May 29, 2014

Senate Natural Resources, Environment, and Great Lakes Committee
Lansing, Michigan

Re: HB 5400 – 5402 – Use of industrial byproducts

Dear Senators,

The Michigan Environmental Council supports the reuse of industrial by-products when protection of public health can be assured and use of the materials is monitored and tracked in a way that reasonably controls public exposure to materials in the future. It is important to evaluate each use not only at the time it is made, but what we expect will happen over time and whether protections for public health are maintained.

The Michigan Environmental Council has the following concerns with the legislation:

1) **Does HB 5400 allow the use of hazardous industrial byproducts as construction fill on private property without the landowners consent?**

The bill requires a contractor to inform an owner that they have used industrial byproducts, however, that notice can be after the material has already been used. In the case of construction fill, the property must be nonresidential and remain nonresidential after the material is used, thereby limiting the future use and value of the property. The bill requires a landowner who has knowledge of the use of industrial byproducts being used on their property to notify subsequent buyers of the property (page 50). The bill as currently written appears to allow a contractor to proceed without permission. Is the state then liable for the lost property value as a taking by authorizing the use of industrial byproducts under this bill without permission of the property owner? The bill needs to be amended to require prior approval of the property owner to preserve private property rights.

2) **The bill allows the use of fly ash from coal plants which will soon contain significantly higher levels of mercury**

New rules at the state and federal levels require coal plants to remove 90% of the mercury from smokestack emissions starting in 2015. That mercury will mainly be captured in the fly ash. Mercury is a neurotoxin that bioaccumulates in the environment. Michigan currently restricts the consumption of fish from all inland lakes due to excessive levels of mercury. One out of every six women in Michigan already has elevated mercury levels in their blood that could impact future offspring.

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This legislation will take that mercury which we are capturing from our power plants and allow utilities to spread it across the state in road beds and under parking lots. Those roads and parking lots will eventually crumble. Some will be rebuilt, others will be left for future generations to figure out how to repurpose. The placement of industrial byproducts at those sites will make their redevelopment more challenging and be a burden on local units of government. Fly ash from coal plants should be excluded from beneficial use 2.

3) The bill allows use of materials that may contaminate drinking water aquifers

HB 5400 establishes a standard for materials that allows them to leach at 20 times the allowed drinking water standard just four feet above the water table. However, the proponents offer no scientific study that shows that those elevated levels will not result in contamination of drinking water aquifers that may render them unusable. In practice, the determining factor will be the nature of the soil that separates the industrial byproducts from the groundwater. In sandy soil, contaminates will move fairly quickly to lower levels, and soil with greater clay content will significantly slow the process. Michigan has a wide variety of soil types which the bill fails to take into account.

There has been much discussion by the bill proponents of the Wisconsin program which much of the Michigan program is modeled after. In Wisconsin, the allowable leaching standards average 5 to 10 times drinking water standards, significantly reducing the potential for contaminated drinking water aquifers in the future.

4) The bill fails to involve local units of governments or the public in the decision making process

The Wisconsin program establishes a public participation process for any projects that is proposing to use more than 30,000 cubic feet of industrial byproducts. These provisions make sense based on the significant impact that could be caused by this much material and to here from those residents who live in the area and have the greatest chance to be directly impacted by the use of the byproducts.

For the reasons stated above, we urge the members to oppose HB 5400. We remain willing to work with bill sponsors to address our concerns.

Sincerely,

James Clift
Policy Director