

ALLOW YARD CLIPPINGS IN DESIGNATED LANDFILLS

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House Bill 4265

Sponsor: Rep. Paul Opsommer

House Bill 4266

Sponsor: Rep. Ken Horn

Committee: Energy and Technology

Complete to 2-21-11

A SUMMARY OF HOUSE BILLS 4265 AND 4266 AS INTRODUCED 2-16-11

The bills would amend Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act (NREPA) to allow the disposal of yard clippings in a landfill that was designated as a landfill energy production facility in its operating license, prescribe the requirements for receiving this designation, and specify that Part 115 would supersede any local laws or ordinances prohibiting or regulating the type of solid waste that may be disposed of at licensed disposal areas. The bills are tie-barred to each other, meaning that neither could become law unless both were enacted.

House Bill 4265 would amend Section 11504 of the NREPA and add Section 11512b (MCL 324.11504 and 324.11512b) to allow yard clippings to be disposed of at a landfill in landfill cells served by a landfill gas collection system. The bill would define a "landfill energy production facility" to mean a landfill designated as a landfill energy production facility in its operating license under provisions of the new Section 11512b.

Requirements for designation. A landfill that met all of the following requirements would be designated as a landfill energy production facility in its operating license:

- The landfill has a landfill gas collection system the installation of which is documented in the landfill's operating record.
- The landfill energy production facility is capable of recovering and utilizing at least 70 percent of the annual gas production from the landfill cells served by the landfill gas collection system, as a source of energy for one or more of the following uses: (1) generation of electricity, a direct fuel use, or any use as a substitute for a conventional fuel; (2) flaring because of testing, maintenance, malfunction, or planned or unplanned interruption of the landfill gas collection system or of an on-site or off-site energy use; for planning, construction, or proving capacity for an intended on-site or off-site energy use; or a similar reason.
- Flaring for each particular reason could not be used later than two years after the flaring first began, except that the Department of Environmental Quality would have to approve a request to extend flaring if the landfill owner or operator submitted a schedule for the use of landfill gas for the generation of

electricity, a direct fuel use, or any other use as a substitute for conventional fuels.

Calculating the percentage of landfill gas recovered and utilized. To calculate the percentage of landfill gas recovered and utilized by a landfill energy production facility, the amount of gas recovered and utilized for one or more of the uses described in the bill would be divided by the estimated total amount of the gas generated by the landfill annually, and the quotient would be multiplied by 100.

The two allowable methods for estimating the total amount of gas generated by the landfill annually are: (1) the EPA landfill gas emission model (LANDGEM) using prescribed default values for the methane generation rate and for the potential methane generation capacity; or (2) a site-specific gas generation estimation proposed by the landfill owner or operator and approved by the Michigan Public Service Commission.

Failure to meet 70 percent requirement. If a landfill energy production facility failed to meet the requirement that it recover and utilize at least 70 percent of its annual gas production, the Michigan Public Services Commission could – after notice and opportunity for an evidentiary hearing – revoke, suspend, or modify the landfill's designation as a landfill energy production facility, in addition to other sanctions allowed under Part 115. (**Note:** The authority to impose license sanctions is generally given to the licensing entity, which in this case would be the Department of Environmental Quality.)

Yard clippings. Yard clippings could be disposed of at a landfill energy production facility in landfill cells served by a landfill gas collection system if the clippings were initially collected in residential solid waste collection trucks registered under the Michigan Vehicle Code and the yard clippings had been commingled with other solid waste when initially collected.

If the yard clippings are source separated and generated in a municipality with a single-hauler solid waste collection and disposal contract, the municipality's legislative body could not authorize the commingled collection of yard clippings for delivery to a landfill energy production facility unless the legislative body held a public hearing on the issue.

Rule promulgation: The Michigan Public Service Commission could promulgate rules to implement Part 115 (Solid Waste Management) of NREPA.

House Bill 4266

The bill would amend Sections 11507a and 11514 of NREPA (MCL 324.11507a and 325.11514) to require additional information to be added to the annual report submitted by landfill owners or operators, expand the types of yard clippings of which more than a de minimis amount can be delivered to or disposed of in a landfill, and specify that Part 115 of the act would supersede local laws or ordinances.

Annual report. Section 115107a of NREPA requires a landfill owner or operator to submit an annual report to the state and to the county and municipality in which it is located that contains specified information about the amount of solid waste the landfill received and the landfill's remaining disposal capacity. Under the bill, a landfill

designated as a landfill energy production facility would also have to report on (1) the amount of landfill gas recovered at the landfill during the year, as determined by metering or another approved method; (2) how the landfill gas was utilized; and (3) the time periods during which any flaring took place and the reasons for the flaring.

Yard clippings. Section 11514 of NREPA prohibits more than a de minimis amount of yard clippings to be knowingly delivered to or knowingly allowed to be disposed of in a landfill unless the clippings are diseased, infested, or from invasive species. House Bill 4266 would also make an exception for the following:

- Yard clippings remaining after the traditional yard clippings collection season ended and the majority of state registered compost facilities were closed or the period each year between December 1 and March 30.
- Yard clippings sent to a landfill energy production facility; however, the yard clippings could not consist of source-separated shrubbery, brush, tree trimmings, or any combination.

Unenforceability of local laws. An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute that prohibited or regulated the type of solid waste that is permitted to be disposed of at a licensed disposal area would be in conflict with Part 115 and would not be enforceable.

FISCAL IMPACT:

Under current law, yard clippings may not be disposed in landfills. Yard waste must be separated and disposed of at recycling and composting sites. According to the Department of Environmental Quality (DEQ), total waste disposal in Michigan landfills was 57.1 million cubic yards in Fiscal Year 2008. DEQ receives revenue from the Solid Waste Surcharge which is charged on solid wastes that are disposed of in landfills. The landfill operators pay seven cents per cubic yard of solid waste.

Under House Bill 4265, yard clippings could now be disposed of in landfills under most circumstances, if those facilities qualify as a Landfill Energy Production Facility (LEPF). In FY 2008, approximately 1.1 million cubic yards of yard clippings were composted at registered composting facilities. Because yard clippings can now be deposited and would no longer have to be separated from solid waste, qualified landfills may receive a greater amount of waste which would generate additional revenue from the Solid Waste Surcharge to DEQ. The amount of this increase in revenue cannot be determined because it is dependent upon how much additional solid waste is taken to the landfill. However, if all 1.1 million cubic yards of yard clippings were taken to qualified landfills, the revenue increase would be \$77,000 annually to DEQ.

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■ 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.