



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



LIESL EICHLER CLARK  
DIRECTOR

VIA E-MAIL

TO: Governor Gretchen Whitmer  
Members of the Michigan Legislature

FROM: Liesl Eichler Clark, Director *YEC*

DATE: March 25, 2019

SUBJECT: Report on Activities Funded by the Staff Account of the Solid Waste Management Fund

In accordance with Subsection 11550(6) of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, attached is the Department of Environmental Quality's (DEQ) Report on Activities Funded by the Staff Account of the Solid Waste Management Fund for fiscal year 2018.

Section 11525a of Part 115 requires the owner or operator of a landfill, except for Type III captive landfills, to pay a surcharge of \$0.12 per cubic yard of solid waste that is disposed of in a landfill before October 1, 2019. Further, Type III captive landfills pay an annual flat fee ranging between \$500 and \$3,000, depending on the volume of waste they report as disposed that year. The solid waste surcharge is placed into the Solid Waste Management Fund, which funds the Solid Waste Program and the activities described in this report. It should be noted that the surcharge is scheduled to sunset at the end of fiscal year 2019 and will need to be reviewed and potentially extended.

If you need further information, please contact Jack Schinderle, Director, Waste Management and Radiological Protection Division, at 517-284-6551; or you may contact me at 517-284-6710.

Attachment

SUBJECT: Report on Activities Funded by the Staff Account of the Solid Waste  
Management Fund

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cc/att: Chris Harkins, Director, Senate Fiscal Agency  
Mary Ann Cleary, Director, House Fiscal Agency  
Chris Kolb, Director, State Budget Office  
JoAnne Huls, Chief of Staff, Governor's Office  
Greg Bird, Legislative Director, Governor's Office  
Emily Laidlaw, Policy Director, Governor's Office  
Abbey Frazier, Senate Fiscal Agency  
Austin Scott, House Fiscal Agency  
Jacques McNeely, State Budget Office  
Jennifer Harrison, State Budget Office  
Aaron B. Keatley, Chief Deputy Director, DEQ  
Amy Epkey, Administration Deputy Director, DEQ  
Sarah M. Howes, Director of Policy and Legislative Affairs, DEQ  
David Fiedler, Regulatory Affairs Officer, DEQ  
Jack Schinderle, DEQ  
Elizabeth Browne, DEQ  
Kathy Tetzlaff, DEQ  
Rhonda Oyer, DEQ  
Jeff Spencer, DEQ  
Christina Miller, DEQ



MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY

## Legislative Report

# Report on Activities Funded by the Staff Account of the Solid Waste Management Fund

Report Period: Fiscal Year 2018

In accordance with Subsection 11550(6) of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, attached is the Department of Environmental Quality's (DEQ) Report on Activities Funded by the Staff Account of the Solid Waste Management Fund for fiscal year 2018.



REPORT ON ACTIVITIES  
FUNDED BY THE  
STAFF ACCOUNT OF THE  
SOLID WASTE MANAGEMENT FUND

OCTOBER 1, 2017 – SEPTEMBER 30, 2018

Prepared By:  
Michigan Department of Environmental Quality  
Waste Management and Radiological Protection Division  
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March 25, 2019

Subsection 11550(6) of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), states in part:

By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities of the previous fiscal year funded by the staff account of the solid waste management fund....

Section 11525a of Part 115 requires the owner or operator of a landfill, except for Type III captive landfills, to pay a surcharge of \$0.12 per cubic yard of solid waste that is disposed of in a landfill before October 1, 2019. Further, Type III captive landfills pay an annual flat fee ranging between \$500 and \$3,000, depending on the volume of waste they report as disposed that year. The solid waste surcharge is placed into the Solid Waste Management Fund, which funds the Solid Waste Program and the activities described in this report. It should be noted that the surcharge is scheduled to sunset at the end of fiscal year (FY) 2019 and will need to be reviewed and potentially extended.

Solid Waste Program staff regularly work with the Waste Management and Radiological Protection Division's (WMRPD) Remedial Action Team to determine corrective action activities at facilities that were previously licensed or are closed facilities. This work is beyond the permitting, licensing, inspection, and compliance activities at active facilities. Currently, WMRPD staff is actively managing corrective action activities at one previously licensed facility. These activities are funded through the Solid Waste Management Fund Staff Account.

Following is the information as outlined in Subsections 11550(6)(a) through (i):

**(a) Full-Time Equivalent (FTE) Positions**

Solid waste activities carried out by the Department of Environmental Quality (DEQ), WMRPD, in FY 2018, were conducted by 40 FTEs. These positions included permitting, licensing, compliance, and enforcement staff, such as geologists, engineers, and environmental quality analysts; district supervisors; and WMRPD management and administrative support staff.

**(b) Construction Permit Application Decisions**

One construction permit application was pending at the beginning of FY 2018.

- (1) During FY 2018, three applications for permits to establish or expand solid waste disposal facilities were received.

- (2) A total of three applications were determined to be administratively complete. There were no applications determined to be administratively incomplete. Also, three applications were approved, and zero applicants voluntarily withdrew their applications. There were zero applications denied. At the end of FY 2018, there were two applications pending a decision.
- (3) Of the applications that were determined to be administratively complete, 67 percent were decided upon within 120 days of being determined to be administratively complete, as required by Section 11511 of Part 115.<sup>1</sup> One permit application was granted a 90-day extension to the review period. The permit was issued on day 39 of the extension period.

CONSTRUCTION PERMIT APPLICATIONS	
Pending Applications as of October 1, 2017	2
Number of New Applications Received	3
Number of Applications Administratively Incomplete	0
Number of Applications Withdrawn	0
Number of Permits Issued	3
Number of Applications Denied	0
Number of Pending Applications as of September 30, 2018	2
Percent of Decisions Made on Time	100%

**(c) Operating License Applications Received Under Section 11512 of Part 115**

At the beginning of FY 2018, one operating license application was pending a decision.

- (1) During FY 2018, 23 applications for new or renewal licenses to operate solid waste disposal facilities were received.
- (2) A total of 21 applications were determined to be administratively complete. There were two applications determined to be administratively incomplete; however, they were resubmitted as complete during FY 2018. A total of 20 applications were approved, zero applicants withdrew their applications, and zero license applications were denied. At the end of FY 2018, there were four applications pending a decision.
- (3) Of the license applications that were determined to be administratively complete in FY 2018, 100 percent were decided upon within 90 days of being

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<sup>1</sup> The processing deadline is specified in Subsection 1307(1) of Part 13, Permits, of the NREPA, which requires that the DEQ approve or deny an application for a construction permit under Section 11509 by the 120-day processing deadline, unless a deadline extension is requested by the applicant.

determined to be administratively complete, as required by Section 11516 of Part 115.<sup>2</sup>

OPERATING LICENSE APPLICATIONS	
Pending Applications as of October 1, 2017	1
Number of New Applications Received	23
Number of Applications Administratively Incomplete	2
Number of Applications Withdrawn	0
Number of Licenses Issued	20
Number of Applications Denied	0
Number of Pending Applications as of September 30, 2018	4
Percent of Decisions Made on Time	100%

**(d) Number of Inspections of Licensed Disposal Areas as Required by Section 11519 of Part 115**

During FY 2018, 520 inspections of licensed disposal areas were conducted.<sup>3</sup>

**(e) Number of Letters of Warning (LOWs)<sup>4</sup> Sent to Licensed Disposal Areas**

During FY 2018, 47 LOWs were sent to licensed disposal areas.<sup>5</sup>

**(f) Number of Contested Case Hearings Initiated in FY 2018: Zero**

**Number of Contested Case Hearings Completed in FY 2018: Zero**

**Number of Civil Actions Initiated in FY 2018: Zero**

<sup>2</sup> The processing deadline is specified in Subsection 1307(1) of Part 13, Permits, of the NREPA, which requires that the DEQ approve or deny an application for an operating license under Section 11512 by the 90-day processing deadline, unless a deadline extension is requested by the applicant.

<sup>3</sup> A total of 655 compliance inspections were conducted in FY 2018. However, 520 are reported here because Subsection 11550(6)(e) only requires the number of inspections at licensed disposal areas. The remaining 135 inspections were conducted either at sites of illegal operations or at Type B solid waste transfer facilities that are authorized to operate by the statute but are not required to have an operating license.

<sup>4</sup> LOW includes written communications from the DEQ that give notice of noncompliance with Part 115, such as Compliance Communications and Violation Notices.

<sup>5</sup> A total of 61 LOWs were issued in FY 2018. However, 47 are reported here because Subsection 11550(6)(e) only requires the number of LOWs sent to licensed disposal areas. The remaining 14 LOWs were sent either to owners or to operators of disposal areas that are not required to have an operating license or to owners or operators of sites determined to be illegal operations. A Type B solid waste transfer facility is an example of a solid waste disposal area that is not required to have a license to legally operate. Although these disposal areas are not licensed, they are inspected for compliance with the operational requirements of Part 115 and the Part 115 Rules. The number of LOWs sent in FY 2018 may encompass some inspections made in the last quarter of FY 2017.

**Number of Civil Actions Completed in FY 2018: One**

**Number of Voluntary Consent Orders and Administrative Orders Entered or Issued in FY 2018: Zero**

**Amount of Fines and Penalties Collected in FY 2018 Through Such Actions or Orders: \$300,000**

**(g) Description of Corrective Actions Required by Enforcement Actions**

**(1) Trident Barrow Management 22, LLC (also known as "The Wixom Site")**

On July 10, 2018, the DEQ entered a Consent Decree (Case No. 16-000736-CE-C30) with Trident Barrow Management 22, LLC (Trident), in Ingham County Circuit Court, resulting from solid waste disposal violations at the property located at 28801/29311 South Wixom Road, Wixom, Oakland County, Michigan (site). The site is the location of the former Ford Motor Company Wixom Assembly Plant. Trident purchased the site from Ford in 2012 and soon thereafter began demolishing the on-site buildings, thereby generating construction and demolition (C&D) waste. While some of the C&D waste was hauled off-site for proper disposal, Trident's contractor filled in numerous on-site trenches, pits, and a paint-shop basement with the remaining C&D waste (estimated 75,000 cubic yards), thereby creating an illegal solid waste disposal area.

Due to the nature of the violations and the recalcitrance of Trident to resolve the violations after the issuance of several Violation Notices, the WMRPD Southeast Michigan District Office referred the matter to the WMRPD Enforcement Section on April 29, 2014. Despite attempts by the WMRPD Enforcement Section to compel Trident to enter into an Administrative Consent Order, Trident would not voluntarily do so. Therefore, the WMRPD referred the matter to the Department of Attorney General (DAG) on August 6, 2014, to pursue a civil action.

A complaint and summons were ultimately filed in Ingham County Circuit Court by the DAG on September 27, 2016, alleging violations of Part 115, MCL 324.11501 *et seq.*; Part 121, Liquid Industrial By-Products, of the NREPA, MCL 324.12101 *et seq.*; and Part 31, Water Resources Protection, of the NREPA, MCL 324.3101 *et seq.*, resulting from the Defendant's actions and inactions. The DAG filed a Motion for Summary Disposition with the court on February 6, 2018, that was granted by the court during a hearing on February 28, 2018. The court entered the *Order Granting Plaintiff's Motion for Summary Disposition of Counts I and II of its Complaint* on March 15, 2018, which includes the following: (1) a determination that Trident is liable for the Part 115 and Part 121 violations; (2) the requirement for Trident to initiate cleanup (removal/proper disposal of solid waste and liquid industrial by-product) within 60 days of the Order; and (3) a

determination that Trident is liable for civil penalties, enforcement and surveillance costs, and attorney's fees. It was also determined that Trident will undergo a hearing to determine the appropriate amounts of penalties, costs, and fees.

Subsequently, Trident entered into a purchase agreement for sale of the site to an entity (Detroit Wixom, LLC) that is willing to conduct the needed corrective actions to resolve the violations caused by Trident at the site. The WMRPD and DAG will be entering an Administrative Consent Agreement (ACA) with Detroit Wixom, LLC, so that the compliance program and milestones for achievement are well understood and adhered to. The Consent Decree specifies that entry of the ACA with Detroit Wixom, LLC, will not remove Trident's obligation to conduct the response actions if Detroit Wixom, LLC, fails to do so.

Trident was assessed a penalty of \$300,000 as settlement of the alleged violations through entry of the Consent Decree. The Consent Decree will remain in effect until corrective action has been completed and compliance with solid waste management requirements have been achieved at the site.

**(h) Number of Solid Waste Complaints Received, Investigated, Resolved, and Not Resolved by the DEQ**

During FY 2018, the DEQ received 123 solid waste complaints, of which 63 were investigated via inspections. The remaining 60 complaints were resolved by contact with the parties involved, were appropriately referred to other DEQ program divisions/offices or other agencies, or are still under investigation.

**(i) Amount of Revenue Remaining in the Staff Account at the End of FY 2018**

The amount of revenue in the Solid Waste Management Fund Staff Account at the end of FY 2018 was \$5,493,511.