



Michigan Waste & Recycling Association

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MWRA Part 115 Concerns (HB 5812-5817)

MWRA's remaining Part 115 unresolved issues appear below and proposed language is highlighted in **RED**.

HB 5817

MWRA Comment #1 –Language from MWRA Sec. 11576(5)

(d) Local ordinances **TO THE EXTENT that THEY REGULATE** do not control the development of a materials management facility and that minimally control the operation of the materials management facility, such as ordinances addressing landscaping, screening, and other ancillary construction details; hours of operation; operating records and reporting requirements; noise, litter, odor, dust, and other site nuisances **AT A MATERIALS MANAGEMENT FACILITY**; and facility security and safety **PROVIDED THAT SUCH ORDINANCES ARE NOT MORE STRINGENT THAN THE REQUIREMENTS OF PART 115 AND DO NOT REGULATE THE LOCATION, DEVELOPMENT OR OTHER OPERATIONAL ASPECTS OF A MATERIALS MANAGEMENT FACILITY.**

MWRA Justification for Comment 1:

The operation of complex disposal areas, especially landfills, requires uniform regulation at a State level. Local governments generally do not possess the expertise to even “minimally control to operation” of such facilities, and allowing local governments to do so would create a patchwork of requirements that would interfere with EGLE’s comprehensive regulations. Accordingly, Part 115 preempts local regulation over the design, construction and operation of disposal areas. MWRA is willing to agree that MMP’s may include local ordinances that regulate nuisance conditions at disposal areas, but only to the extent those ordinances are not more stringent than the requirements of Part 115. MWRA does not oppose local regulation of materials management facilities that are not disposal areas.

MWRA Comment #2 – Language from MEC

Sec. 11578(o) ~~Allow~~ **DEFINE A MINIMUM LEVEL OF RECYCLING SERVICE A HAULER MUST PROVIDE THAT INCORPORATES THE BENCHMARK RECYCLING ACCESS STANDARDS, WHICH a county or municipality within the planning area MAY, at its discretion, to require AT ITS DISCRETION, ADOPT THROUGH AN APPROPRIATE ENFORCEABLE MECHANISM AS A REQUIREMENT FOR haulers operating in its jurisdiction to provide a minimum level of recycling service**

MWRA Justification for Comment 2:

Consistent with our previous comments, MWRA has added the requirement of an Enforceable Mechanism in order to support the language provided by MEC.

MWRA Comment #3

Sec. 11581. (1) In addition to the materials management planning grants under section 11587, a municipality or county may fund the implementation of an MMP ~~utilize HAS AVAILABLE TO INCLUDE, AND NOT LIMITED TO,~~ through any of the following mechanisms, ~~as applicable, to fund implementation of an MMP~~ **TO THE EXTENT AUTHORIZED BY AN APPLICABLE ENFORCEABLE MECHANISM:**

MWRA Justification for Comment 3:

MWRA's proposed language clarifies that the authority to implement these mechanisms must be found somewhere outside of Part 115.

MWRA Comment #4

Sec. 11583. An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute, **WHICH EITHER (A) PROHIBITS OR REGULATES THE LOCATION OR DEVELOPMENT OF A MATERIALS MANAGEMENT FACILITY, AND WHICH IS NOT PART OF OR NOT CONSISTENT WITH THE APPROVED MATERIALS MANAGEMENT PLAN FOR THE COUNTY, OR (B) VIOLATES SECTION 207 OF THE MICHIGAN ZONING ACT, 2006 PA 110, MCL 125.3207, WITH RESPECT TO THE A MATERIALS MANAGEMENT FACILITY, SHALL BE CONSIDERED IN CONFLICT WITH THIS PART AND SHALL NOT BE** ~~that conflicts with part 115 is not enforceable if either of the following applies:~~

~~(a) It prohibits development of a materials management facility and is not incorporated by reference in the MMP for the county.~~

~~(b) It violates section 207 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3207, with respect to a materials management facility.~~

MWRA Justification for Comment 4:

The language proposed in H-2 could unintentionally eviscerate Part 115's existing preemption effect over local ordinances. As drafted in H-2, a local ordinance that "conflicts with Part 115" would be "unenforceable" **only** if the local ordinance also regulates within the narrow confines of subsection (a) or (b). Alternatively, a conflicting local ordinance that regulates disposal areas in ways that are outside of (a) and (b) would **not** be expressly rendered "unenforceable" by H-2's language, which could be interpreted as permission from the Legislature to allow such local intrusion into the operation of disposal areas to the detriment of EGLE's regulations. MWRA is adamant that any alteration to Part 115's existing preemption language retain its current effect preemptive over local ordinances. Consistent with our last workgroup conversation, we support the addition of (b) back into the language. Any changes or variation to the above language will need approval of MWRA in order to continue our support.

MWRA Comment #5

Sec. 11578. Pg. 23 Line 23-29, Pg. 24 Lines 1-14 If a solid waste landfill is proposed to be developed in the planning area within 2 miles of a municipality that is located adjacent to the planning area, or if a solid waste processing and transfer facility or materials utilization facility is proposed to be developed in the planning area within 1 mile of such a municipality, all of the following apply:

(a) The CAA shall notify the legislative body of the adjacent municipality of the proposed development in writing. The notice shall include a copy of this subsection.

~~(b) The legislative body of the adjacent municipality may appoint a representative of the municipality as an additional regular member of the planning committee. The legislative body must submit to the planning committee notice of an appointment within 60 days after receiving notice from the CAA of the right to make the appointment.~~

- (c) The planning committee shall provide the adjacent municipality an opportunity to comment on the proposed development.
- ~~(d) The materials management facility developer and the planning committee shall address, to the extent practicable, each concern identified by the adjacent municipality. The county planning committee shall document compliance with this subdivision.~~

MWRA Justification for Comment 5:

MWRA proposes the striking of the above language in both (b) and (d). Landfills are licensed and regulated by EGLE and should continue to comply as such. Giving an adjacent community regulation over private business is overreaching and sets a bad precedent.

#6 NORTHVILLE TWP. PROPOSED AMENDMENT TO HB 5817—GIVES VETO AUTHORITY TO ADJACENT COMMUNITIES OVER PRIVATE BUSINESS

A landfill within 2 miles of a county border would not be allowed to expand, unless consent is granted from the bordering community, if both of the below apply:

1. *The existing landfill has incurred any of the following:*
 - a. *Five or more notices or findings of violation from EGLE or the United States Environmental Protection Agency in the immediately preceding five years for violations of the same statute, rule, regulation, or permit condition.*
 - b. *Ten or more notices or findings of violation from EGLE or the United States Environmental Protection Agency for violations occurring under any statute, rule, regulation, or permit condition in the immediately preceding five years or*
 - c. *any one violation that results in the filing of a civil or criminal action.*
2. *There is sufficient capacity in another similar landfill within 30 miles or within the MMP for which the landfill is located*

The above suggested language to Section 11578 in HB 5817 would prohibit new or expanded landfills within 2 miles of an adjacent municipality border without formal consent of the jurisdiction's elected body.

The amendment would affect more than a dozen Michigan landfills that are located adjacent to non-host community units of government.

MWRA Justification for Opposition to Proposed Amendment—Comment 6:

It's important to maintain positive working relationships with communities that border our landfill facilities to effectively resolve neighbor concerns and respond to community needs. However, giving adjacent communities effective veto power over landfill operations and expansion plans is overreaching — exceeding the Department of Environment, Great Lakes & Energy's (EGLE) authority, and threatening private investment in disposal infrastructure.