Code 313" (May 2016 version).

- Within one year after registration or assuming operation of a registered anaerobic digester, or undertaking operation of an anaerobic digester, whichever is later, complete an operator training program from the Michigan State University Extension, the Michigan Department of Agriculture and Rural Development (MDARD), or the American Biogas Council or an equivalent training program approved by EGLE.
- Submit a custody transfer form identifying each feedstock source and digestate recipient to EGLE. The owner or operator would also have to submit an updated form to EGLE within 45 days after a change in feedstock sources or digestate recipients.

An owner or operator of an anaerobic digester that manages source separated material generated on-site, with not more than 20% percent of the managed material generated off-site, would be exempted from obtaining a permit under Part 31 of NREPA, or any rules promulgated under Part 31 if any of the following apply to their digester:

- The anaerobic digester meets, or when constructed will meet, all the following requirements:
 - Receives manure from a farm that does not have a permit for a concentrated animal feeding operation, as defined in R 323.2101 of the Michigan Administrative Code.
 - Does not accept more than 20% of its feedstock from off-site.
 - Manages digestate in compliance with GAAMPS or by disposal at any of the following:
 - A sewerage facility permitted under Part 41 (Wastewater) of NREPA.
 - A materials management facility permitted under Part 115.
 - A composting facility the owner or operator of which has complied with applicable requirements in section 11568 of NREPA.
- The anaerobic digester is incorporated or when constructed will be incorporated into a sewerage disposal or waterworks system permitted under Part 41

Conflict with NREPA provisions

The bill states that if a provision of an above standard relating to notifications or registrations of digesters that manage material generated on-site, or a provision of such a standard approved by EGLE, conflicts with a provision of NREPA, then the provision of NREPA applies.

Other provisions

The bill would provide that, if EGLE fails to approve or deny an application for a permit for an anaerobic digester under Part 31 within 180 days after the application is submitted, the application is considered to be approved.

The bill would specify that an anaerobic digester registered and operating in compliance with section 11568 (as amended by the bill) is not required to obtain a permit, or co-permit with a farm, under Part 31 or 115 of NREPA or rules promulgated under Part 31. If a general permit is needed for a facility under section 11568, the bill would require EGLE to identify with specifics the reason for denial if the permit application is denied.

Finally, the bill would eliminate current requirements governing disposal and storage liquid digestate generated by an anaerobic digester.

MCL 324.11506 and 324.11568

House Bills 4257 and 4265 are tie-barred to each other, which means that both must be enacted for either to take effect.

FISCAL IMPACT:

House Bill 4257 is unlikely to affect costs or revenues for EGLE or local units of government.

The impact of House Bill 4265 on EGLE revenues and costs is unclear at present, as the bill both expands exemptions for material regulated as solid waste and maintains other regulatory oversight provisions, including anaerobic digester registration under certain statutory conditions. The department's Water Resources Division and Materials Management Division provide oversight of groundwater resources and solid waste management. These divisions are supported by \$86.0 million Gross (\$33.0 million GF/GP) and \$31.0 million Gross (\$744,800 GF/GP) respectively in FY 2024-25. The bill is unlikely to affect costs or revenues for local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.