Testimony in Support of SB 404

Good afternoon Chairman Brandenburg and Members of the Committee. My name is Dan Batts; I am General Manager of Landfill Management Co. and I am also President of Michigan Waste Industries Association on whose behalf I provide this testimony today.

Thank you for allowing me to testify before you today in support of SB 404 which would provide additional options for landfill operators to fund their Perpetual Care Fund (PCF).

Part 115 of Act 451 requires that every landfill owner or operator assure that it is financially capable of closing its landfill, conducting post-closure maintenance and monitoring for 30 years, and conducting corrective action, if necessary. At a large landfill, these costs can exceed $40 million.

Unlike landfill financial assurance requirements imposed under federal law and in other states, the Act requires a landfill owner or operator to demonstrate a portion of it financial assurance using unique mechanism referred to as a PCF. A PCF is a special account that every landfill must establish as either a trust or an escrow account held in favor of the DEQ. Money must be periodically deposited into the PCF until it reaches a statutory maximum amount. This amount is adjusted annually for inflation and is currently in excess of $2 million. The Act requires that a PCF be maintained as a cash account. The cash must generally remain idle in the PCF until the landfill has completed closure and post-closure activities, which may be decades into the future. In the intervening time, the idle cash cannot be invested in the landfill or in other capital expenditures.

While a PCF must be maintained as a cash account, the Act permits a landfill owner or operator to demonstrate all other required financial assurance through the use of bonds, which may include non-cash financial instruments such as surety bonds and letters of credit. These non-cash financial instruments are equivalent to a cash trust or escrow account in providing the assurance that the funds for closure, post-closure care and corrective action will be available if necessary; however, the non-cash financial instruments do not require a landfill owner or operator to tie up large amounts of cash over long periods of time.

SB 404 would expand the list of financial instruments allowable for a PCF to include non-cash surety bonds and letters of credit, i.e., the same types of non-cash bonds that are currently allowed for all other landfill financial assurance requirements. The bill would not change any other provision in the Act concerning a landfill owner's or operator's obligation to maintain financial assurance, the amount of the required financial assurance (including the amount required to be maintained in a PCF), or the DEQ's access to the financial assurance (including access to a PCF) in the event those funds are necessary to conduct closure, post-closure care, or corrective action at a landfill.

Thank you for allowing me to address the committee today. I am available for questions at your request.