

State Office of Administrative Hearings and Rules

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REGULATORY IMPACT STATEMENT

The department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the State Office of Administrative Hearings and Rules no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions may be made to **soahr_rules@michigan.gov**. The SOAHR will review the regulatory impact statement and send its response to the agency (see last page).

A. GENERAL

1. SOAHR #, title, and rule numbers (or rule set range of numbers):

SOAHR #: 2008-028 EQ

The inert and composting portions of the rules promulgated pursuant to **Part 115, Solid Waste Management**, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

As part of this rules package, R 299.4101 to R 299.4104, R 299.4110 to R 299.4119, R 299.4122 to R 299.4124, R 299.4126, R 299.4127, R 299.4129, and R 299.4142 will be amended; R 299.4120a to R 299.4120d and R 299.4121a to R 299.4121k will be added; and R 299.4120, R 299.4121, and R 299.4125 will be rescinded.

2. Identify the relationship of the rule to state and federal statutes and regulations:

The state statutory basis for the proposed rules is found in Sections 324.11508, 324.11538(1), 324.11539(2), and 324.11540 of Part 115.

3. Identify how the rule compares to an industry standard set by a state or national licensing organization.

There is no direct relationship between the proposed rules and industry standards set by state or national licensing organizations.

4. Is the rule more restrictive or less restrictive than the federal rule or industry standard?

Non-hazardous industrial waste is not regulated at the federal level.

5. What are the sanctions on the state if the rule is not adopted?

There would be no sanctions on the state if the rule changes are not adopted.

B. GOAL OF RULE:

6. Identify the conduct and its frequency of occurrence that the rule is designed to change:

The purpose of the proposed rules is to clarify technical issues, ensure more consistent interpretation, promote the beneficial use of industrial by-products, and provide guidance for the composting of organic materials.

7. Identify the harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

By changing the Part 115 rule requirements to have consistent language with Part 201, there should be fewer questions on the intent of the Part 115 rule requirements. This should increase compliance with Part 115 (and Part 201), thus reducing threats and risks to human health, safety, welfare, and the environment. Current rules do not provide any management or reporting standards for composting organics such as food waste. Businesses are looking for management options to utilize the food waste they generate. The compost portion of the rule is proactive and seeks to prevent harm as organics composting increases in popularity as a management option.

8. Estimate the change in the frequency of the targeted conduct expected from the rule change:

The proposed revisions are designed to minimize confusion and ensure greater consistency in the current interpretations of the rules. The proposed revisions should provide for consistent regulatory interpretations and increase the compliance rate.

9. Identify any alternatives to regulation by rule that would achieve the same or similar goals:

Similar goals could be achieved by statutory changes. Alternatives considered with respect to the state-initiated revisions included issuing generic exemptions and designations of inertness. Since many of the revisions are aimed at improving the overall clarity of the rules and reducing burdens to the regulated community, not pursuing these revisions would result in the lack of clarity that often leads to confusion and inconsistent interpretations.

10. Discuss the feasibility of establishing a regulatory scheme within the industry independent of state intervention:

The clarifications required in the rules are necessary to create consistency between the industry and state on interpretations of current rules. It would not be feasible to obtain that agreement by having independent regulatory schemes developed without state intervention.

C. COSTS TO GOVERNMENT UNITS:

11. Estimate the cost of rule imposition on the department or agency promulgating the rule, including the costs of equipment, supplies, labor, and increased administrative costs for initial imposition of the rule and any ongoing monitoring:

The rule is intended to allow a number of waste reuses under the self-implementing portion of the rule that would free up staff time that could be spent on the registration portion of the rules related to composting facilities and possible inspections. If additional waste is utilized rather than disposed in a landfill, the solid waste surcharge fees (21 cents/ton) that are paid by landfills, based on quantity of waste disposed, that fund the solid waste program, will not be collected on that waste. It is not possible to estimate the potential fee reductions because it is not known how many companies will take advantage of the proposed rule changes or the quantity of material that would be reused rather than disposed. Additionally, Michigan currently has very few compost facilities that accept organic wastes other than yard clippings. If additional facilities accept other wastes it can be expected that utilization quantities will increase, further decreasing the solid waste surcharge revenue collected.

12. Estimate the cost of rule imposition on other state or local governmental agencies, including the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring:

Municipal composting facilities over 5,000 cubic yards would be required to perform sample collection and testing that may cost them between \$1,000 and \$2,800/year. However, if testing is never performed and it is discovered that the composting process has contaminated the groundwater or surface water, remediation costs and liner costs could be high. Just as the DEQ

would collect less monies to fund their solid waste program, local units of government that have host community agreements with landfills would receive less revenues from any impact fees collected under those agreements. It is not possible to estimate the potential fee reductions because it is not known how many companies will take advantage of the proposed rule changes or the quantity of material that would be reused rather than disposed.

D. COSTS TO REGULATED INDIVIDUALS:

13. Estimate the actual statewide compliance costs of the rule to individuals, including the costs of education, training, application fees, examination fees, license fees, new equipment or increased labor, exclusive of those costs identified in section C above:

No direct costs to residents will occur as a result of these rule revisions. The costs incurred to residents if the rules are not promulgated are far greater because, in aggregate, individuals will see cost savings because of the expanded management options available for many wastes.

14. Identify any compliance costs requiring reports and the estimated cost of their preparation by individuals who would be required to comply with the rule:

None.

15. Estimate the cost of any legal, consulting, and accounting services and any other administrative expenses individuals will incur in complying with the rule:

None.

16. Estimate the number of individuals the rule affects:

All Michigan residents will be affected because additional management options will be available as a result of this rule. This will result in decreased reliance on landfills and increased solid waste utilization, consistent with Michigan's updated solid waste policy.

17. Will the rule have a disproportionate impact on individuals based on their geographic location?

No.

E. COSTS TO BUSINESSES:

18. Estimate the actual statewide compliance costs of the rule to specifically include small businesses, including the costs of equipment, supplies, labor, training, application fees, permit fees, supervisory costs, exclusive of those identified in sections C and D above:

The proposed rules should create minimal compliance costs for most companies. We would expect that any costs that most waste generators would incur to comply with the proposed rules would be off-set by the savings in disposal costs for wastes that could now be utilized. However, some generators of high-volume, low-hazard wastes would be required to dispose of their wastes rather than reuse them because some of these wastes present an unacceptable risk to human health and the environment. Additionally, the large yard clippings composting sites will be required to perform yearly testing on leachate and runoff from their sites as an alternative to a more costly approach of installing liners and obtaining groundwater and surface water permits.

19. Identify any reports the rule requires and the estimated cost of their preparation by businesses; specifically include small businesses:

The costs for the initial notification requirements and yearly reports due for many of the rules would be negligible for most of the companies.

20. Estimate the cost of any legal, consulting, and accounting services and any other administrative expenses businesses will incur in complying with the rule; specifically include small businesses:

Any costs associated with legal or consulting fees would be off-set by the reduction of disposal fees paid by the business.

21. Estimate the number of businesses the rule affects:

It is impossible to estimate the number of individuals that will take advantage of these rules changes. The number of businesses affected varies depending on the rule. It has been estimated that some proposed rules impact as few as six businesses, while others impact thousands. The larger, more sophisticated generators of waste will initially be the most likely to take advantage of the increased management options available under the proposed rules.

22. Identify any disproportionate impact the rule may have on small businesses because of their size or geographic location:

The proposed rules will not have a disproportionate impact on small businesses because of the size of the business or geographic location. Impact is based primarily on waste type generated, generation level, and level of management.

23. Discuss the ability of small businesses to absorb the costs estimated above without suffering economic harm and without adversely affecting competition in the marketplace:

There should be minimal or no costs for small businesses to absorb, thus there would be no economic harm. Most composting facilities are small businesses and they in turn do or can serve many small businesses such as local grocers and restaurants. Many of these composting facilities already accept organics other than yard clippings and managing them in a manner similar to the requirements of the proposed rules or will be able to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace. Competition should not suffer as the rules apply to all generators of waste in Michigan. Regionally, the proposed rules present management options that may not be available in other states, presenting a competitive advantage for Michigan businesses.

24. Estimate the cost of the agency enforcing or administering the rule to exempt or set lesser standards for small businesses:

The DEQ will not incur any additional costs since the proposed revisions do not specifically exempt or set lesser standards for compliance for small businesses.

25. Determine the impact on the public interest of exempting or setting lesser standards for small businesses:

The public will not feel any adverse impact from the proposed rules since the proposed revisions do not specifically exempt or set lesser standards for compliance for small business.

26. Explain how the agency reduced the economic impact of the rule on small businesses, as MCL 24.240 requires, or discuss why such a reduction was not feasible:

The proposed rules will not have a disproportionate impact on small businesses because of their size. Therefore, no specific revisions are proposed to reduce the economic impact of the rules on small business. It should be noted that the proposed rule requiring the collection and analysis of leachate and runoff at compost facilities was targeted only at the larger compost operations so as not to be a hardship on the smaller ones.

27. Discuss whether and how the agency has involved both industry and small business in the development of the rule:

Both industry and small business were represented on the rules work group that developed the draft rules.

F. BENEFITS OF RULE:

28. Estimate the primary and direct benefits of the rule, including but not limited to the rule's impact on business competitiveness, the environment, worker safety, and consumer protection.

The primary benefits of the site/source separated organics in composting and the self-implementing beneficial use of industrial by-products would be to save the company (generator) on disposal costs if they can find a beneficial reuse for their material. The rule should provide greater environmental protection, better instructions to end users on the proper way to use recycled wastes, reduce green house gas emissions, reduce energy use, and comply with Michigan's 2007 Solid Waste Policy.

29. Estimate the secondary or indirect benefits of the rule, including spin-off benefits to business, the environment, workers, and consumers:

Secondary benefits would be related to the jobs that would be created in the recycling of industrial by-products and site/source separated organics. Furthermore, the compost portion of the rules will allow for data collection to determine how to appropriately regulate composting facilities groundwater and surface water impacts.

30. Are the direct and indirect benefits of the rule likely to justify the cost?

Yes.

31. Estimate the cost reductions to government, individuals, and businesses as a result of the rule:

The clarification and consistency provided in the proposed rules will alleviate confusion as to program interpretations and requirements, thereby providing an opportunity to reduce the need for consultant services and legal representation and the associated expense.

32. Estimate the increased revenues to state or local government units as a result of the rule:

Increased revenues to state or local government units are not expected as a result of the imposition of the proposed rules. Furthermore, local units of government that have host community agreements with landfills will receive smaller payments because less waste will be disposed into licensed landfills.

33. Identify the sources you relied upon in calculating your cost and benefit responses:

The DEQ asked members of the Inert/Compost Workgroup to provide written estimates of costs and benefits associated with the proposed rules.

Reviewed by Department Regulatory Affairs Officer:

Reviewed by SOAHR Representative:

SOAHR Response:

Approval		
Disapproval		Explain:
More information needed		Explain:
Date:		SOAHR #:

(SOAHR-RIS June 2005)