



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SOLID WASTE AMENDMENTS

House Bill 4037

Sponsor: Rep. James M. Middaugh
**Committee: Conservation, Environment
and Recreation**

Complete to 5-14-97

A SUMMARY OF HOUSE BILL 4037 AS INTRODUCED 1-8-97

Currently, under Part 115 of the Natural Resources and Environmental Protection Act (NREPA), which regulates the state's solid waste disposal areas, a solid waste disposal area may not operate unless it conforms to an approved solid waste management plan. House Bill 4037 would delete this provision of the act and, instead, would require that a person proposing to construct a new landfill or incinerator enter into a "host community agreement" (HCA) with the community in which the landfill or incinerator was to be located. The bill would specify that the Department of Environmental Quality (DEQ) could not issue a construction permit for a landfill or incinerator unless the applicant complied with requirements for HCAs and arbitration provisions for disputed HCAs. The bill would also specify that a municipal solid waste landfill or a type III landfill that complied with Part 115 of the act, and the rules promulgated under that part, would not be subject to the provisions of the County Rural Zoning Enabling Act, the Township Rural Zoning Act, nor Public Act 207 of 1921, the act regulating city or village zoning.

Further, the bill would require that the DEQ submit a report to the legislature that categorized and itemized by state or country of origin the amount of solid waste received by Michigan landfills and calculated the percentage generated in-state and the percentage generated out-of-state. The bill would also establish new provisions regarding the siting of type II and III landfills and incinerators.

Types of Landfills and Incinerators. Part 115 of the NREPA does not define types I, II, or III landfills. The types of landfills are, however, delineated in administrative rules. House Bill 4037 would amend the act to provide the following definitions for types II and III landfills: a "Type III landfill" would mean a landfill that wasn't a municipal solid waste or hazardous waste landfill, and would include both construction and demolition waste landfills and industrial waste landfills. A "commercial Type III landfill" would be defined as one that accepted waste generated by persons other than the landfill owner. A "municipal solid waste landfill" or "Type II landfill" would mean a landfill that accepted household waste, municipal solid waste incinerator ash, or sewage sludge, and that wasn't a land application unit, surface impoundment, injection well, or waste pile. A "municipal solid waste landfill" could also receive other types of solid waste, such as commercial waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial waste, and could be publicly or privately owned.

Under the bill, a "new incinerator" would mean one that -- on the effective date of the bill -- accepted municipal solid waste, and that did not have a permit under Part 55 of the act, which regulates air pollution control. A "new municipal solid waste landfill or new commercial type III landfill" would be defined to mean a landfill that was not contiguous to that acreage sited in a solid waste management plan in effect immediately before the effective date of the bill for a municipal solid waste landfill or a commercial type III landfill.

Host Community. The bill would define "host community agreement" to mean a written, legally enforceable document or documents executed by authorized officials of the "host community" that governed either the operation or the location of a landfill or incinerator, or both.

If a host community agreement were entered into before the effective date of the bill, then a "host community" would mean either the county or municipality in which the landfill or incinerator was located. If a host community agreement were entered into after the effective date of the bill, then, subject to the provisions specified under the bill for landfills or incinerators located in more than one municipality or county, a "host community" would mean one of the following:

- A city or village that was the proposed location of a municipal solid waste landfill or commercial Type III landfill or incinerator, provided that the city or village had adopted zoning ordinances that complied with city and village zoning laws for developments other than those regulated by Part 115 of the NREPA.

- A township that was the proposed location of a municipal solid waste landfill or commercial Type III landfill or incinerator, provided that the township had adopted zoning ordinances in compliance with the Township Rural Zoning Act, and the landfill or incinerator would not be located in a village that had adopted a zoning ordinance in compliance with city and village zoning laws for developments other than those regulated by Part 115 of the act.

- A county that was the proposed location of a municipal solid waste landfill or commercial Type III landfill or incinerator, provided that the landfill or incinerator would not also be located in any of the aforementioned cities, villages, or townships.

If a landfill or incinerator were located in more than one municipality or county, then "host community" would mean all such municipalities or counties acting as one entity through an interlocal agreement under the Urban Cooperation Act of 1967, or through a contract under Public Act 8 of 1967, which regulates intergovernmental transfers of functions and responsibilities.

Solid Waste Management Plans. Many provisions relating to solid waste management plans would be deleted under the bill, including the requirement that a plan must have been approved by the DEQ before a construction or operating permit can be issued for a disposal area; that the department promulgate solid waste management plan rules, including those relating to specific sites for disposal areas and out-of-county waste; and the provision allowing a municipality that is located in two counties, or that is adjacent to a municipality located in another county, to be included in the adjacent county's plan.

The role of county and regional solid waste management planning agencies and many of the functions of county boards of commissioners in the preparation and review of solid waste management plans would be deleted under the bill, and current provisions regarding the preparation of solid waste management plans and the roles of solid waste planning committees would be replaced as follows:

- The requirement that a solid waste planning committee consist of a specific number of members would be deleted. However, such a committee would still have to include representatives from the various organizations and agencies affected by a proposed solid waste management plan.
- A copy of a proposed solid waste management plan would not have to be submitted for review to the department, but, instead, only to each municipality within the affected planning area.
- A county, or two or more counties acting jointly, could prepare a solid waste management plan, which would include the best available data necessary to manage solid waste within the planning area.
- If a county failed to prepare a solid waste management plan, the municipalities within a county representing 51 percent or more of the total county population could jointly prepare one.
- Following a public hearing, a plan would have to be formally acted upon by the county board of commissioners, or -- in the case of a plan prepared jointly by municipalities within a county that represented 51 percent or more of the county population -- the municipalities in the county that prepared the plan.
- If a plan were approved by the appropriate governing bodies, it would then have to be approved by not less than 66-2/3 percent of the governing bodies of the municipalities within each respective county before it could take effect. In the case of a plan that had been prepared jointly, approval of at least 66-2/3 percent of the governing bodies of the participating municipalities would have to be achieved. A plan that had not been approved or rejected by a municipality within 90 days would be considered approved. The plan would then be submitted to the department for approval.
- A plan would have to be updated every five years by the entity that prepared it to reflect changes in data.
- Current provisions requiring promulgation by the department of solid waste management plan rules, including those relating to specific sites for disposal areas and out-of-county waste, would be incorporated into requirements for solid waste management plans. The following would have to be included under the bill's requirements for a solid waste management plan:
 - An evaluation and characterization of waste streams by type and volume, including residential and commercial solid waste, household hazardous waste, industrial sludges, pretreatment residue, and other wastes from industrial or municipal sources.
 - An inventory and description of all existing facilities where solid waste was being treated, processed, or disposed of, including composting and recycling facilities and a summary of capacity.
 - Public education efforts concerning solid waste disposal alternatives.
 - An analysis or evaluation of the best available information applicable to the plan area in regard to recyclable materials and composting.

Existing Landfills/Arbitration Panels. Under the bill, a municipal solid waste landfill and commercial type III landfill that was licensed on the effective date of the bill could continue to operate within its sited acreage (defined under the bill to mean the area for landfill development identified, recognized in, or otherwise consistent with a solid waste management plan that was in effect immediately before the effective date of the bill), subject to the following provisions:

- If a host community agreement had been entered into before the effective date of the bill, the landfill could continue to operate subject to that agreement; the bill would specify that its provisions could not void, modify, or otherwise interfere with an HCA that had not expired before the bill's effect date.

- If, before the bill's effective date, the landfill owner or operator had entered into an HCA with the municipality or county in which the disposal area was located, but the agreement had expired, then the landfill would operate subject to any conditions of siting. However, if the owner or operator of the landfill entered into a new agreement with either the municipality or county in which the disposal area was located regarding operations at that landfill, then the landfill would operate under the terms of the new HCA.

- If, before the bill's effective date, the landfill owner or operator had not entered into an HCA with the municipality or county in which the disposal area was located, the landfill could continue to operate subject to criteria contained in a solid waste management plan in effect at the time of the initial siting of the landfill or immediately before the bill's effective date, whichever was less restrictive, and provided that the criteria were subject to the enforceable mechanism associated with that plan, and that it related to the development or operation of the landfill, excluding criteria relating to the solid waste flow.

New Landfills and Incinerators. House Bill 4037 would, generally, specify that a person proposing to build a new landfill or incinerator would have to enter into an HCA with the community in which the proposed landfill or incinerator would be located. However, the bill would also permit a new municipal solid waste landfill to be built under certain circumstances.

Currently, under the NREPA, the department may not issue either a construction permit or an operating permit for a solid waste disposal area within a planning area unless a solid waste management plan has been approved for that planning area. The bill would delete these provisions, and would specify, instead, that, while a host community would have to take the solid waste management plan for that jurisdiction into consideration, the DEQ could not issue a construction permit for a new municipal solid waste landfill or a new commercial type III landfill or a new incinerator unless the person proposing to construct the landfill or incinerator had entered into an HCA with the host community and the HCA was approved -- according to provisions specified under the bill -- by the board of commissioners of the county in which the host community was located. A copy of the HCA would have to be included with an application for a construction permit, and the following provisions would apply: the board of commissioners would have 90 days to approve or disapprove an HCA, then, unless a majority of the members disapproved the agreement, it would be considered approved; should the county board disapprove the HCA, it would have to submit its objections to the host community within 30 days following the disapproval; the municipality could then attempt to negotiate with the person proposing to construct the landfill or incinerator to address the objections, and either resubmit a modified agreement or notify the board that it intended to pursue the previously submitted agreement. The agreement

would then be approved unless the legislative bodies of two-thirds of the municipalities within the county adopted resolutions objecting to the HCA within 90 days of its submittal.

Notwithstanding these provision, the department could, however, issue a construction permit for a municipal solid waste landfill provided that the following conditions were met:

- The state were divided into the following three regions, and the DEQ annually published notice of the existing permitted capacity of the municipal solid waste landfills in each region:

- Region I (Upper Peninsula): Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keewenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft counties.

- Region II (Northern Lower Peninsula): Alcona, Alpena, Antrim, Arenac, Bay, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Iosco, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Midland, Missaukee, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, and Wexford counties.

- Region III (Southern Lower Peninsula): Allegan, Barry, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Ionia, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Macomb, Monroe, Montcalm, Muskegon, Oakland, Ottawa, St. Clair, St. Joseph, Saginaw, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, and Wayne counties.

- If the permitted capacity within any of these regions was less than nine years, a person who was interested in siting a municipal solid waste landfill within that region would have to notify the DEQ within 30 days after the publication of the notice regarding municipal solid waste landfill capacity in each region. The person could only notify the department of his or her interest if all of the following conditions were met:

- The person had been actively negotiating the terms and conditions of siting of the landfill with the host community during the six-month period immediately prior to January 1st of that year, and the host community had not finally rejected the proposal and terminated negotiations.

- The person owned, held an option to purchase, or leased, the land in which the proposed landfill would be located.

- The proposed site of the landfill would, at the time of application for a construction permit, meet the siting and construction criteria contained in Michigan Administrative Code rules R 299.411 to R 299.419.

- One year after being notified that these conditions had been met, the DEQ would be required to convene an arbitration panel and forward to it all notifications received regarding the permitted capacity of the landfill that satisfied these conditions. The panel would consist of three arbitrators. One would represent local units of government, and would be selected by the department. One would represent landfill owners and would also be selected by the DEQ. The third arbitrator could be selected jointly by the other two arbitrators, but, if they were unable to

agree on a selection, the director of the department would make the selection from a list of certified arbitrators provided by the American Arbitration Association. The panel would utilize procedures recommended by the association.

- Upon receipt of the required notifications from the DEQ, the arbitration panel would convene to determine whether one or more of the municipal solid waste landfills should be sited, and the terms of an HCA between the person proposing to site the landfill and the host community. In making its determination, the arbitration panel would have to consider the capacity needs of the region and state and the overall environmental protection afforded by the proposed location. Within seven days after convening, the panel would be required to follow certain arbitration procedures, which would be virtually identical to those prescribed under the bill for existing landfills.

Contiguous Property. Under the bill "contiguous property" would mean the original property or geographically contiguous property that had been owned on or before January 1, 1996 by the same individual or corporation, or its subsidiaries, parent corporation, or affiliates, that could be divided by a public or private right-of-way. It could also include property owned by such entities, connected by a right-of-way controlled by them, for which the public did not have access. The bill would require that each landfill owner submit a statement not more than 60 days after the bill's effective date, describing all contiguous property owned by the landfill owner, or by a subsidiary, parent, or affiliate of the owner. The statement would have to be submitted to each county and municipality in which either the landfill or the contiguous property was located, and would have to describe the property by parcel or lot number or metes and bounds description, and identify the owner or owners of record. The bill would also specify that a landfill could not expand beyond its sited acreage or capacity onto contiguous property unless the expansion complied with the provisions and rules promulgated under Part 115 of the act (including the requirement that necessary construction permits and operating licenses must be obtained), and either of the following situations applied:

- A host community agreement covering the expansion was reached between the host community and the owner or operator of the municipal or commercial landfill.
- The permitted capacity of the region in which the expansion was located was less than nine years.

If unable to reach an agreement with a host community within 90 days after submitting an initial offer, a landfill owner or operator could submit a written request to initiate arbitration to the host community.

Arbitration Requirements. Arbitration could be conducted subject to the following provisions:

The arbitration panel would consist of three members: one selected by the host community, one by the owner or operator, and one selected jointly by the owner or operator and the host community. The director of the DEQ would select an arbitrator from a list of certified arbitrators provided by the American Arbitration Association if either the owner or operator or the host community failed to notify the other of their selection within 30 days after the written request to

initiate arbitration was submitted or received, or if the parties were unable to agree to jointly select the third arbitrator.

- The arbitration panel would be convened within 60 days after receipt of a request to initiate arbitration by the host community. Within seven days after convening, the panel would either order the parties to continue negotiating for up to 30 days if it decided that arbitration could be avoided by negotiation, or order the parties to submit their respective final offers within seven days. The panel would issue a subsequent order to the host community if it failed to submit its final offer within seven days. If the host community failed to respond to the second offer within seven days, the owner's or operator's offer would be considered the approved agreement. However, if an owner or operator failed to submit a final offer within seven days after the date of the initial order, the proposal would be considered abandoned.

- A final offer would have to contain final terms and conditions relating to the facility and information or arguments in support of the proposals. Additional supporting information could be submitted at any time. A final offer could not include any restrictions on the intrastate flow of solid waste; technical requirements relating to the design, construction, or operation of the landfill that were more restrictive than those provided under the act; nor terms affecting any portion of the landfill or other facility that wasn't located on the contiguous property.

- Negotiations between the parties could continue during the arbitration process, and, if an issue were resolved, it would be incorporated into a written agreement and the final offer of each party would be amended.

- After final offers were submitted to the panel, neither party could amend its final offer, except with the written permission of the other party.

- Within 60 days after the last day for submitting a final offer, and with the approval of a minimum of two panel members, the panel would issue an arbitration award that adopted, without modification, except for the deletion of items that were not subject to arbitration, the final offer of either party. A copy of the award would be served on both parties, and the panel could, at its discretion, meet with one or both parties prior to issuing an award.

- If the landfill owner or operator constructed and operated the facility that was the subject of an arbitration award under these provisions, then the award would be considered an approved host community agreement and would be binding on the owner or operator, the host community, and the DEQ.

Reports. Currently, under the act, a landfill owner or operator is required to submit a annual report to the state, and to the county and municipality in which a landfill is located, containing information on the amount of solid waste received by the landfill during the year, itemized, to the extent possible, by county, state, or country of origin. The bill would require that, in addition, the DEQ submit a report to the legislature by September 1, 1997, that categorized and itemized by state or country of origin the amount of solid waste received by Michigan landfills and that calculated the percentage generated in-state and the percentage generated out-of-state.

Conflicting Local Solid Waste Plans. A local ordinance, law, rule, regulation, policy, solid waste management plan, or practice of a municipality, county, or other local unit of government

that prohibited or regulated the location, development, or operation of a solid waste disposal area would be considered as conflicting with Part 115 of the act and would not be enforceable. However, this provision of the bill would not apply to siting conditions or siting criteria established under the bill for municipal solid waste landfills or commercial Type III landfills, nor to host community agreements.

Also, the act currently requires that certain incinerators that don't comply with the construction permit and operating license requirements of Part 115 be included in a county's solid waste management plan. The bill would, instead, require that an incinerator of this type be subject to the provisions of a host community agreement.

Construction Permits. Currently, Part 115 of the Natural Resources and Environmental Protection Act (NREPA), which regulates the state's solid waste disposal areas, prohibits the operation of a solid waste disposal area unless it complies with an approved solid waste management plan. The act also specifies that, in the absence of an approved county solid waste management plan, the DEQ may -- under certain conditions -- issue a construction permit for a disposal area that receives ashes produced in connection with the combustion of fossil fuels for electrical power generation. House Bill 4037 would delete these provisions, and would establish new construction permit criteria for municipal solid waste landfills, commercial Type III landfills, or incinerators.

Under the bill, a construction permit would not be issued for a new municipal solid waste landfill, commercial Type III landfill, or incinerator unless the person proposing to construct the facility had entered into an approved host community agreement with the host community. When negotiating the agreement, the host community would take the solid waste management plan for that jurisdiction into consideration. A host community that entered into a host community agreement would have to forward a copy of the agreement to the county board of commissioners of the county in which the host community was located.

Repeals. The bill would rescind Administrative Rules R299.4112(1)(B), which permits the director of the DEQ to designate the emergency disposal of material, and 299.4711(E)(iii)(C) of the Administrative Code, which regulates flow control. The bill would repeal provisions of the act that conflict with new provisions specified under the bill.

The bill would also repeal provisions of the act that:

-- Prohibit one county from accepting solid waste or incinerator ash that is generated in another county, unless a county's approved solid waste management plan explicitly authorizes the acceptance.

-- Allow a person reapplying for an operating license to also request a reduction in the required amount of financial assurance.

-- Require municipalities or counties to assure that all solid waste is removed frequently enough to protect the public health and is delivered to a licensed disposal area, unless it is permitted by law to be disposed of at the site of generation.

-- Require that the DEQ approve, disapprove, or review a solid waste management plan within six months after it is submitted.

-- Require that a county solid waste management plan provide for siting of disposal areas to fulfill a 10-year capacity.

-- Require that a plan update contain certain information concerning recycling and composting before it is approved, and that it be prepared according to a standard format.

-- Require that the DEQ assist in the preparation and implementation of county solid waste management plans, prepare a state solid waste management plan, and develop a strategy to encourage resource recovery and establishment of waste-to-energy facilities.

-- Establish a grant program to provide financial assistance to county or regional solid waste management planning agencies and certified health departments to implement their planning responsibilities.

MCL 324.11502 et al.

Analyst: R. Young

■ 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.