

Legislative Analysis



REVISE COUNTY SOLID WASTE MANAGEMENT PLANNING PROCEDURES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4485 (Substitute H-1)
Sponsor: Rep. Mark Meadows

House Bill 4486 (Substitute H-1)
Sponsor: Rep. Kate Ebli
Committee: Great Lakes and Environment

Complete to 5-3-07

A SUMMARY OF HOUSE BILLS 4485 AND 4486 AS REPORTED FROM COMMITTEE

In general, House Bills 4485 (H-1) and 4486 (H-2) would amend the county solid waste management planning provisions of Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act (NREPA). House Bill 4485 would, among other things, make changes to Part 115 definitions. House Bill 4486 would primarily revise procedures for county solid waste management planning. Each bill is described in more detail below.

House Bill 4485 (Substitute H-1)

- Definitions. The bill would amend and create new definitions pertaining to solid waste and landfills. The definitions are discussed in more detail below.
- Estimate and documentation included with landfill operating licenses applications. In addition to all other requirements, an operating license applicant would have to provide an "estimate of landfill disposal capacity, and documentation on the amount of waste received at the disposal area during the term of the previous license or expected to be received during the term of the license for which the application is being filed, whichever is greater." ("Landfill disposal capacity" would mean "the volume, in cubic yards, of solid waste that can be disposed at a landfill or landfills, as applicable, plus the capacity of areas permitted for construction but not yet constructed.")
- Type II landfill fees calculations. Section 11512(7) sets forth the applicable fee that must accompany a Type II landfill operating license, ranging from \$250 for landfills receiving less than 100 tons of waste per day to \$30,000 for landfills receiving more than 3,000 tons of waste per day. The licenses are good for five years. Under the bill, Type II landfill operating license fees would no longer be based on the "projected" amount of waste to be received daily by the landfill during the five-year term of the license, or, in the case of renewals, on the average amount of waste received in the previous year. The fee would presumably now be calculated on the

basis of the estimate and documentation required under Section 11512(3). At the next license renewal, a landfill operator could be charged a supplemental fee or be given a credit if it turns out that the landfill accepted more or less waste than the amount on which the fee was based.

- Elimination of “discounts” for early submission of Type II license renewal applications. Under the existing Section 11512(e), a Type II landfill operator’s license fee is reduced by 50 percent if the renewal application is submitted at least one year before expiration of the license; under Section 11512(f), the fee is reduced by 25 percent if the renewal application is submitted at least 6 months before the license expires. The bill would eliminate both of these provisions.
- Extend ban on the knowing disposal of medical waste, beverage containers, tires, and yard clippings in landfills to ban the same items from going to municipal incinerators. Existing Section 11514(2) generally prohibits medical waste, used beverage containers, vehicle tires, and yard clippings (with some exceptions) from being knowingly delivered to or disposed of in a landfill. The bill would ban these same items from being knowingly delivered to or disposed of in a municipal solid waste incinerator. (Existing Section 11514(4), applicable to municipal incinerators, bans only yard clippings.)
- Ban used oil, lead acid batteries, low-level radioactive waste, regulated hazardous waste, and most liquid wastes from municipal incinerators. Existing Section 11514(3) prohibits used oil, lead acid batteries, low-level radioactive waste, regulated hazardous waste, and most types of bulk or noncontainerized liquid waste from being landfilled (knowingly or otherwise). This section would be amended to ban these same items from a municipal solid waste incinerator.
- Inspections of solid waste facilities at any reasonable time. The bill would authorize the DEQ, a health officer, or a health officer’s representative, to enter private or public property required to be licensed under Part 115, public or private property or a facility exempted from licensing requirements under Section 11529, or any other facility regulated under Part 115 "for the purpose of inspecting or investigating conditions relating to the storage, transfer, processing or disposal of solid waste." The inspection could take place at "at any reasonable time."
- Transfer facilities that do not need construction permits or operating licenses. Under existing Section 11529, a solid waste transfer facility does not need a construction permit or operating license if *either* (1) it is not designed to accept wastes from vehicles with mechanical compaction devices, or (2) it accepts less than 200 uncompacted cubic yards per day. Under the bill, unless *both* of these conditions were met, a transfer facility would have to obtain a construction permit and operating license. Under the bill, an exempt transfer facility would still have to comply with the operating requirements of Part 115 and its rules, as is the case currently, and also the facility would have to “be consistent with the solid waste management plan for the county where the solid waste transfer facility is located.”

- Eliminate requirement that the DEQ promote waste-to-energy facilities. The bill would amend Section 11529(4) to eliminate the requirement that the DEQ promote policies that encourage the establishment of waste-to-energy facilities.
- Tie bars. The bill is tie-barred with House Bill 4486 which means that unless both bills are enacted, neither will take effect.

Definitions. The bill would amend numerous existing definitions and insert numerous new definitions into Part 115. The bill would also make other stylistic or grammatical changes to many definitions. New, amended, or moved, definitions would include:

- "**Agreement**" would mean "a duly executed contract." [Section 11502(1)]
- "**Captive facility**" would mean "a landfill that accepts for disposal only nonhazardous industrial waste generated by the owner of the landfill or a nonhazardous industrial waste landfill that is described in Section 11525(3)." [Section 11502(6)]
- The definition of "**consistency review**" would be expanded to include an evaluation of whether the administrative and technical components of a landfill permit, application, license, or operating conditions were consistent with the applicable solid waste management plan and administrative and court orders entered under Part 115. Currently, this section only requires a review of consistency with (1) Part 115 and (2) rules promulgated under Part 115 and (3) approved plans and specifications. The definition would also be amended to change "approved plans and specifications" to "approved engineering plans and specifications." [Section 11502(11)]
- "**De minimis**" would refer to "a small amount of material or number of items, as applicable, commingled and incidentally disposed of with other solid waste." [Section 11503(1)] Under existing Section 11514(6), "de minimis" means "incidental disposal of small amounts of these materials that are commingled with other solid waste."
- "**Designated planning agency**" would mean an agency (other than the DEQ) responsible for preparing a solid waste management plan under Section 11533. [Section 11503(3)]
- "**Excess landfill disposal capacity**" would mean a "measure in years and cubic yards of any landfill disposal capacity in a county beyond the 10 years that are required to be shown in the county solid waste management plan excluding guaranteed landfill disposal capacity allocated to outside counties." [Section 11503(9)]
- "**Garbage**" would mean "rejected food wastes including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that results from the

preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetable matter." [Section 11503(13)]

- **"Guaranteed landfill disposal capacity"** would mean "the amount of landfill disposal capacity at specific landfills allocated to a county, as assured through enforceable mechanisms." [Section 11503(14)]
- **"Intergovernmental agreement"** would mean an agreement between 2 or more governments or levels of government. [Section 11504(4)]
- **"Landfill disposal capacity"** would mean "the volume, in cubic yards, of solid waste that can be disposed at a landfill or landfills, as applicable, calculating using the constructed capacity, minus waste in place, plus the capacity of areas permitted for constructed but not yet constructed." [Section 11504(6)]
- **"Planning committee"** would mean a planning committee provided for under Section 11534(1)." [Section 11504(12)]
- **"Planning entity"** would mean a "designated planning agency or the [DEQ], whichever is responsible for preparing a solid waste management plan under Section 11533." [Section 11504(13)]
- **"Remaining landfill disposal capacity"** would mean "the number of years of disposal capacity remaining at a landfill calculated by dividing the landfill disposal capacity by the average of the amount of waste received for each of the 3 prior years as reported under Section 11507a, or for a landfill that has not been in operation for at least three years, by dividing the landfill disposal capacity by an annualized estimate of the amount of waste received since the landfill has been in operation." [Section 11505(3)]
- **"Scrap wood."** The bill would move and renumber, but not otherwise amend, the existing definition of "scrap wood" [Section 11505(8)]
- **"Solid waste boundary"** would mean "the perimeter of the solid waste deposited or to be deposited in a landfill as specified in the construction permit. If the perimeter is not specified in the construction permit for the landfill, solid waste boundary means the outermost perimeter, on the horizontal plane, of the solid waste at a landfill as it exists at completion of lawful disposal activity." [Section 11506(2)]
- **"Solid waste diversion"** would mean any of the following:
 - The recovery of resources from solid waste through reuse, recycling, or composting.
 - Resource conservation measures that reduce the amount of solid waste generated. [Section 11506(3)]

- **"Solid waste management plan"** or **"plan"** would mean "a plan prepared, approved, and updated as provided in Sections 11533 to 11539, including any amendments to that plan." [Section 11506(5)]
- **"Treated wood."** The bill would move and renumber, but not otherwise amend, the existing definition of "treated wood" [Section 11506(10)]
- **"Trust fund"** would mean "a trust fund held by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency." A trust fund would have to comply with Section 11523b. [Section 11506(11)]
- **"Wood."** The bill would renumber, but not otherwise amend, the existing definition of " wood" [Section 11506(10)]

House Bill 4486 (Substitute H-1)

Annual reports to include report on space guaranteed to counties. Section 11507a of NREPA requires a landfill owner or operator to submit an annual report to the DEQ and both the county and municipality in which the landfill is located. Among other things, the report must disclose the amount of solid waste received by the landfill during the previous year broken down by county, state, or country of origin, if possible. Under the bill, the annual report would also have to include:

- The "landfill disposal capacity" (as defined in House Bill 4485 to which the bill is tie-barred, see above).
- The "remaining landfill disposal capacity" (as defined in House Bill 4485, see above).
- The "guaranteed landfill disposal capacity" allocated annually to each county for which the landfill owner or operator expects to serve (as defined in House Bill 4485, see above).
- A balance sheet showing that the total capacity guaranteed to counties being served by the landfill does not exceed the landfill's disposal capacity.

The report would be due 30 days (instead of 45) after the end of the state fiscal year. The DEQ would remain obligated to summarize the information contained in these reports and submit a report to the legislature by January 31 of each year.

Annual reports by counties. The bill would newly require every county to submit an annual report to the DEQ, on a form provided by the DEQ, by February 28 of each year. The report would have to include both:

- Estimated "excess landfill disposal capacity" in the county (as defined in House Bill 4485, see above).
- Information and documentation demonstrating the county's "guaranteed landfill disposal capacity" (as defined in House Bill 4485, see above).

Eliminate provision concerning counties with sufficient disposal capacity. The bill would delete Section 11526a(2) under which a county that has sufficient disposal capacity for its needs within 150 miles: (1) is not required to identify a site for a new landfill in its solid waste management plan; (2) does not have to have an operative interim siting mechanism; and (3) the DEQ is not required to issue a construction permit for a new landfill in that county.

County solid waste management plans. The bill would require that each Michigan county adopt a solid waste management plan covering a period of ten years, and that:

- Plans would have to comply with Section 11538 *and* rules promulgated by the DEQ.
- In general, the entire territory of a county would be included in the planning area of a single solid waste management plan.
- Two or more counties could create a single solid waste management plan if the planning entities for those counties agreed to the joint exercise of their powers and performance of their duties.
- If the regional solid waste management planning agency or the DEQ is responsible for preparing the plan for two or more counties, the regional agency or the DEQ could determine that those counties must be included in a single solid waste management plan.
- A municipality located in two counties could request that the entire municipality be included in the planning area of only one of the counties and excluded from the other county's planning area. Likewise, a municipality that borders a municipality in another county may request to be included in the planning area of the solid waste management plan for the neighboring county. A request to be included in a different county's plan would have to be approved by the board of commissioners of both affected counties. If a county board failed to approve a request within 90 days, the municipality could appeal to the DEQ. The DEQ's decision would be due within 45 days and would be final.

Procedures for amending solid waste management plans. Changes to a solid waste management plan could be made in two ways only: (1) a comprehensive plan update or (2) a plan amendment.

- A comprehensive plan update would have to be adopted through the procedure set forth in Section 11533 and Sections 11534 to 11437.
- A plan update would have to be adopted in the same way with the following exceptions: (1) A plan amendment could be adopted at any time; and (2) a plan amendment would have to be initiated by the planning entity; and (3) subsection (3) and subsections (5) to (10) of Section 11533 would not apply.

Scheduled updates for county solid waste plans. Each county solid waste plan would have to be reviewed and updated on a five-year cycle. Plans would be staggered so approximately 20 percent of the plans would be updated each year.

- At least 120 days before initiating the update process, the director of the DEQ would submit a proposed schedule to each designated planning agency and to the county board of commissioners for each county. The schedule would specify

when each county's solid waste management plan would be due during the five-year cycle and would be open for comments for 60 days. The DEQ would have to provide planning agencies and counties with the final schedule at least 45 days before initiating the update process. Proposed and final schedules would also have to be posted on the DEQ website.

Initiation of plan update process and assignment of responsibility for plan preparation.

- The DEQ director would initiate the update process for a county by notifying it in writing that it is time for the county to prepare a solid waste management plan.
- Within 30 days of receiving an update notification, the county could file with the DEQ (and with each municipality within the county) a notice that the county intends to assume overall responsibility for preparation of the plan. The notice of intent would have to designate the agency responsible for preparing the solid waste management plan.
- If a county did not file a timely notice of intent to assume responsibility for preparation of the plan, the DEQ would (1) notify each municipality within the county that the county had not assumed responsibility for the plan; (2) request that the municipalities prepare the plan; and (3) convene a meeting to discuss preparation of the plan.
- Within four months of the DEQ's notice, the municipalities would have to decide (by majority vote) if they were willing to file a notice of intent to assume overall responsibility for preparation of the solid waste management plan.
- If the municipalities did not file a timely notice of intent, the DEQ would request the regional solid waste management planning agency for the region in which the county is located to be responsible for preparing the plan. The regional planning agency would have 90 days to respond to this request.
- If the regional solid waste management planning agency declines to prepare the plan, the DEQ would prepare the solid waste management plan for the county and that plan would be final.
- A designated planning agency would be obligated to submit progress reports on preparation of the plan when requested by the DEQ.

Appointment and composition of planning committees. A planning committee would be appointed by the county executive (in the case of a charter county with an elected executive), the board of commissioners (for all other counties), or the municipalities, depending on which level of government has assumed responsibility for the plan.

Committees for a planning area with a **population of 100,000 or more** would have 14 members:

- Solid waste management industry (4 representatives)
- Environmental groups (2 representatives)
- County government (1 representative)
- City government (1 representative)
- Township government (1 representative)
- Regional solid waste management planning agency (1 representative)
- Industrial waste generators (1 representative)

General public (3 representatives)

Committees for a planning area with a **population of less than 100,000** could be composed of 14 members as described above or could opt for a smaller 7-member committee with the following members:

Solid waste industry or industrial generators (2 representatives)

General public, environmental groups, or regional solid waste management planning agency (2 representatives)

Township government (1 representative)

City or village government (1 representative)

County government (1 representative)

Duties of planning committees. The planning committee would assist the designated planning agency. If the appointment of a planning committee is required, the plan would not take effect unless it had been approved by a majority of the members of the planning committee.

Duties of planning agencies. Among other things, a designated planning agency preparing a plan would have to:

- Solicit the advice of and consult periodically with: (1) the county; (2) the municipalities, appropriate organizations, and the private sector in the county, as provided in administrative rules; (3) the regional solid waste management planning agency (if that agency is not itself preparing the plan); and (4) adjacent counties and municipalities that may be significantly affected by the plan.
- Prepare the plan with the advice, consultation, and assistance of the planning committee, if one has been appointed.

Local plan approval procedures.

- If the county is preparing the plan, it would have to conduct at least one public hearing.
- If municipalities are preparing the plan, those municipalities that voted in favor of filing a notice of intent to prepare the plan would have to jointly conduct at least one public hearing on the plan.
- Either a county or group of municipalities would have to take formal action on the plan within 190 days after the completion of public hearings but only after the plan has been approved by the planning committee. If a plan is rejected by the county board of commissioners or by a majority of the municipalities that voted in favor of filing a notice of intent to prepare the plan, it would be returned to the planning committee along with a written statement of objections to the plan. The planning committee would have to review the objections and return the plan with recommendations.
- Within 10 days after a plan is approved by a county, group of municipalities, or regional solid waste management planning agency, the designated planning agency would be required to submit the plan to the governing bodies of all the municipalities within the county. Each governing body would have 120 days to approve or disapprove the plan.

- A governing body rejecting a plan would have to state in writing the specific reasons for its disapproval.
- A plan would have to be approved by the governing bodies of at least 67 percent of the municipalities within each respective county that voted within the 120-day period.
- If the governing bodies of at least 67 percent of the municipalities that timely voted have not approved a plan, the DEQ would prepare a plan for the county, including those municipalities that disapproved the plan. The DEQ's plan would be final.

DEQ plan approval and review procedures. Once a county plan is approved through the process described above, the designated planning agency would submit it to the DEQ.

- The DEQ would have to approve or disapprove the plan within six months.
- The DEQ could not approve a plan that does not meet the requirements of Part 115 and rules promulgated under Part 115.
- The DEQ could approve a plan with modifications to bring it into compliance with Part 115 and its rules.
- If the DEQ returns the plan to the designated planning agency for clarification or for agreement with the modifications, the six-month approval process could be extended for up to six more months, at the request of the designated planning agency.
- The DEQ would review approved plans periodically to determine if any revisions or corrections were necessary to bring the plan into compliance with Part 115 or its rules.

Administrative rules pertaining to solid waste plans. Under Section 11538(b) the DEQ is authorized to promulgate rules pertaining to solid waste management plans and is directed to require certain features in every plan.

- Under Section 11538(1)(b), every plan contains an evaluation of waste problems by type and volume, including residential and commercial solid waste, hazardous waste, industrial sludges, pretreatment residues, municipal sewage sludge, air pollution control residue and other wastes. The bill would allow a planning entity to make some assumptions about the volume of various kinds of wastes to be disposed of: full achievement of volume reduction goals could be assumed if the plan identifies a detailed approach to enforce and achieve these goals through solid waste diversion programs.
- Under Section 11538(1)(c), every plan must contain an evaluation and selection of technically and economically feasible solid waste management options. The bill would amend this section to include "sanitary landfills, incinerators, solid waste diversion, or a combination thereof" among the possible options for evaluation.

- Under Section 11538(1)(d), every plan must contain an inventory and description of all existing facilities for the treatment, processing, or disposal of waste and a description of the deficiencies of these facilities, if any. This section would be amended to require an inventory and description of "solid waste disposal facilities, solid waste diversion facilities, and specific solid waste diversion programs." The plan would have to evaluate the deficiencies, if any, of these facilities or programs in meeting the county's waste management needs.

Identification of disposal sites or use of interim siting mechanisms. The bill would eliminate current Section 11538(2) which:

- Requires every plan to identify disposal sites for the five years after approval of a plan or a plan update.
- Restricts allowable assumptions about waste reduction through efforts such as composting, recycling, and incineration to levels that can be currently demonstrated or that can be reasonably expected to be achieved through current programs.
- Requires an interim siting mechanism and an annual certification process for the planning period if the plan does not identify specific sites for solid waste disposal areas.

New Section 11538(2) would do the following:

- For the first five years after approval of the plan, the plan would have to identify specific landfills with sufficient guaranteed landfill disposal capacity for solid waste to be generated during that period (to the extent that landfills are used to meet the 10-year waste management requirement under Section 11533).
- For the second five years, the plan would either (1) identify specific landfills with sufficient guaranteed landfill disposal capacity, or (2) include an interim siting mechanism and annual certification process.

Prevention of duplicate counting of the same capacity and securing excessive landfill capacity; grandfather clause for existing agreements. Each plan would be required to include information and documentation demonstrating the county's guaranteed landfill disposal capacity to preclude duplicate counting of the same capacity by more than one planning entity. Further, a planning entity could not have agreements with landfills that provide guaranteed landfill disposal capacity in a cumulative amount that is more than 125 percent of the capacity needed for the 10-year waste management requirement of Section 11533. This section would *not*, however, invalidate an existing agreement between a planning entity and a landfill entered into before the effective date of the bill.

Plans without interim siting mechanisms. If an interim siting mechanism is not included in the plan, then a disposal area would have to be specifically identified to be consistent with the plan. In addition, if there is no interim siting mechanism, and guaranteed landfill disposal capacity falls to less than that required for five years of the county's landfill disposal needs, the shortfall would have to be addressed by amending the plan to: (1)

identify specific landfills with sufficient guaranteed landfill disposal capacity, (2) increase solid waste diversion, or (3) adopt an interim siting mechanism.

Plans with interim siting mechanisms. If an interim siting mechanism is included in the plan, it would be required to identify any authorized disposal area types that may be sited utilizing the interim siting mechanism, among other things. The mechanism would be operative upon the call of the county board of commissioners or whenever the county's guaranteed landfill disposal capacity dipped to less than 66 months of its needs in which case the siting mechanism would become operative. The planning entity would then receive applications for a finding of consistency from persons proposing new landfill disposal capacity. Once operative, the siting mechanism would remain operative for at least 90 days or until at least 66 months worth of landfill disposal capacity is secured through approving an application of a request for consistency or by adoption of a new annual certification process showing that the guaranteed landfill disposal capacity in place would provide for at least 66 months of the county's disposal needs.

Annual certification of guaranteed landfill disposal capacity. Counties are currently required to conclude an annual certification process by June 30 of each year. The bill would require that the certification process examine the guaranteed landfill disposal capacity for solid wastes generated within the planning area. Failure of a county board of commissioners to approve an annual certification by June 30, would be deemed a finding that guaranteed landfill disposal capacity is not sufficient, in which case the interim siting mechanism would become operative..

A county board of commissioners could adopt a new certification at any time. A new certification supersedes all previous certifications, takes effect 30 days after adoption, and remains in effect until a subsequent certification is adopted.

Requirements for a landfill to be considered "consistent with the plan." A plan would be required to specify the name, the solid waste boundary, the landfill disposal capacity, and the remaining landfill disposal capacity that each landfill, or landfill expansion, in the county would have for that landfill to be considered "consistent with the plan" (as is required for a construction permit). If the "remaining landfill disposal capacity" conflicts with the "landfill disposal capacity," the "remaining landfill disposal capacity" would be relied on for a determination of consistency with the plan.

Transfer facilities not needing permits or licenses must be "consistent with plan." The location or development of a solid waste transfer facility that is exempt from needing a construction permit or operating license under Section 11529 would still have to be "consistent with the plan" and could be regulated by an ordinance, rule, or regulation of a municipality, county, or governmental authority if the ordinance or rule is included in and consistent with the county's approved solid waste management plan.

FISCAL IMPACT:

The fee adjustments made through these tie-barred bills (House Bills 4485 and 4486) may affect the amount of revenue realized by the state and paid by local governments, but no significant increase or decrease in state or local revenue is expected. There would be no need to increase staff or department spending to meet administrative requirements, and local payments would not be significantly changed.

POSITIONS:

Department of Environmental Quality supports the bills. (4-18-07)

Ecology Center supports the bills. (4-18-07)

Clean Water Action supports the bill. (4-18-07)

Michigan Environmental Council supports the bills. (4-18-07)

Michigan League of Conservation Voters supports the bills. (4-18-07)

Michigan Association of Counties indicated that it "has concerns" with the bills. (4-18-07)

Michigan Waste Industries Association opposes the bills. (4-18-07)

Republic Waste Services opposes the bills. (4-18-07)

Michigan Manufacturers Association opposes the bills. (4-18-07)

Legislative Analyst: Shannan Kane
Fiscal Analyst: Kirk Lindquist

■ 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.