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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



LIESL EICHLER CLARK
DIRECTOR

VIA E-MAIL

TO: Members of the Michigan Legislature
FROM: Liesl Eichler Clark, Director 
DATE: July 22, 2020
SUBJECT: Report on Hazardous Waste User Charges

In accordance with Subsections 11135(6) and 11153(8) of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, attached is the Department of Environment, Great Lakes, and Energy's (EGLE) report on Hazardous Waste User Charges for fiscal year 2019.

If you need further information, please contact Elizabeth M. Browne, Acting Director, Materials Management Division, at 517-331-6706; or you may contact me at 517-284-6708.

Attachment

- cc/att: Chris Harkins, Director, Senate Fiscal Agency
- Mary Ann Cleary, Director, House Fiscal Agency
- Chris Kolb, Director, State Budget Office
- Jennifer Flood, Legislative and Public Affairs Director, Governor's Office
- Emily Laidlaw, Policy Director, Governor's Office
- Josh Sefton, Senate Fiscal Agency
- Austin Scott, House Fiscal Agency
- Jacques McNeely, State Budget Office
- Carly Kirk, State Budget Office
- Aaron B. Keatley, Chief Deputy Director, EGLE
- Amy Epkey, Senior Deputy Director, EGLE
- Sarah M. Howes, Legislative Liaison, EGLE
- David Fiedler, Regulatory Affairs Officer, EGLE
- Paul McDonald, EGLE
- Dale Shaw, EGLE
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- Robert Jackson, EGLE
- Allan Taylor, EGLE
- Kathy Tetzlaff, EGLE
- Richard Conforti, EGLE
- Kimberly Tyson, EGLE



MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

Legislative Report

Report on Hazardous Waste User Charges

Report Period:
Fiscal Year 2019

Authority:
MCL 324.11135(6) and 324.11153(8)

INTRODUCTION

The Department of Environment, Great Lakes, and Energy (EGLE) is federally authorized to administer Michigan's Hazardous Waste Program (HWP), under Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and its administrative rules, in lieu of the federal HWP under the Resource Conservation and Recovery Act of 1976, as amended (RCRA). Part 111 of the NREPA requires EGLE to evaluate the effectiveness and adequacy of the site identification (ID) number and annual handler user charges collected as part of the Hazardous Waste User Charge (HWUC) system, relative to the overall revenue needs of Michigan's HWP. The intent of this report is to evaluate the HWP in relation to the HWUC system and commence focus on future funding models.

HAZARDOUS WASTE PROGRAM

The HWP is a preventive program that protects human health and the environment by ensuring the proper identification, handling, tracking, transportation, treatment, storage, and disposal of hazardous waste in Michigan. The HWP requires waste characterization and classification, issuance of site ID numbers, manifest tracking of waste from the point of generation to ultimate disposal, transportation, and licensing of treatment, storage, and disposal facilities (TSDF), all of which support the national "cradle-to-grave" HWP. Michigan has approximately 2,500 large quantity generators (LQGs) and small quantity generators (SQGs) that manage hazardous waste subject to the HWUC system, representing a variety of industries and manufacturing sectors (e.g., automotive, chemical, pharmaceutical, glass, metal processing, furniture, leather, etc.), as well as universities, hospitals, dry cleaners, laboratories, vehicle and equipment maintenance and repair shops, printers, construction-demolition-renovation services, pesticide services, photo processing, wood preserving, transportation, remediation activities, etc. There are tens of thousands of very small quantity generators (VSQGs) that are exempt from user charges. Michigan currently has 14 licensed hazardous waste TSDFs that pay user charges.

The HWP also oversees the following related acts:

- Part 121, Liquid Industrial By-Products, of the NREPA
- Part 167, Used Oil Recycling, of the NREPA
- Part 171, Battery Disposal, of the NREPA
- Hazardous Materials Transportation Act, 1998 PA 138

FUNDING

The HWP is supported by a federal grant from the United States Environmental Protection Agency (USEPA), the revenue in the Environmental Pollution Prevention Fund that is generated by the HWUC system, and the hazardous waste disposal fees. Renew Michigan funds have also been used to balance the program budget. When fully funded, the program supports 44 full-time employees, who are responsible for compliance assistance, licensing of transporters and treatment/disposal facilities, closure of hazardous waste management units, corrective action and cleanup of hazardous waste releases, recycling, site registration through identification number issuance, manifest processing, federal program authorization, technical reviews, inspections, reporting and oversight, and enforcement. The HWP is operating with significantly less than 44 full-time employees due to the current and ongoing funding shortfall that has delayed the filling of vacancies created by retirements, job changes, the 2020 COVID-19 pandemic, etc.

The following shows the amounts received toward the fiscal year 2019 HWP budget from the site ID number user charges, manifest processing user charges, annual handler user charges, hazardous waste disposal fees, and transporter revenue that were deposited into the Environmental Pollution Prevention Fund:

FEE STRUCTURE

Revenue	2017	2019
Site ID Number User Charges	\$29,204	\$26,779
Annual Manifest Processing User Charges	\$299,088	\$0
Annual Handler User Charges	\$531,200	\$712,696
Hazardous Waste Disposal Fees	\$2,906,140	\$3,560,690
Annual Transporter Revenue	\$245,715	\$254,820
Total	\$4,011,347	\$4,554,985

Fee	Amount
Site ID Number User Charges	\$50 per site ID number issued.
Annual Manifest Processing User Charges	Eliminated in June of 2018; USEPA e-Manifest system replaced all State manifest collection and processing systems.
Annual Handler User Charges	Small Quantity Generator - \$100 Large Quantity Generator - \$400 TSDF - \$2,000
Hazardous Waste Disposal Fees	Solidification - \$10/ton or cubic yard (or 4 cents/gallon or ½ cent/pound). Landfill Disposal - \$10/ton or cubic yard (or ½ cent/pound).

It should be noted that the HWUCs have steadily decreased over time due to less generation of hazardous wastes via waste minimization efforts, recycling, the universal waste category, conditionally exempt small quantity generator status, waste delisting approvals, etc. The following billing records show this trend:

Calendar Year	Number of Invoices	User Charges Billed
2003	5,876	\$1,214,682
2005	4,770	\$1,181,572
2007	4,599	\$1,089,724
2009	4,152	\$946,328
2011	3,398	\$841,852
2013	3,264	\$876,216
2015	3,005	\$835,092
2017	2,774	*\$830,288
2019	2,551	**\$712,696

*User Charges Billed do not match revenue due to discrepancies in manifest count, revisions to generator status of the handlers, and late fees being assessed.

**User Charges Billed have not been fully collected at the time of this report.

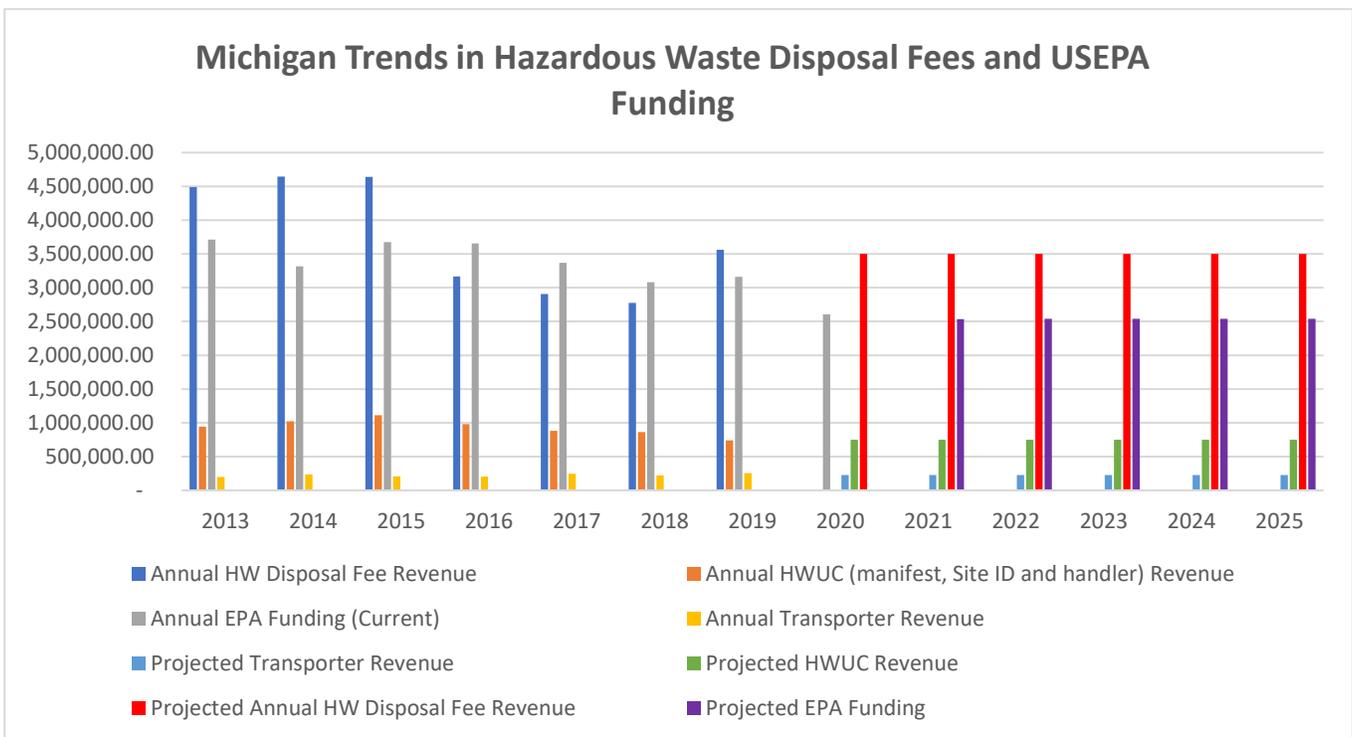
FUNDING TRENDS

While the current structure is a fair system for the identified handlers, and it does provide quality information that can be used by the regulated community, EGLE, and the public, it no longer provides adequate revenue to fund the current HWP for the following reasons:

- Limitations of the e-Manifest Fee - The federal e-Manifest system became active in June of 2018. After this system was activated, EGLE was pre-empted from collecting manifest processing user charges, eliminating approximately \$200,000 of revenue per year for the HWP.

- Reduction in Federal Funding - In 2017 the USEPA began a phased reduction in the federal grant by over \$1.2 million, resulting in a 30 percent overall reduction in federal support by 2020, as compared to a 2016 baseline. The latest USEPA projected funding has stabilized. The next years, 2021 to 2025, are presented in the graph below. While these projections are similar to the 2020 value, they are a reduction as compared to previous years. Even though the next years' projections are not trending down, there is no accounting for increased costs, such as annual inflation.
- Reduction in Fee Revenue - The quantity of hazardous waste solidified and landfilled in the state has also stabilized since 2019. This also represents a decrease in disposal fee revenue by over \$1 million annually from historic levels.

The downward trend and eventual stabilization at historically low levels in funding from the USEPA, and the projected revenue from solidification and landfill disposal fees, are shown graphically below. Based on this trend and the sunset of certain user handler fees in October of 2021, EGLE will need to reengage stakeholders to explore (an) alternate funding mechanism(s).



PROGRAM ENHANCEMENTS AND EFFICIENCIES

EGLE has implemented, and continues to implement, HWP efficiencies to improve services and control costs, including:

Part 111 Rule Revisions

The proposed Part 111 Rules, promulgated pursuant to Part 111 of the NREPA, address federal revisions that are required for EGLE to maintain its authorization, as well as federal revisions that authorized states have the option of incorporating for consistency purposes. The revisions, which will be promulgated by the fall of 2020, relate to the following federal subject areas: generator improvement rules, import/export of hazardous waste, e-Manifest system implementation, and aerosol cans as a universal waste. Additionally, the proposed rules address revisions based on EGLE and public recommendations. These revisions relate to the following subject areas: state-only hazardous waste listings; updates to information associated with items adopted by reference in the rules; and typographical corrections. This rules package will represent the 12th amendment to the base program rules and will be effective by the fall of 2020. The next

rules package, which will be initiated with stakeholder input in 2020, will address recalled air bags, the pharmaceutical rules, and other updates.

Utilize Senior Environmental Employee Program (SEEP)

Michigan utilizes the federally-funded SEEP for cost-effective contract positions to assist with liquid industrial by-product (LIB) report processing, data entry, quality control screening, biennial report processing, and site ID number issuance/processing. The HWP relies upon the SEEP contractors to accomplish the data management requirements of the HWUC process, processing LIB reports, and assisting with the biennial report.

Improved Public Participation

The HWP has expanded its public participation process to include the Environmental Justice (EJ) review protocols (e.g., utilizing EJ screening tools, language translation services, etc.). For some projects, public hearings/meetings are recorded and posted on the EGLE Website, via YouTube, so they can be accessed by anyone, at any time, during the public comment period (versus being available only the night of the hearing/meeting). Also, for licensing actions, the HWP has added an additional public information meeting when a proposed operating license application is determined to be administratively complete. This helps to ensure that the first time the public hears about a proposed decision is not when EGLE is announcing their intent to issue or deny a license. For locations that have limited English proficiency, written correspondence is provided in multiple languages. During public meetings, multiple translators are provided to assist in communications for limited English proficient attendees. Licensing and contact information is also routinely posted on appropriate municipality Websites, which is in addition to what the administrative rules require.

SUMMARY

The HWP continues to implement and seek additional efficiencies to decrease program costs without impacting the core mission. Current and projected levels of funding are not adequate to maintain the program. The significant decrease in federal funding combined with decreases in revenue from hazardous waste reduction fees and the loss of manifest revenue indicate that other funding options need to be pursued. EGLE is currently coordinating with stakeholders to explore future funding model(s) for proposal to the Legislature. While the HWP has seen a reduction in licensed hazardous waste facilities from 19 to 14, the overall number of hazardous waste management facilities has remained constant, at approximately 300. While many of these facilities are in the corrective action process, they are at different levels of completed corrective action (remediation is ongoing, and exposures are under control), and there is long-term maintenance and monitoring required to ensure the remediation remains under control. In addition, additional corrective action sometimes must be completed as new information becomes available. For example, the emergence of the PFAS class of contaminants as a threat to human health and the environment and the increased importance of the vapor intrusion pathway have required additional evaluation, and in many cases, the need for additional corrective action. As mentioned previously, the HWP has improved its public participation process. The expanded public participation and additional translation services require more time and resources to reach the local public near a facility being considered for licensing or corrective action requirements.

As mentioned previously, there are approximately 2,500 LQGs and SQGs subject to the HWUC; there are approximately 10 times that number of VSQGs that are not subject to the HWUC. These VSQGs are subject to the Part 111 rules and statutes that govern LQGs and SQGs. The HWP is required to inspect and oversee these VSQGs to ensure they follow the regulations. As technology and the regulations change to allow LQGs and SQGs to become VSQGs, the HWUC fund is diminished. The HWP must find a way to maintain funding without relying on the General Fund. That is why the HWP is re-establishing a Hazardous Waste Management Program Funding Stakeholder Work Group. This work group will be established to provide a forum to discuss funding for Michigan's HWP and will discuss both short-term and long-term program funding, with an emphasis on a long-term, stable, equitable, and easy-to-collect solution.