



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

ALLOW YARD CLIPPINGS IN LANDFILLS FROM DECEMBER 1 TO MARCH 15

House Bill 5641 (Substitute H-1) First Analysis (5-2-00)

Sponsor: Rep. Larry DeVuyst
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Currently, the Natural Resources and Environmental Protection Act (NREPA) prohibits the owners or operators of landfills or municipal solid waste incinerators from accepting solid waste if they know or should know that the solid waste to be disposed of includes yard clippings generated or collected on land owned by a county, municipality, or a state facility. And as of March 28, 1995, owners and operators of landfills or municipal solid waste incinerators have been unable to accept solid waste that they knew or should have known included yard clippings from *any* source. However, there is an exception for yard clippings that are diseased or infested.

Yard waste was prohibited in landfills after a 1987 study by the Department of Natural Resources determined that yard waste constituted an average of 24 percent of Michigan's total solid waste stream, and that most was disposed of in landfills. So much yard waste was in the waste stream that there was concern it would outstrip the limited capacity of landfills unless the disposal of grass clippings and leaves was curbed or eliminated. Subsequently, in 1990, the Michigan legislature adopted a statute which prohibited the disposal of yard clippings (although not all yard waste) in incinerators or landfills, a law which took effect in 1993 for municipalities, and in 1995 for other sources. (See *BACKGROUND INFORMATION*, "Yard Waste Landfill Ban," below.)

Unlike solid waste, yard clippings need not be land-filled or incinerated to ensure disposal. Instead, yard clippings can be composted. In fact, yard clippings (which under the law include grass clippings, leaves, vegetable or other garden debris, shrubbery, or brush or tree trimmings less than four feet in length and two inches in diameter) can be converted to compost humus. Leaves, especially, are important to successful compost management. Because they are easy to

compost, leaves customarily are mixed with grass clippings and the decaying grass and leaves together serve to create high quality compost without creating annoying smells.

Since the yard waste landfill ban, established by Public Act 264 of 1990, was put in place in order to conserve landfill space, many Michigan communities have begun community composting programs. Indeed, it has become customary for those involved in all aspects of municipal waste management to express a dedication to efficient and cost-effective recovery and recycling programs, including composting. However, despite the effectiveness of composting programs as an alternative to waste disposal, most communities operate their yard waste recovery season for only 34 or 36 weeks of the year, generally from March or mid-March through November. The winter months in the north are too cold to generate much yard waste, and the cold temperatures also deter composting of yard clippings. Nonetheless, yard waste often continues to accumulate in the late fall months, and while according to committee testimony leaves can be stored for up to two years without generating offensive odors, grass clippings begin to generate unacceptable odors within two weeks.

Unable to compost because of the cold weather and prevented from disposing of yard clippings in landfills because of the yard waste ban, some municipal and private waste management programs have urged that the ban be lifted during the cold season of the year so they are able to dispose of yard clippings in landfills, on the condition that those yard clippings be limited to those both generated and collected during the period the ban is lifted.

However, if the ban is lifted during the cold months, some fear that Michigan's landfill capacity may be diminished by out-of-state imports of yard waste. They

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point out that Michigan landfills would be unable to restrict yard clippings to those generated or collected only in Michigan, since several U. S. Supreme Court cases during the 1990s have ruled that flow control and importation restriction statutes and ordinances are unconstitutional. Generally these court decisions hold that waste is an article of commerce, and that the flow or transport of waste across state lines is subject to the conditions of the Interstate Commerce Clause. As such, states and local governments may not adopt regulations which violate the free flow of commerce between states. (See *BACKGROUND INFORMATION*, “Fort Gratiot Landfill v Michigan Department of Natural Resources,” below.)

THE CONTENT OF THE BILL:

House Bill 5641 would amend the Natural Resources and Environmental Protection Act to allow landfills to accept yard clippings that were generated and disposed of from December 1 to March 15 of any year.

MCL 324.11521

BACKGROUND INFORMATION:

Yard Waste Landfill Ban. A decade ago, the legislature enacted Public Act 264 of 1990 (House Bill 4872) to amend the Solid Waste Management Act, in order to address the problem of yard clippings in landfills. Under that act, “yard clippings” is defined to mean 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 could be converted to compost humus. Under the act, the term did not include stumps, agricultural wastes, animal waste, roots, sewage sludge, or garbage. [Note: “Yard clippings” are included in the definition of “rubbish” as that term is defined in the Solid Waste Management Act (MCL 299.406(2)). There, “rubbish” includes “grass clippings.”]

According to the House Legislative Analysis Section’s enrolled analysis of House Bill 4872, dated 10-19-90, the bill was introduced due to the rapid filling of landfill space and the pollution problems associated with incineration. At that time, the Department of Natural Resources estimated that composting materials made up eight to 12 percent of the state’s landfill contents. It was suggested that it would make more sense for the state to recover composting materials than to continue to bury and burn them. At the time, successful composting programs had been established

in a few areas of the state. Further, the \$800 million Quality of Life Bond Proposal passed by Michigan voters in 1988 as Proposal C, the referendum on Public Act 326 of 1988 (which allowed the people of the State of Michigan to authorize the sale of bonds for environmental protection), allocated \$150 million for solid waste projects, and some communities had received grants and loans to establish composting programs under that proposal.

For further information about the yard clippings ban, see the LSB Science and Technology Division Backgrounder “Managing Yard Waste: Michigan’s Landfill Disposal Ban and Disposal Alternatives” Volume 1, Issue 9. 1997. 2pp.

Fort Gratiot Landfill v. Michigan Department of Natural Resources. According to the LSB Science and Technology Division, Michigan controls the flow of waste between counties under Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act, Public Act 451 of 1994. Under Part 115, waste generated in one county can be shipped over county lines for disposal only if both the receiving and generating counties have agreed to this in their county solid waste management plans.

At one time the transportation of waste in Michigan from other states also was restricted. However, the U.S. Supreme Court ruled that restricting out-of-state waste through county management plans was a violation of the Interstate Commerce Clause. Therefore, MCL 324.115330(2) of Public Act 451 of 1994 was ruled invalid in the case known as *Fort Gratiot Landfill v. Michigan Department of Natural Resources*.

More specifically, in *Gratiot* the U.S. Supreme Court reversed the Court of Appeals for the 6th Circuit, which had upheld a 1988 amendment to the Michigan Solid Waste Management Act. That amendment required that “a person shall not accept for disposal solid waste . . . that is not generated in the county in which the disposal area is located unless the acceptance of solid waste . . . that is not generated in the county is explicitly authorized in the approved county solid waste management plan (MCL 299.413a); and it further required that “in order for a disposal area to serve the disposal needs of another county, state, or country, the service . . . must be explicitly authorized in the approved solid waste management plan of the receiving county.” (MCL 299.430[2]). According to the U.S. Supreme Court opinion, the petitioner in the case contended that requiring a private landfill operator

to limit its business to the acceptance of local waste constituted impermissible discrimination against interstate commerce. The district court denied the petitioner's motion, however, and subsequently dismissed the complaint. The court first concluded that the statute did not discriminate against interstate commerce "on its face" because the import restrictions apply "equally to Michigan counties outside of the county adopting the plan as well as to out-of-state entities." It also concluded that there was no discrimination "in practical effect" because each county was given discretion to accept out-of-state waste. Moreover, the incidental effect on interstate commerce was not clearly excessive in relation to the public health and environmental benefits derived by Michigan from the statute. The court of appeals for the Sixth Circuit agreed with the district court's analysis. Although it recognized that the statute "places in-county and out-of-county waste in separate categories," the court of appeals found no discrimination against interstate commerce because the statute "does not treat out-of-county waste from Michigan any differently than waste from other states." It also agreed that there was no actual discrimination because the petitioner had not alleged that all counties in Michigan ban out-of-state waste. Accordingly, the U.S. Court of Appeals affirmed the judgment of the district court. However, the U.S. Supreme Court reversed the decision because of concern that it was inconsistent with another called *Philadelphia v. New Jersey* 1978, and declared that the *Philadelphia* case provided the framework for analysis of the Michigan case.

Since the *Gratiot* case was reversed, those who have remained unconvinced by the U.S. Supreme Court's reasoning about the unconstitutionality of the Michigan statute have argued that the decision should be challenged with another case. They claim that a state statute that calls for county solid waste management plans to specify agreement about solid waste importation in a uniform manner without regard to the source of the waste need not be interpreted to violate the Interstate Commerce Clause of the U.S. Constitution.

More generally and by way of background, the LSB Science and Technology Division points out that controlling the flow of solid or hazardous waste has been an issue in several cases argued before the U.S. Supreme Court: *City of Philadelphia v. New Jersey* 1978; *Oregon Waste Systems, Inc. v. Oregon Department of Environmental Quality* 1994; *Chemical Waste Management, Inc. v. Hunt* 1992; *Fort Gratiot Landfill v. Michigan Department of Natural Resources*

1992; and, *C&A Carbone v. Town of Clarkstown, New York* 1994. Local courts, too, have issued rulings. As a result, the U.S. Congress has attempted to pass laws that provide states and local governments with some ability to control the flow of waste. However, no laws have been enacted to date, and the policy conversation has continued throughout the past decade.

The LSB Science and Technology Division observes that various terms have evolved to describe the movement of waste between points for disposal, including the terms *flow control* and *import bans*. *Flow control* refers to a ban, enacted by a local unit of government, on the *export of solid waste* from its jurisdiction. In contrast, *import bans* refer to restrictions on interstate transport of solid waste to control waste disposal. Flow control and import ban policies are usually specified in a local ordinance, or allowed by state statutes, in order to ensure steady--that is to say, adequate but not excessive--use and management of local high-cost waste disposal facilities. For example, local governments in an estimated 35 states have been allowed to enact flow control ordinances (i.e., to ban the export of waste). Indeed, fully one-third of the counties in New York State have enacted such ordinances. Additionally, several states have enacted restrictions on the importation of solid waste.

Opposition to flow control and import bans exists among many solid waste haulers who find the restrictions interfere with their ability to compete financially in the waste hauling industry. However, landfill owners' positions vary, since removing the restrictions can interrupt their cash flow and threaten their debt-repayment schedules that pay off construction loans. Landfill owners who also manage waste hauling operations also hold varying positions on flow control and import bans.

Generally, industry's belief that flow controls limit competition is hotly contested by local government officials who question the existence of truly competitive markets in waste hauling and solid waste management. They point out that solid waste services are being handled by fewer but larger firms, as smaller disposal businesses are being bought up by large, nationwide firms that also construct very large, regional landfills. The result appears to be rising prices as fewer firms compete for business.

For further information about solid waste transport, see the LSB Science and Technology Division Background "Controlling the Flow of Solid Waste:

Export and Import Bans” Volume 1, Issue 1. 1997. 4pp.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that there would be no fiscal impact on the state or on local governmental units. (4-25-00)

ARGUMENTS:

For:

Legislating a yard waste collection season will have the effect of reconciling state law with Michigan’s typical yard waste generation season, a season that corresponds to most municipal solid waste hauling contracts. It would allow municipal service delivery to maintain predictable and convenient collection schedules when confronted with unseasonable yard waste generation in late fall, after December 1. The volume of yard waste generated after December 1 and before March 15 is of little consequence. Permitting the disposal of such incidental yard waste when it is placed at the curb, and prior to the annual spring deployment of a municipal government’s own or its contracted yard waste collection fleet will not diminish the overall effectiveness of the existing yard waste ban. Setting the end of the season at December 1 will allow the law to comport with existing collection arrangements and traditional season’s end yard cleanup while being late enough in the year to discourage attempts to circumvent yard waste collection rules.

Against:

The December 1 date on which the yard waste landfill ban would be lifted each year will ultimately reduce the volume of leaves collected by composters. This is significant because leaves are easy to compost and a very important part of creating high quality compost without creating annoying smells. According to committee testimony, the composting season often runs well into December. Composters continue to receive leaves and actively turn, add, and manage materials to ready them for the few months of cold weather. Additionally, composters often stockpile the leaves received late in the season, and add them to fresh-cut grass collected in early spring, in order to ensure that the composting materials create no nuisance odors. This critical December period must be protected, and the beginning date of the exemption should be changed to no earlier than December 10.

Against:

Michigan is a state that has more landfill capacity than many others. Because the state’s capacity exceeds the immediate need for space, Michigan is known as a solid waste ‘importing’ state, and it receives solid waste for disposal in Michigan-based landfills from the solid waste ‘exporting’ states. Because this is the case, and because exporting states find Michigan an attractive alternative site for their solid waste, there is concern about the implications of this bill. If Michigan opens the door a little way--that is to say, if the legislature lifts the yard waste ban for just a few months--it could result in huge volumes of yard clippings ‘imported’ from other states during winter months. This ‘imported’ solid waste will fill Michigan landfills, which are already near capacity. Since the U.S. Supreme Court reversed the appeals court in the *Fort Gratiot* decision in 1992, Michigan has been unable to refuse to accept out-of-state solid waste, including “rubbish” which is defined in the Solid Waste Management Act to include “yard clippings.” Lifting the yard waste ban for a few months will open Michigan landfills to yard clippings from Michigan, and also from every other state where the growing season is longer; it is those states that transport their rubbish and yard clippings here. This legislation would then have the result of diminishing the already limited capacity of Michigan’s landfills substantially more than its sponsors likely intended.

Against:

This bill would create a loophole in the state’s very effective yard waste landfill ban. This change in policy would impede the progress of Michigan’s composting and conservation education efforts, which have been underway since early in this decade. In 1992 the Michigan United Conservation Clubs assumed responsibility for the Waste Information Series for Education (WISE) Program that was developed by the former Department of Natural Resources. The WISE Program helps teachers in Michigan schools introduce youngsters to composting and conservation habits, and promotes the use of the new habits in the schoolchildren’s homes with their families. Since 1992, the Michigan United Conservation Clubs has updated the materials and mails them to each Michigan school district each year. The conservation and composting activities are designed for use by teachers and students in grades K through 3 (lower elementary), grades 4 through 6 (upper elementary), grades 7 through 9 (middle school), and grades 10 through 12 (high school). The organization also sponsors training

sessions for teachers in order to introduce the materials, and to demonstrate the ways the recommended activities can be incorporated into the science curriculum. To date 1,500 teachers have taken advantage of the training which is offered twice each year.

Key to the success of this environmental education effort is the state's policy to promote composting, which is accomplished chiefly by the ban on placing yard clippings in landfills.

POSITIONS:

The Michigan Waste Industries Association supports the bill. (4-27-00)

The Department of Environmental Quality supports the committee substitute. (4-27-00)

The Michigan Composting Council supports the committee substitute. (4-27-00)

The Michigan Recycling Coalition supports the committee substitute. (4-27-00)

The Resource Recovery and Recycling Authority of Southwest Oakland County, the City of Wyandotte, and the Downriver Community Conference submitted written testimony to support the concept of the bill. (4-26-00)

The Michigan United Conservation Clubs opposes the bill. (4-27-00)

Analyst: J. Hunault

■ 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.