

Department of Environmental Quality - Report to the Legislature

Recommendations for Changes to the Solid Waste Planning and Disposal Area Siting Provisions of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended

February 22, 2005

EXECUTIVE SUMMARY

Michigan is currently the third highest importer of solid waste in the nation. Statutory amendments enacted in 2004 require that imported waste meet Michigan disposal standards. However, a closer correlation between the amount of disposal capacity needed in Michigan and the amount of capacity that is actually available could result in fewer solid waste imports for the state and a more effective solid waste planning process. The state's current solid waste management planning program has consistently been regarded as a means of providing disposal capacity in the state, rather than developing an integrated waste management system and a comprehensive approach to solid waste management as a whole. While the state has been largely successful in creating adequate landfill capacity, further encouragement of waste reduction for the protection of Michigan's environmental resources through decreased reliance on land disposal and incineration is necessary.

Implementing the recommendations contained in this report would update Michigan's current Solid Waste Policy and improve the overall effectiveness of the Planning process, as follows:

- In addition to establishing incentives to encourage recycling, source reduction, and reuse, efforts should be made to incorporate cost-effective programs into the county solid waste management plans (Plans) as well as providing for adequate disposal systems and capacity.
- Encouraging counties to plan on a regional basis, improving measurement and tracking of landfill capacity, and maintaining accurate information on landfill capacity and waste diversion will help link waste diversion goals and programs outlined in the Plans to statewide Solid Waste Policy goals.
- Ensuring that the five-year Plan update cycle or an alternative update cycle is consistent and maintaining the counties' ability to control waste flow would help improve the administration of the planning process.
- Establishing funding mechanisms such as a surcharge, unit-based garbage fee structures, or host county or host community agreements would help support planning and program implementation at the state and local levels.

In order to ensure that all solid waste is properly managed in the interests of public safety and the health of the environment, the Department of Environmental Quality (DEQ) has prepared this report based on consultation with affected stakeholders. This report assesses Michigan's current solid waste management planning processes and provides specific recommendations for amending the solid waste planning (Planning) and disposal area siting provisions of Part 115. The intention of this report is to help formulate a comprehensive approach to solid waste management in Michigan by updating and reflecting on the goals established in the state's 1988 Solid Waste Policy. The implementation of the recommendations found in this report will ensure adequate and reasonable disposal capacity is available in the state for use by Michigan's residents without creating excess capacity and will lead to a more effective and comprehensive approach to solid waste management.

INTRODUCTION

Part 115 was amended by 2004 PA 38 by adding Section 11511a(6), which states:

By January 1, 2005, the department shall submit to the legislature a report providing recommendations for amending the solid waste planning and disposal area siting provisions of this part. The report shall also recommend methods for securing reasonable and necessary regional and statewide disposal capacity considering the paramount public concern in the conservation of the natural resources of the state. The department shall prepare this report based on consultation with affected parties.

This report fulfills the requirement for the DEQ to provide recommendations to the Legislature for amending the Planning and disposal area siting provisions of Part 115. The DEQ convened a stakeholder work group to discuss these issues. The members of the work group are listed in Appendix A. The work group met on June 17, 2004, August 10, 2004, October 19, 2004, and December 8, 2004. This report provides background on the Planning process, an overview of the work group discussions, and DEQ's recommendations for amending Part 115 based on consideration of the work group's input.

In an effort to be responsive to the above charge, the DEQ formulated the following issues in the form of questions to help frame the discussion and recommendations presented in this report:

- How can Michigan's Solid Waste Policy be updated to provide a more comprehensive approach to solid waste management in order to make the Planning process more effective overall?
- Should the Planning process be restructured to transition from a county-based model to a region-based model?
- What more can we do to have a closer correlation between the amount of disposal capacity needed in Michigan and the amount of capacity which is available?
- Are there things we can do to improve the administration of the Planning process?

BACKGROUND

The current Planning process, outlined in Part 115 and developed during the late 1980s and 1990s:

- controls the siting of new and expanded disposal areas;
- requires a county-level demonstration of adequate disposal capacity;
- defines recycling/composting and other local waste diversion programs;
- controls imports and exports of waste for disposal between counties in Michigan; and
- preempts all local regulation of disposal area design, location, and operation except to the extent allowed by the DEQ-approved county solid waste management plan (County Plan).

One goal of the Planning and disposal area siting provisions of Part 115 is to ensure adequate and reasonable disposal capacity in the state for use by Michigan's residents without providing

excess capacity. It should be noted that due to the existence of specific waste import and export authorizations in each County's Plan for waste coming from or going to other counties within the state, data provided by landfills for Fiscal Year 2004 cannot be used to calculate a figure for statewide capacity in terms of "estimated years remaining."

Under the current Planning process, each county must demonstrate adequate capacity for disposal of waste generated in the county for both 5 and 10 years. A county must demonstrate 5 years of capacity by listing specific sites for disposal of the amount of waste generated over the 5-year period. To demonstrate 10 years of capacity, a county must either (1) list specific sites for disposal of the amount of waste generated within the county for the 10-year period or (2) list 5 years of capacity at specific sites and have an objective criteria-based siting process and an annual capacity certification process. If a county becomes unable to show at least 66 months of capacity, the siting process is triggered and the county must designate or identify additional available capacity.

The requirement that each county show 10 years of site-specific disposal capacity has facilitated the siting of extensive additional capacity at individual disposal facilities. In some cases, individual facilities have secured capacity of greater than 50 years of disposal at current disposal rates. This dedication of large areas for solid waste disposal purposes is an inefficient use of natural resources. Importantly, large amounts of capacity in excess of that necessary for disposal of locally-generated waste is one factor that encourages importation of waste from outside of Michigan. To address these concerns, the Legislature called for this report and imposed a moratorium on new municipal solid waste landfill construction until January 2006, pending the development of this report and consideration of its recommendations.

Beyond simply providing disposal capacity, solid waste planning should describe an effective, environmentally sound, and integrated solid waste management system that ensures that all solid waste in the Planning area is properly managed. It should also seek to maximize the capacity and life of disposal facilities. An integrated waste management system should include, to the greatest extent practicable, components relating to adequate waste diversion, reuse, and recycling capacity, as well as providing adequate long-term disposal systems and capacity. To date, the state Planning program has been conceived of as a means of providing disposal capacity, rather than developing an integrated system.

In an effort to develop a more comprehensive approach to solid waste management, the state formulated the 1988 Solid Waste Policy, addressing not only the need to ensure adequate capacity, but also the importance of prioritizing waste management alternatives. Since the development of the 1988 Solid Waste Policy, it has become evident that prudent stewardship of Michigan's environmental resources requires a shift toward reduction in solid waste generation (via source reduction, reuse, and recycling) and decreased reliance on land disposal or incineration.

The development of a more comprehensive approach to solid waste management should include the establishment of goals along with incentives to promote recycling and other waste diversion efforts and disincentives to waste disposal. Recycling efforts should be encouraged by allowing counties to provide incentives to encourage cost-effective recycling through the County Plans. These recycling programs should be tailored to the availability of recyclable materials in the Planning area and the existence of markets. A qualitative and quantitative analysis should be included so the public knows the true cost of recycling versus the true cost of disposal. This allows for a public capable of making informed decisions about the services they are receiving. Initially, it may cost more money to divert waste than to dispose of the same waste. However, this does not take into account the true costs of waste disposal when one

considers the long-term management of disposal facilities nor does it take into account the many benefits that result from beneficial reuse activities, recycling, and development of value-added products. Twenty percent of Michigan households, and many businesses, have the opportunity to recycle and reduce their waste for disposal. These same households and businesses also may reduce their disposal costs by subscribing to a smaller, less expensive garbage container, where volume-based or Pay-As-You-Throw (PAYT) programs are available. Counties can also promote recycling efforts through existing local authorities.

While the current Planning process has been somewhat difficult, it has been successful in creating adequate landfill capacity in Michigan. The current Planning process was developed in consideration of competing interests among state and local government, the public, and the waste management industry. The recommendations contained in this report reflect reconsideration of these competing interests.

With this background, recommendations are presented for the four issues identified above. Associated stakeholder work group discussion for each issue and any subissues are presented in Appendix B. For each recommendation, the DEQ considered the discussion presented in Appendix B prior to formulating the recommendations. In some cases, the recommendations can be implemented by the DEQ, and in other cases legislative changes will be needed. In addition, some recommendations will require additional resources for successful implementation.

ISSUES AND DEQ RECOMMENDATIONS:

Issue 1. How can Michigan's Solid Waste Policy be updated to provide a more comprehensive approach to solid waste management in order to make the Planning process more effective overall?

DEQ Recommendations:

- **Update the 1988 Solid Waste Policy to take a more comprehensive approach to solid waste management in Michigan by identifying objectives and goals that promote waste diversion and reduce dependence on waste disposal.**
- **Use the Policy to provide a foundation to identify accurate current and future disposal capacity.**
- **Include in the Policy preferred management options and corresponding goals for waste diversion, recycling, composting, land disposal, and incineration.**
- **In the Policy, encourage the collection and reporting of information for measurement and evaluation purposes.**
- **Identify a funding mechanism¹ and the associated legislation and rulemaking needed to implement that funding to support Planning and program implementation at the state and local levels.**
- **Propose new potential initiatives to support private and public sector activities that help advance the goals of the Policy and the implementation of County Plans.**
- **Develop a means to transition the Planning program to a comprehensive system that reflects and focuses on the goals established in the Policy.**

¹ It should be noted that the solid waste industry and at least one governmental unit represented on the stakeholder work group objected to any funding mechanism that is a surcharge or imposes a fee on the landfill disposal of solid waste. However, a large number of the other stakeholders in the work group believe that this idea should receive consideration.

Issue 2. Should the Planning process be restructured to transition from a county-based model to a region-based model?

DEQ Recommendations:

- **Maintain the Planning process at the county level with improvements as noted within this report.**
- **Provide incentives to encourage counties to plan on a regional basis through the cooperative efforts of multiple counties.**

Issue 3. What more can we do to have a closer correlation between the amount of disposal capacity needed in Michigan and the amount of capacity which is available?

DEQ Recommendations:

- **Update the 1988 Solid Waste Policy to preserve adequate landfill capacity for the use of Michigan’s residents.**
- **Amend Part 115 to improve the measurement and tracking of landfill capacity and waste diversion efforts.**
- **Encourage the regulation or reservation of capacity through locally authorized or negotiated means such as annual disposal caps and written commitments between counties and disposal facilities to eliminate the “double-counting” of promised capacity.**
- **Require that County Plans describe what is consistent with the Plan in terms of specific capacity rather than just ambiguously listing the acreage of the disposal facility or of the solid waste boundary (“footprint”).**
- **Authorize counties to control through local zoning those Part 115 disposal facilities that, although included in the County Plan, do not require a Part 115 construction permit and operating license.**
- **Allow County Plans to act in lieu of local zoning for facilities not required to be permitted and licensed only if the host township or county does not have zoning.**
- **Maintain Part 115 operational requirements for facilities not subject to a Part 115 construction permit and operating license.**
- **Provide clearer direction on acceptable siting criteria and procedures.**
- **Require County Plans to include accurate waste generation and waste diversion data, including future projections of such data.**
- **Require County Plans to provide for adequate recycling and composting capacity for processing material generated in each county or region.**
- **Establish a means for the DEQ to determine sufficient or optimum landfill capacity in order for the Planning process to help eliminate any excess capacity.**
- **Establish a means to identify the rate at which disposal capacity is used so that the state can maintain accurate information on landfill capacity and waste diversion.**
- **Link waste diversion goals and programs outlined in County Plans to statewide Policy goals.**

Issue 4. Are there things we can do to improve the administration of the Planning process?

4a. State Guidance for County Plan Development and Review

DEQ Recommendations:

- **Revise the standard County Plan format and guidance documents with input from the Designated Planning Agencies, stakeholders, and staff prior to the next round of County Plan updates.**
- **Develop incentives within this context to encourage cooperation in Plan development on a regional basis.**
- **Develop, with input from the Designated Planning Agencies and stakeholders, procedures before the start of the next Plan update cycle that ensure the consistency of Plan review and approval.**
- **Encourage the regional Planning agencies to provide technical assistance in Plan preparation.**
- **Ensure that the five-year Plan update cycle or an alternative update cycle is maintained consistently.**
- **Develop guidance material to clarify the scope of authority of the DEQ, counties, and local units of government for the design, implementation, and enforcement of Plans.**
- **Amend Part 115 to clearly delineate the need to include specific waste diversion programs in Plans and the authority to enforce waste diversion provisions.**
- **Maintain the ability of counties to control waste flow within the state and seek to address the limitations regarding interstate flow control through available legal and legislative means.**

4b. Time Frames for Decisions Within the Planning Process

DEQ Recommendations:

- **Amend Part 115 to modify the local decision-making process, as follows:**
 - **Add decision deadlines at various points in the Planning process to actions on Plan decisions (updates and amendments).**
 - **Specify a default result if an action is not taken by a deadline.**
 - **Amend Part 115 to establish the standard for a Plan decision of two-thirds of the units that voted within a specified time frame.**
 - **Require local municipalities to support their disapproval of the Plan decision with a stated rationale.**
- **Further review with stakeholders the need to provide for an expedited mechanism for the siting of captive industrial landfill facilities to serve Michigan industry.**

4c. Size and Composition of the Planning Committee

DEQ Recommendation:

- **Amend Part 115 to provide the alternative of a smaller Planning committee for rural counties.**

4d. Data Collection

DEQ Recommendations:

- **Develop a standard means of calculating waste generation, waste diversion, and disposal capacity data.**
- **Amend Part 115 to provide for the state and local collection and reporting of quantitative data on facility capacity and waste diversion to help with the Planning process at both the local and the state levels.**
- **Incorporate provisions in the amendments to Part 115 to protect information that may be proprietary.**

4e. Funding Mechanisms

DEQ Recommendations:

- **Revise Part 115 to clarify the authority and methods for enacting user fees as legitimate funding methods for plan development and implementation.**
- **Identify a funding mechanism and the associated legislation and rulemaking needed to implement that funding to support Planning and program implementation at the state and local levels.**
- **Consider, in the context of revisions to the Solid Waste Policy encouraging PAYT, unit-based garbage fee structures or mechanisms.**

4f. Host Community/Host County Agreements

DEQ Recommendations:

- **Encourage the use of Host Community or Host County Agreements as one component of funding for local solid waste management programs.²**
- **Encourage the use of Agreements to guarantee disposal capacity to the specific county or municipality.**
- **Establish a means to protect existing Agreements when a statewide funding mechanism is instituted to prevent existing contracts from being superseded or those with existing Agreements from paying double for the same thing.**

SUMMARY

The DEQ believes that with the implementation of these recommendations we will help to ensure adequate and reasonable disposal capacity is available in the state for use by Michigan's residents without creating excess capacity. Additionally, implementation of these recommendations will make efforts at the state and local level to ensure a more comprehensive approach to solid waste management more effective and will provide positive steps toward a comprehensive solid waste management policy.

The regulatory and policy changes/DEQ actions needed to implement these recommendations along with the budget implications of implementation including designation of the associated issue are discussed in Appendix D.

² It should be noted that the waste industry objects to making Host Community Agreements mandatory.

APPENDIX A

Work Group Members

The DEQ would like to acknowledge participants of the work group who provided thoughtful comments and discussion, which were incorporated, as appropriate, into this report:

Ms. Sarah Archer/Mr. Hayes Jones — Oakland County
Mr. Dan Batts — Bestway Disposal
Mr. Noel Bush — Midland County
Mr. John Campbell — Eastern Upper Peninsula Planning & Development Authority
Ms. Cara Clore — Clinton County Department of Waste Management
Mr. Gary Dawson — Consumers Energy
Mr. Steve Essling/Mr. Tom Horton — Waste Management of Michigan
Mr. Joe Fivas — Michigan Municipal League
Mr. Tom Frazier — Michigan Townships Association
Mr. James Frey — Resource Recycling Systems, Inc.
Ms. Stephanie Glysson — Republic Waste Services
Mr. Thomas Goergen — Genesee County Metro Planning Commission
Mr. John Gruchot — Berrien County Administration Center
Mr. Terry Guerin — Granger
Mr. Tom Hickson — Michigan Association of Counties
Mr. Carl Holsinger — St. Joseph County
Mr. Mike Johnston — Michigan Manufacturers Association
Mr. Jeff Krcmarik — Washtenaw County Division of Public Works
Mr. Steve Leuty — Kalamazoo County
Mr. Larry O'Keefe — St. Clair County
Mr. Robert Ratz — Wayne County Department of Environment
Ms. Diane Rekowski — Northeastern Michigan Council of Governments
Ms. Elisa Seltzer — Emmet County Department of Public Works
Mr. Larry Sullivan — Charlevoix County Planning Commission
Mr. Randy Terronez — Clare County Department of Public Works
Mr. Douglas Wood — Kent County Department of Public Works

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Jim Sygo
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APPENDIX B

Work Group Discussion

The following text is a summary of comments made by work group members. The statements do not necessarily reflect agreement of the work group as a whole, nor should they be read to reflect the position of any particular member of the work group or interest represented on the work group unless specifically indicated.

Issue 1. *How can Michigan's Solid Waste Policy be updated to provide a more comprehensive approach to solid waste management in order to make the Planning process more effective overall?*

Work Group Discussion:

Protecting disposal capacity for use by Michigan citizens should be a priority of the state, and unnecessary development or expansion of disposal facilities should be minimized. As a step toward accomplishing this, we must accurately identify current and future disposal needs through data collection and analysis. This is difficult, as collection of the necessary data is not presently mandated. In addition, requiring counties to describe what is consistent with the County Plan in terms of specific capacity rather than just ambiguously listing the acreage of the disposal facility or of the solid waste boundary ("footprint") would be helpful in developing an accurate picture of the disposal capacity within the state.

The current solid waste management focus relies too heavily on disposal strategies and needs to evolve to meet present challenges, such as waste generation issues, developing/refining waste diversion programs, market development for materials, and innovation and technology issues related to how waste is handled. Disposal capacity must be viewed as part of a comprehensive waste management system and as a diminishing commodity. Recycling, beneficial reuse, and other waste diversion strategies help to extend the life of existing disposal areas and reduce the need to site more. Controlling fill rates also helps to promote waste diversion efforts at the local level. Waste diversion can be promoted through the use of incentives, along with disincentives for disposal.

A clear directive from the state in the form of a new or updated statewide solid waste management policy with unambiguous goals is needed to ensure a more comprehensive approach to Planning is available as a guideline for use by the counties. This is most effectively accomplished by updating Michigan's existing 1988 Solid Waste Policy (Policy) to include statewide goals that reflect current trends and best management options. Without a clear link between the Policy and County Plans, it could be said that the Planning process only exists to ensure there is adequate space to bury waste. An updated Policy should include the following components:

- Establish updated goals for waste diversion.
- Provide incentives to promote waste diversion and disincentives to landfill disposal.

- Broaden the scope of how waste diversion objectives are measured and assist in determining needed capacity for residential and commercial waste and needed capacity of captive facilities³ to provide for the needs of the industry.
- Identify objectives that include waste diversion options and require the measurement of waste diversion in each county. (Requiring the measurement of waste diversion activities in an auditable format would provide for program accountability, especially where public funds are used for these programs. This information would also assist in accurately determining the landfill capacity needed for Michigan's waste.)
- Provide for initiatives to support public and private sector activities that help advance the Policy and County Plan goals or address specific challenges (funding mechanisms serve as a "carrot" type approach and can help various entities work together to achieve the goals set in the Policy).
- Recognize the unique disposal needs of Michigan industry and provide for these needs in a time-sensitive and cost-effective manner that will help facilitate successful competition with industries throughout the national and global markets.
- Provide a foundation to identify accurate current and future disposal capacity.
- Identify preferred management options and corresponding goals for waste diversion, recycling, composting, disposal, and incineration.
- Mandate the collection and reporting of information for measurement and evaluation purposes.
- Identify potential effective, efficient, and sustainable funding mechanisms to support Planning and program implementation at the state and local level.
- Help to transition County Plan development to a comprehensive solid waste management system.

County Plans would need to uphold the Policy and provide specific options to encourage and implement activities to move toward the statewide goals contained in the Policy. More emphasis within the County Plans would need to be placed on statewide Policy goals, such as waste diversion, in order to reduce dependence on landfill disposal.

There is a need to be creative in how waste diversion maximization techniques and funding options can be successfully worked into Planning. New initiatives are needed at both the state and local levels to assist in the implementation of local efforts to enable the state to reach overall goals. Such efforts can, and will, enable us to more wisely use the disposal capacity and siting portions of the County Plan.

Issue 2. Should the Planning process be restructured to transition from a county-based model to a region-based model?

Work Group Discussion:

Barriers to a mandatory regional Planning approach were identified in the March 4, 1993, final report of the Solid Waste Management Planning Program Review Work Group. One of the

³ A captive facility means a landfill that accepts for disposal only nonhazardous industrial waste generated only by the owner of the landfill or a nonhazardous industrial waste landfill. A nonhazardous industrial waste landfill is one which accepts only coal ash, wood ash, or cement kiln dust, or a combination of these materials, or that permanently segregates them in a landfill; wastewater treatment sludge or sediments from wood pulp or paper producing industries or that permanently segregates them in a landfill; or foundry sand or other material that is approved by the DEQ for use at an operating landfill that is disposed of in a landfill that is only used for the disposal of this material or that permanently segregates this material in a landfill.

most significant barriers identified was the absence of a governmental structure between the county and state level government and determining how regions should be “formed.” These discussions led to the conclusion that the county is the appropriate level at which Planning should occur. We believe this to still be the case. Regional Planning should not be mandated, but counties should be encouraged to pursue regionalized Planning when appropriate. Incentives could be provided to encourage Planning on a regional basis. Potential incentives might include:

- DEQ collection of data that would suggest logical multicounty Planning areas.
- Planning funding only for regional plans.
- Training on the benefits of regional Planning at the start of the next Planning cycle.
- Economies of scale for recycling on a regional level.
- Additional funding incentives for implementation of solid waste management plans to counties participating in regional Planning.
- Providing an opportunity for combining individual county-by-county processes into one larger regional process while keeping all of the same steps (e.g., maintain the present local municipal approval process).

Currently Rule 703(1)(e) of the rules promulgated pursuant to Part 115 allows for counties preparing a regional or multicounty Plan to jointly appoint a single Solid Waste Planning Committee made up of 14 members as defined in Part 115.

Regionalizing Planning would require the need and a structure for the counties and local units to cooperate beyond just the Planning process and into implementation. Regionalizing landfill siting would require some sort of flow control to the regional facilities; otherwise, the reality may not reflect the theorized zone. There is no natural waste flow in a region, and without enforced flow control or control over facility siting, the flow can shift according to disposal market costs. There are many complex factors that affect where waste goes for disposal (i.e., distance to the disposal facility, the company that owns the disposal facility, liability, disposal cost, etc.). In addition, disposal waste flow may not be relevant to the flow of material diverted from disposal (i.e., facilities, services, etc.).

Issue 3. What more can we do to have a closer correlation between the amount of disposal capacity needed in Michigan and the amount of capacity which is available?

Work Group Discussion:

Adequate landfill capacity currently exists. For facilities where capacity is relied upon by multiple counties, state oversight is needed of the determination of whether the sum of the “promised” capacity for all of the counties exceeds the actual permitted capacity of the facility.

It would be helpful if capacity were regulated through locally-authorized means such as annual disposal caps and written commitments between counties and disposal facilities. While this would ensure disposal capacity to the county, it would also affect a facility’s longevity and growth. A 10-year commitment to a community could be reserved and paid for via a contract or negotiated agreement with a disposal facility. Local units of government would have to agree to any increase in the capacity of a facility once the currently permitted capacity is depleted. The needs and costs to the landfills and the communities must be balanced. How these issues affect economic development and sprawl also needs to be studied and taken into consideration in the Policy goals. Any changes must maintain flexibility to site captive industrial landfills and flexibility to transport captive waste across county lines.

Both waste generation and waste diversion amounts need to be accurately identified in Plans in order to accurately determine the amount of waste requiring disposal. Likewise, this will allow the rate of landfill capacity consumption to be determined and allow closer tracking of landfill capacity. Determining capacity is meaningless if no calculation of the rate of landfill capacity consumption currently exists. Amendments to Part 115 should require data collection to allow measurement and tracking of disposal capacity and waste diversion efforts. Counties should also be required to describe each disposal facility in terms of the specific capacity that is consistent with the Plan rather than just as a facility footprint. Information in the Plan should include acreage, boundary description, and volume (capacity) of the facility. A trigger could be provided to limit capacity, such as a certain number of years in a particular area. Improved facility information in the Plans would allow proper tracking of disposal capacity.

Changes to Part 115 could also provide a specific process for defining disposal needs versus waste diversion. These changes would be expected to promote waste diversion appropriate to a region based on existing programs and waste flow in that region. Plans should be used as a tool to promote waste diversion.

While there is a need to be able to plan ahead without creating excess capacity, there may also be a need to reduce the amount of capacity required to be shown under the Plans to be closer to the amount of capacity that is actually sited. There is also a balance point between sufficient capacity and the disposal price citizens may be willing to pay. Since waste flow cannot be fully controlled, it needs to be determined if a capacity requirement in Plans remains meaningful.

Plans include landfill footprints and capacity that is not accounted for since it is not yet permitted. The DEQ currently looks only at “permitted capacity” (what is actually available under a construction permit) when reporting and does not at this time know the total amount of “planned capacity” (what the landfill intends to develop and is included in their facility description as consistent with the County Plan). The net result is that we have far greater planned capacity than we need. Any landfill footprint provided for in a solid waste plan should be presented as a planned landfill development (PLD) that includes a calculation of the built out planned capacity of that footprint (in compacted cubic yards, gate yards, and tons).⁴ If the landfill owner chooses not to submit the PLD information for unpermitted acreage adjacent to their active cells, then that additional potential landfill footprint would not be included in the Plan and development of that space would not be consistent with the Plan. Solid waste plans would then contain meaningful calculations of total planned capacity that would allow local, regional, and statewide calculations of total available capacity. Some landfills may already do this through Host Community Agreements, but also including this information in Plans would be useful. This PLD information, combined with annual capacity reports from each landfill, as well as DEQ approvals of new permitted capacity, would allow the DEQ to report on total regional and statewide planned capacity, permitted capacity, and total capacity. It would also allow a report of last year’s consumption of permitted capacity, last year’s additions to permitted capacity, last year’s conversion of planned capacity to permitted capacity, adjustments based on annual landfill reports, and so on. We would then have accurate information on landfill capacity in the state. Capacity estimates also need to reflect the reality of out-of-state fill rates to be useful (i.e., what looks like a capacity that could last 10 to 20 years may actually be filled in 5 years).

⁴ This concept is similar to one that developers use when they submit a planned unit development for a housing or commercial project that must define the maximum number of housing units, square footage of commercial space, overall density, and many other related “built out” conceptual details of their project, even if that project will take 20 years to be developed.

Plans are required to include a calculation of total waste generation as well as current waste diversion levels, which then allows calculation of waste needing to be disposed. Landfill capacity requirements are then projected into the future based on this data. If waste generation is lower than projected (e.g., economic downturn or increased waste diversion) then use of landfill capacity is lower and we end up with excess landfill capacity. Likewise, if waste diversion efforts are more successful, then we also end up using less landfill capacity and end up with excess landfill capacity. Since the Planning process does not clearly spell out the requirements for identifying recycling and composting capacity, these tend to get discounted. The Planning process could require each county to identify waste diversion capacity requirements for the future (identifying specific existing sites/facilities and proposed sites/facilities). The collection programs that divert this waste would also need to be identified (e.g., drop-off recycling, curbside recycling, commercial cardboard recycling, industrial fly ash recycling, auto-shredder fluff recycling, etc.). The impact of these programs and waste diversion capacity would then be calculated into the future for the Planning timeline, deducted from calculated waste generation, resulting in a calculated landfill capacity requirement. An easily implemented funding mechanism, (e.g., statewide surcharge with distribution of funds to counties and local units via the Plan) would also be part of this. Plans would then contain meaningful calculations of total landfill capacity requirements that would allow local, regional, and statewide calculations of landfill capacity requirements for the entire Planning timeline. This would allow the DEQ to report on projected landfill capacity requirements for the entire Planning timeline, both regionally and statewide, and how well those requirements are being met by available capacity. We would then have accurate information on landfill requirements in the state. It is likely that this will show more than adequate capacity across the state for landfill disposal and place more emphasis on the needed development of waste diversion capacity.

The mandatory landfill siting process could be eliminated when statewide or regional capacity is diminished and instead require that the Planning process call for mandatory waste diversion, recycling, and composting activities to effectively manage waste in times of low capacity. However, existing disposal capacity is owned by a number of different businesses. Any limit on who can expand based on statewide or regional capacity may affect which businesses remain in operation as they consume their capacity.

Siting is a key issue in the Planning process. As long as sufficient capacity exists, it should be possible to avoid siting new capacity. While there are some features similar to this in the current law, it is difficult to figure out, and most Plans did not use these provisions. Clear “permitted disposal capacity” targets could be set, above which no additional permitted landfill capacity could be approved; and clear “planned disposal capacity” targets could be set, above which no additional landfill capacity will be allowed in County Plans. These targets should be carefully set, but good starting points for discussion would be 7 to 10 years for “permitted” and 15 to 20 years for “planned” (with “permitted” included as a subset.) The DEQ annual report on available capacity and required capacity would allow analysis of this to take place both statewide and regionally. Such an analysis would likely show that no additional disposal capacity is needed in most, if not all, of the state. Over time, the excess capacity that exists now will slowly be eliminated, and the use of more limited available capacity for meeting distant waste disposal needs would also likely decline due to less capacity being available and the consequent increase in disposal costs.

Siting criteria and procedures vary greatly from county to county. There is a need for clearer direction from the DEQ on acceptable siting procedures and criteria. The following are some suggested siting approaches from the 1993 report:

- Siting would be subject to no more than the basic siting criteria in Part 115.
- Siting would be governed by a Host Community Agreement, and if the parties did not reach an Agreement within a specified time frame, siting would be subject to no more than the basic siting criteria in Part 115.
- Siting would be governed by a Host Community Agreement, and if the parties did not reach an Agreement within a specified time frame, the process would be subject to binding arbitration on the last best offer. The arbitration process would be developed and established under Part 115.
- Siting would be triggered by the existence of less than 10 years of disposal capacity. If the parties were unable to negotiate a Host Community Agreement within 5 years, the process would be subject to binding arbitration on the last best offer from the developer or the host community. Proposals must at least meet the minimum Part 115 criteria.
- Counties would be given the option to choose any of the above-specified approaches. Selection of an option would be done during the development of a Plan update or amendment and be subject to the required approval process and public review.

Facilities not required to be permitted and licensed under Part 115, those facilities handling presorted recyclable materials, transfer stations that accept less than 200 uncompacted cubic yards of waste per day, or composting facilities could be governed under local zoning. Plans would act in lieu of zoning for these facilities only if the host township or county does not have zoning. These facilities would still be subject to the licensing and operational requirements of Part 115 as appropriate.

Other issues that should be considered in the context of capacity and siting of landfills include looking at technological changes, such as bioreactors, to reuse old landfills rather than site new ones.

Issue 4. Are there things we can do to improve the administration of the Planning process?

4a. State Guidance for Plan Development and Review

Work Group Discussion:

There are a number of things that can be done to improve the administration of the Planning process. Major needs identified during the work group discussion were:

- standardize the Plan format and eliminate redundancies
- increase state assistance in Plan preparation
- develop guidance documents
- establish procedures to ensure consistency of Plan review and approval
- improve the credibility and enforceability of the Plans

These improvements would make Plans less cumbersome and more effective. A simplified, standardized format would also expedite plan review and comparison. The Plan format would benefit from reducing redundancy including the repeated descriptions of solid waste disposal areas in both the “Data Base” and “Selected Solid Waste Management System” sections, as well as the maps of solid waste disposal areas. In addition, some clarification, simplification, or consistency in the use of regulatory terms, such as “property sited for use,” versus “total facility property,” is needed before they can be used meaningfully in Plans. The revised standard Plan format should also be incorporated into the state Solid Waste Management Plan.

Another potential way to improve the standard Plan format would be to create a two-part Plan. Part 1 would be a precisely structured summary document that could stand alone and provide sufficient detail to describe the Planning system for the Planning area; and Part 2 could provide greater detail, analysis, and discussion of the provisions of the Plan and would be attached to the summary document.

It is also important that a schedule and process for completing Plan updates be identified and adhered to. Given the budget and resources issues present in the counties, the counties would like to be given a 12-month lead-time prior to a Plan update being required.

There is a need for state technical assistance in Plan preparation and the development of additional guidance. Examples of additional guidance include:

- an improved, revised standard Plan format,
- guidance documents and procedures for the review and approval of Plans, and
- the necessary data needed to develop Plans.

These documents should be incorporated into the state Solid Waste Management Plan. Technical assistance from the DEQ may be limited due to the number of staff currently assigned to the Planning program (1 1/2 full-time equated positions.) If additional funding resulted in additional Planning staff, assistance that is more technical could be provided. Counties have indicated that it is very helpful having DEQ staff attend their Planning Committee meetings and answering questions. The DEQ will provide technical assistance as staff availability allows.

The regional Planning agency could also help to provide technical assistance to the counties. Incentives could be developed that encourage cooperation in Plan development on a regional basis. Ways to encourage cooperation on a regional basis could be included in the revised Plan format and new guidance documents. This would include requiring the county to notify other counties in the area and the regional Planning agency that the county is preparing an update or amendment.

The DEQ needs to be more consistent on Plans reviews and on when Plans are updated. Consistency in timing will reduce the need to amend Plans between update cycles and help to maintain the credibility of the Planning process. Delays in the Planning process beyond the mandated 5-year cycle diminish the importance of the Plans and create a risk of Plans not being upheld as legal, enforceable documents. Thus, delays in the 5-year update cycle at the state level always bring the credibility of the Planning process into question.

Local oversight of the Planning process should be maintained and strengthened. Counties should remain the Designated Planning Agencies, but more weight could be given at the local level to decide issues. The scope of authority granted to the DEQ, the county, and local units of government for the design, implementation, and enforcement of the Plan needs to be more clearly defined. Part 115 needs to more explicitly reflect what solid waste management activities may be regulated, by whom, and through what means. Once the management of solid waste activities is clearly defined, the authority to establish a local ordinance to implement Plans should be enabled. Part 115 needs to be amended to clearly state that the Plan is the county's Plan and the county is responsible for Plan implementation and enforcement. Enforcement of Plans could entail the ability to mandate specific recycling activities, the authority to impose surcharges on facilities for the disposal of waste, or establishing hours of operation of disposal facilities. Care should be taken, however, not to create inappropriate authority at the county or municipal level.

It was determined to be critical to the Planning process that counties maintain the ability to direct the flow of waste within and outside of the county to better serve the public interest and to maximize waste diversion. Flow control is a key factor in the ability of communities and counties to track the destination and origin of waste and the rate of landfill capacity use. Prior to the 1992 Supreme Court decision in the Fort Gratiot case, the county and local communities could control the flow of solid waste both in state and out of state. The Fort Gratiot decision narrowed the role that flow control plays in solid waste management. The inability to control waste flow is an underlying issue in the Planning process. Plans are not as effective if out-of-state waste is allowed to freely flow. The assurance that capacity developed in an area would be utilized by local citizens, unless the citizens granted otherwise, is lost. The ability to determine the impact of local waste diversion and recycling programs on a community's waste stream is much more difficult. The waste industry has expressed opposition to more control of waste flow. The counties believe additional waste flow control is needed in order to protect the capacity needed for their residents. The legal issue of who the landfill capacity belongs to, the landfill or the public, and how that capacity is provided for in the Planning process are important legal questions.

A key role that flow control continues to play is as a negotiation tool. This tool can serve as an incentive for achieving negotiated agreements with the waste industry. Through these agreements, communities may gain input and some control over annual caps and interstate waste issues in exchange for easing local flow control restrictions. It is the "bargaining chip" that municipalities hold when they come to the table. It also allows for the counties to obtain a funding source and other benefits.

Industry maintains that lack of intrastate free flow inflates their and, consequently, their clients' costs. Financial success may afford industry the ability to use the best technologies and service methods available. Removal of flow control may well contribute to more financial success. However, removal of this negotiation tool may endanger the ability to put mechanisms in place that assure that Michigan landfill capacity is primarily developed for use by Michigan residents. Therefore, we need to endeavor to maintain the ability of counties to control waste flow within the state and seek to address the limitations regarding interstate flow control through available legal and legislative means.

4b. *Time Frames for Decisions Within the Planning Process*

Work Group Discussion:

Plans can languish at numerous points along the course of development. Some type of mechanism is needed to allow for a faster process to amend Plans for minor changes. A number of ways that this might be accomplished were discussed by the work group, including an expedited plan approval process at the state or county level. However, the most efficient process would be to insert time frames for action on County Plans into Part 115 such that it speeds up the Plan approval process. Default mechanisms for failing to act within the specified time frame should also be included.

Time frames should be introduced into various decision or development points in the process, including the amount of time for the Solid Waste Planning Committee to develop and present a recommended plan; the county's review, adoption, or creation of a plan; as well as local municipal review and approval of the document. Particularly troublesome is the fact that there are no requirements for a local municipality to act on a proposed Plan amendment or update within a specified time frame. More detailed procedures, including reasonable deadlines for municipal action are needed. Approval or disapproval of a Plan amendment or update should

be based upon 67 percent of only those units that voted within a specified time frame. If the municipality fails to act within the specified time frame, that municipality would either be disqualified from voting or the lack of action would be counted as a “yes” vote. The time frame for municipal action should be defined as a 120-day period or provide a sliding scale of “X” days from the date of the next meeting of the local municipality for action on the Plan amendment or update. This prevents a local municipality from stalling movement of the Plan amendment or update. If a local municipality disapproves the Plan amendment or update, it must support that disapproval with a stated rationale.

Some changes that a county might wish to make to their Plan may be relatively minor and more appropriately processed through a less cumbersome set of procedures than the current process of a formal plan amendment. More significant issues should continue through the current process of a formal Plan amendment. An expedited amendment process could be developed that would allow counties to make minor changes to a Plan without the need for undertaking a formal Plan amendment. An expedited Plan amendment process could be created that would facilitate quick and easy minor amendments to the current Plan to accommodate waste diversion projects.

This approach is needed to maximize waste diversion opportunities that may arise between Planning cycles. There is no real reason for an expedited amendment process for siting landfills, but often much smaller projects such as materials recovery facilities that would help waste diversion and the plan mechanisms that would enable them (e.g., funding systems) do get hung up in the formal Plan amendment process. Without an expedited process, the costs and time associated with the current formal amendment procedures may prohibit the establishment of beneficial programs and services. A model expedited plan amendment process could be developed for use by the counties. The end result would be that capacity for waste diversion would grow more quickly, enabling further reductions in the need to site additional landfill capacity.

Instead of a mandated expedited Plan amendment process designed by the state or a model expedited Plan amendment process that may be developed, Designated Planning Agencies could be granted discretionary authority to define expedited amendment procedures within the Plan based on some guiding principles in Part 115 and be subject to a more limited period of public review and comment. Each Plan containing an expedited amendment process would include an explicit listing of those changes that could be processed through the fast-track procedure and an explicit listing of those changes that could not be processed through an expedited amendment. Changes explicitly excluded from the expedited amendment process would be subject to a formal Plan amendment process. These items could also be statutorily excluded from the expedited amendment process. Examples of items that would not be eligible for the expedited process might include: changes to the siting procedures and criteria, changes in service area, and the addition of unplanned for facilities. However, the waste industry would like the ability to change the service area (import/export authorizations) under the expedited amendment process.

An entity within the Planning area could be empowered to make certain changes to the Plan without going through the formal amendment process. Granting of this authority would be clearly defined and authorized in the Plan and would be evaluated and approved or rejected by the municipalities during approval of the next Plan update process. If the recommendations of this report concerning time frames for action on County Plans are implemented such that it speeds up the Plan approval process, an expedited amendment process for minor modifications of the Plans may no longer be necessary.

Industrial landfill owners would like to see an expedited mechanism for the siting of facilities to serve Michigan industry. They believe that a County Plan should not have to be amended to allow for the siting of industrial landfills and that disposal of homogeneous industrial waste streams should be exempt from regulation under County Plans. Section 11511 of Part 115, for example, provides such a mechanism to ensure that construction permits may be issued in the absence of an approved County Plan for landfills designed to receive ash from fossil fuel power plants. This mechanism could be expanded to provide a fast-track mechanism for siting other types of industrial landfills. Owners of industrial landfills have indicated that in order for Michigan industry to be competitive, it must have the capability to move quickly in the siting, design, and construction of waste disposal and storage facilities. They would also like to see an exemption from county flow control for waste products that are disposed of or stored in a captive industrial facility in order to provide needed flexibility in the industrial sector. Approval of industrial Type III facilities should not be required under County Plans but would be subject to local ordinances. If some level of Plan regulation is retained, a uniform set of statewide criteria should be developed for siting industrial Type III facilities, including a fast-track process.

4c. Size and Composition of the Planning Committee

Work Group Discussion:

Several counties have experienced problems meeting the size and composition of the Solid Waste Planning Committee mandated by Part 115. Part 115 should be amended to provide an acceptable alternative for a smaller Planning Committee for rural counties. Counties or regional/multiple county Planning areas with a total population base greater than 100,000 would be required to appoint a 14-member Planning Committee as currently defined in Part 115. In Planning areas with a population base under 100,000, they could elect to appoint a 14-member Planning Committee as currently defined in Part 115 or a 7-member Planning Committee with the following representation:

- 2 individuals representing the solid waste industry and/or industrial generators,
- 2 individuals representing the general public and/or environmental groups or the regional Planning agency,
- 1 representative from township government,
- 1 representative from city/village government, and
- 1 representative from county government.

Care must be taken to maintain a balance in the makeup of the Planning Committee such that members cannot be added in a manner to influence the outcome of a decision against a particular interest.

4d. Data Collection

Work Group Discussion:

The collection of reliable data from a variety of sources is essential for effective Planning. However, the DEQ has no legal means of obtaining data from various sources, especially the private sector. Therefore, appropriate methods for collection and distribution of reliable solid waste management data are not presently available. The state and local units of government need to be able to measure progress in individual programs and how those programs affect statewide efforts regarding solid waste management. A mechanism to collect the necessary information is needed. The lack of information in general is exacerbated by no current standard

approach to recordkeeping or data collection regarding quantities and waste types that are consistent with the recordkeeping and data collection information used by other states.

A standard means of calculating waste generation and capacity data should also be developed, and legal authorities for the required collection and reporting of data should be established. These legal authorities should require disposal facilities to report this information along with quantified geographic sources of waste accepted at each solid waste processing or disposal facility. Special consideration must be given to protect information that may be proprietary. The reported waste should be apportioned by type (residential, commercial, nonhazardous industrial, or construction and demolition), and the county of origin requirement currently in Part 115 should be maintained. Additionally, a means for funding the collection of this data must be addressed, especially if such data collection is made mandatory. Other states successfully manage the collection of data in a variety of ways, which could be explored by the DEQ in developing proposed Part 115 amendments.

The quickest way to secure authority to collect the data may be for counties to develop a solid waste ordinance. Some problems with this concept are (1) not all counties may be willing or able to develop and pursue such an ordinance, (2) getting consistency in the types of data collected and terminology, (3) difficulty in collecting data across county lines, (4) each county developing its own individual system, and (5) the potential for “double counting” of data if several counties get information from facilities that obtain materials from multiple counties. Thus, it may be easier and more convenient to require the collection of data in a standard format at the state level.

A mechanism should be established to identify the amount of material recycled and require that data be reported. Recycling data is essential to the evaluation of program strategies and setting the direction of local plans. Data need to be received regularly on total amounts of recyclables being generated, by material, and perhaps by municipality. Data should go to a central repository and efforts made to protect the confidentiality of proprietary information. County or regional plan strategies that target volume reduction, recycling, composting, and separation of household hazardous waste (HHW) from the waste stream cannot currently be assessed for effectiveness and future Planning unless baseline data and follow-up data are available. The source of this data would be processing facilities receiving Michigan materials. It could be reported on a quarterly or annual basis. Care should be taken to avoid “double counting” during data collection.

4e. Funding Mechanisms

Work Group Discussion:

Counties that do not host landfills may lack the ability to generate surcharge revenues. These “have not” counties represent over half of Michigan counties (44 of Michigan’s 83 counties). Even in those counties that have landfills, the revenue obtained through Host Community Agreements may not be sufficient. A funding mechanism is potentially needed to enable counties with and without landfills (and revenue from Host Community Agreements) to implement specific, key components of their Plans and to achieve waste diversion goals. Having dedicated funding resources is extremely important and is necessary to develop an enhanced Policy and for Planning implementation. Funding also provides incentives to private industry and local units of government to address infrastructure “gaps” and invest in new manufacturing and processing technology to increase waste diversion. However, it should be noted that some counties that have a county-owned landfill facility have been able to successfully fund all of their programs without revenue from other sources. Other counties have

solid waste ordinances in place that impose a surcharge on waste deposited in landfills located in the county. Care should be taken to ensure that successful systems that are in place are not disrupted through other funding mechanisms.

Current funding tools available to counties have their own advantages and disadvantages. Some communities have been successful in implementing the various funding options that are available to them. However, some of the funding options currently available are not easy to implement or widely applicable across the state. Sometimes the political climate makes a number of these options difficult to implement, or the amount that can be collected under the mechanism is too small. These funding options have no provisions for adjustments for inflation or to accommodate increasing volumes of materials being recycled. This may result in not enough funding being available to support programs once they are in place. See Appendix C, Funding Options for Michigan Recycling Programs, for a list of currently available funding options.

Revisions to Part 115 should clarify the authority and methods for enacting user fees as legitimate funding methods for Plan development and implementation. This would authorize a statewide funding method that assesses a surcharge on any waste disposed of in Michigan. Surcharge amounts should be established and limited by language in Part 115. Distribution of funds should be impartial and based upon a formula. This statewide funding could subsequently be apportioned to:

- the state.
- the data collection center.
- recycling business and market development.
- counties for funding of plan development, implementation, and enforcement.
- the DEQ to fund technical assistance and Planning program administration.
- the private sector for the development of recycling and other waste diversion businesses and programs.
- encourage regional Planning efforts.
- local units of government to pay for clean community services such as HHW collection, recycling, parks, etc. (This would promote competition between service providers and reduce the costs to the local unit of government.)

Specific activities to be funded by the surcharge need to be narrowly defined, including: developing and writing Plans, as well as implementation and enforcement of these Plans. Potential revenue from a surcharge could be used to specifically target waste diversion strategies and to fund specific programs such as hazardous waste collection services for households and small businesses, which benefit all Michigan stakeholders. The lack of convenient HHW collection services for residents in half of Michigan counties is a public health problem. A surcharge could be used to motivate local government or enterprising private HHW services by reimbursing them for HHW services that meet a standard for quality, cost-effectiveness, and public convenience. However, any such surcharge that is enacted should take into consideration Host Community Agreements that currently exist in an effort to prevent “double-dipping.” Monies generated through a funding mechanism could be distributed to support solid waste management programs.

Many states use the lure of funding as an incentive to encourage their communities to provide specific, priority services. PAYT unit-based garbage fee systems can be used to motivate community involvement in waste diversion. Plans could also be used to provide incentives to encourage communities to adopt or enhance PAYT. This has been shown to be one of the

most effective tools for increasing recycling and reducing solid waste generation. If PAYT is combined with surcharge legislation, the loop on funding waste diversion and providing incentives to reduce waste and recycle is completed.

This model PAYT waste fees concept has been successfully implemented in Emmet County. Emmet County does not have a landfill, but has successfully implemented a self-funded resource recovery program by including PAYT in their solid waste management scheme. This program requires solid waste haulers to charge by volume and includes the net cost of recycling in the cost of solid waste disposal. In spite of this charge, the rate still remains below the cost charged by privately-owned solid waste transfer stations in the region, as well as below some landfill gate rates. The program offers drop-off recycling to all residents and is now expanding to offer weekly curbside recycling to 60 percent of the county residents. By controlling the flow of waste, utilizing PAYT as an incentive for waste diversion, and offering no-cost or low-cost comprehensive recycling services, residents and businesses realize a win-win situation by minimizing waste going into landfills and maximizing recycling efforts.

Creative approaches to providing incentives for counties to implement PAYT, in concert with a statewide surcharge, to fund local waste diversion efforts would greatly decrease the landfill capacity needs of the state and, in turn, would greatly lengthen the life of the current landfills while increasing the cost for waste to be disposed, thereby creating a disincentive for disposal. It is important to note that when tip fees are low, there is a disincentive to recycle waste; and when tip fees are high, there is a disincentive for other states and countries to export waste to Michigan. The PAYT concept tends to drive up the tip fee, but gives residents the opportunity to offset the increased cost by recycling.

Funding mechanisms should be created for development of state programs, for the implementation of state Policy objectives to help meet state goals, and for programs at the local level. It is not enough to rely on privately-negotiated contracts between the landfills and host communities/counties or existing funding tools such as Section 8a of the Urban Cooperation Act of 1967, as amended by 1989 PA 138, or the County Department and Board of Public Works Act, 1957 PA 185, as amended, which can be difficult to implement. These funding mechanisms should be integrated into Plans.

The DEQ should identify options available to host communities. These options should include establishing flow controls, using capacity guarantees and disposal caps, or banning imports through negotiated contracts with landfill developers. Counties may be able to better protect the public interest through a negotiated agreement than through legislation. This could be done through Host Community or Host County Agreements. Revenue from these Agreements could be used to pay for waste diversion programs. Agreements could be used to guarantee a specific county or municipality disposal capacity. The DEQ could develop and provide model Agreements for county use. It is estimated that approximately two-thirds of landfills already have Agreements and those should be looked at to develop a model. The DEQ does not collect these Agreements. Currently information is not available on which landfills in Michigan have Agreements. The Michigan Association of Counties offered to help try and collect Agreements to determine which landfills have them.

4f. Host Community/Host County Agreements

Work Group Discussion:

It was suggested that Agreements could be required at all existing landfill facilities to address:

- maximum size of facility (air space).
- annual disposal caps.
- hours of operation.
- tracking and litter control.
- end use of facility.

Other issues could be negotiated, such as out-of-state waste limitations. Facilities with existing Agreements would have to revisit them to ensure minimum requirements are met. An arbitration process would be developed to address impasse situations. These Agreements would be filed with the DEQ.

Since both counties with and without landfills need funding, Agreements are not the whole solution to the funding issue. Another potential solution would be to have counties license waste haulers, have those haulers pay a fee on waste that leaves the county, and have the landfills pay a fee on waste that comes into the county.

A need was identified to clarify that Agreements and the funding mechanisms provided under them are distinct and cannot be altered by the potential application of statewide surcharges. There needs to be some assurance to the host community or county that local host fee Agreements will not be negatively influenced by a state surcharge. Counties fear that landfill operators would try to renegotiate for lower local fee Agreements by claiming that the state surcharge duplicates the local fees. These local Agreements could be protected by mandating a protective minimum monetary fee per unit of solid waste or by clarifying that Host Community or Host County Agreements are distinct and cannot be altered by the potential application of statewide landfill surcharges. Existing local host fees and a potential state surcharge are different. A local fee provides revenue for local road infrastructure near a landfill, fire and police services, landfill monitoring, public education, solid waste services, general fund contributions, and other items as determined by the community to compensate the local county/community for the negative externalities associated with hosting a landfill site. A state surcharge is likely to be used to provide specific waste diversion services that benefit all Michigan residents and landfill operators, such as a statewide system to improve citizens' access to HHW services or other basic waste diversion needs. Likewise, landfill operators need assurances that a statewide disposal surcharge will only be used for priority waste diversion projects, not for General Fund revenue.

Current Plans require a county to demonstrate access to 10 years of disposal capacity based on the calculated disposal requirements. If they cannot demonstrate access to this capacity, they must site new landfill capacity or have a siting process that guarantees siting of new landfill capacity. This has resulted in the siting of excess disposal capacity. Agreements could be required for landfills included in a County's Plan. Minimum requirements for these Agreements as well as overall guidelines could be provided for in the DEQ Planning provisions. One of these minimum requirements would be the guarantee of adequate capacity for the Planning period for the host county. This guarantee, coupled with the landfill capacity provided for in the Plan, would also provide guidance on calculating annual gate yard caps that the Agreement would reference and that would become part of that Plan's waste import provisions. These, and

other provisions, would become part of both the Agreement and the Plan. Solid waste plans would then clearly define capacity that has been guaranteed to the host county, available capacity that can serve the region, and the annual caps that define the potential rate of depletion of that capacity. These data points provide the type of information that allows calculating how well the landfills are set up to meet regional landfill capacity requirements and how the import of waste from long distance sources will affect disposal capacity in that region.

Additional items that could be included in Host Community or Host County Agreements:

1. Length of contract/contract term; events that necessitate review/renegotiation procedures.
2. User fees associated with the Agreement, amount of funding generated, method to determine increase, how they are assessed, what they can be used for.
3. Caps on amount for disposal each year; procedure to increase amounts.
4. Ban on importation of waste from other counties and countries.
5. Notification requirements.
6. Negotiated hours of operation and related operational matters.
7. Guarantees for disposal capacity for county/region.
8. Negotiated service provision from landfill operator to local communities/counties, such as park system, road maintenance, recycling drop-off services, cleanup events, postclosure uses, etc.
9. Ban on acceptance of specific materials.
10. Other unique characteristics negotiated by a different region.
11. Provide copies of both local Host Community and Host County Agreements to the DEQ.

APPENDIX C

FUNDING OPTIONS FOR MICHIGAN RECYCLING PROGRAMS

ACTION BY COUNTY BOARD

General Fund Appropriation: Some Michigan counties allocate general fund dollars to cover their countywide recycling programs. No action is needed by local units or voters.

Landfill Surcharge: Michigan counties that have a landfill within their jurisdiction may under certain circumstances enact an ordinance that establishes solid waste and recycling programs and imposes a tipping fee surcharge (e.g., \$3/ton) on all solid waste coming to the landfill. The operator must collect the surcharge and pay it to the county for use in the established solid waste and recycling programs. No action is needed by local units or voters.

Disposal Facility Surcharge: Michigan counties that have their own solid waste disposal facilities can establish rates for using those facilities that include the costs of running a recycling program. No action is needed by local units unless local unit support is needed to commit waste to the facility.

ACTION BY COUNTY BOARD AND LOCAL UNITS OF GOVERNMENT

Public Works Assessment; 1957 PA 185, as Amended: Michigan counties can create a board and department of public works (DPW) and then work with some or all of the local units to establish a solid waste and recycling project. The engineers estimate for the project is then used to establish an assessment roll for parcels within the jurisdiction of the local units that have approved an agreement with the county. The county then collects the assessment as a program availability user fee and manages the solid waste and recycling program. Action is needed by the county and the local unit but no action is needed by voters. Property owners can appeal the assessment.

User Fee; 1989 PA 138, as Amended: Michigan counties can work with some or all of their local units to establish a recycling, composting, and/or HHW project. The county can then collect up to \$25/year from households in the local units that have approved an agreement with the county. The county then collects the program availability fee on the winter tax roll and manages the recycling program. Action is needed by the county and the local unit, but no action is needed by voters. Voters can challenge the program within a specific time period.

ACTION BY COUNTY BOARD AND/OR LOCAL UNITS OF GOVERNMENT

Intergovernmental Agreement and Independent Cost Sharing: Counties and local units and/or local units working together on their own can act in unison through intergovernmental agreements to run recycling programs. Each local unit can be obligated for their fair share and then come up with their own methods of paying for that share. No action by voters is required.

Intergovernmental Agreement and Hauler Licensing: Counties and local units and/or local units working together on their own can act in unison through intergovernmental agreements and a uniform ordinance that requires private waste haulers to meet certain recycling requirements in order to do business and to include the costs for those programs in their overall solid waste service fees. No action by voters is required.

Dedicated Millage: Incorporated cities and charter townships in Michigan can charge an additional millage for solid waste and recycling services up to limits specified by statute. No action by voters is required.

Organized Collection: Any local unit of government can use contracting and ordinances to select a single hauler to provide solid waste and recycling services to all households, all businesses, or both, and establish a fee collection mechanism to cover the cost for the same. Through intergovernmental agreement a third party (DPW, authority, etc.) can be assigned this responsibility by the local unit. No action by voters is required.

Operating Revenues: A program operated with public agency involvement can charge additional fees for various services that will help offset the public sector's costs for the program. An example would be a multitownship recycling and solid waste drop-off facility that collected a per bag charge for the solid waste dropped off by citizen's and used that revenue to help offset operating costs such as staffing, building improvements, etc.

Material Sales Revenues: A program operated with public agency involvement can use the revenue from sale of recycled materials to help offset the public sector's costs for the program. An example would be a regional recycling facility owned by a multicounty authority and operated under contract by a private firm, with the public agencies offsetting some of their costs with a share of the revenue from sale of recyclables.

VOTER APPROVED MEASURES

Voter Approved Millage: Any local unit of government and/or a county can put a vote to the people for a temporary or permanent millage to fund a solid waste or recycling program.

For more information contact:

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APPENDIX D

Regulatory and Policy Changes/DEQ Actions Needed to Implement DEQ Recommendations

The regulatory and policy changes/DEQ actions needed to implement these recommendations along with the budget implications of implementation including designation of the associated issue are discussed below.

The following recommendations require statutory and/or administrative rule changes:

1. Maintain the ability of counties to control waste flow within the state and seek to address the limitations regarding interstate flow control through available legal and legislative means (see Issue 4a).
2. Amend Part 115 to provide the alternative of a smaller Planning Committee for rural counties (see Issue 4c).
3. Amend Part 115 to add decision deadlines at various points in the Planning process and specify a default result if action is not taken by a deadline (see Issue 4b).
4. Amend Part 115 to provide for the state and local collection and reporting of reliable, standardized quantitative data on facility capacity and waste diversion (see Issue 4d).
5. Identify within the policy, and through a multiple stakeholder process, a funding mechanism and the associated legislation and rulemaking needed to implement that funding to support Planning and program implementation at the state and local levels (see Issue 4e).
6. Amend Part 115 to clearly delineate the need to include specific waste diversion programs in Plans and the authority to enforce waste diversion provisions (see Issue 4a).
7. Amend Part 115 to improve the measurement and tracking of landfill capacity and waste diversion efforts (see Issue 3).

The following recommendations require policy changes or DEQ action:

1. Update the 1988 Solid Waste Policy (see Issue 1).
2. Encourage Planning on a regional basis (see Issue 2).
3. Revise the standard Plan format and guidance documents (see Issue 4a).
4. Identify a schedule and process for Plan updates and maintain that schedule (see Issue 4a).
5. Increase technical assistance to counties for Planning as staffing levels allow (see Issue 4a).

6. Develop guidance material to clarify the scope of authority of the DEQ, counties, and local units of government for the design, implementation, and enforcement of Plans (see Issue 4a).
7. Establish procedures for Plan review and approval (see Issue 4a).

Budget Implications

Additional funding is required to fully implement the following recommendations:

1. Requiring the collection and reporting of data (see Issue 4d).
2. Providing for effective, efficient, and sustainable funding mechanisms to support Planning and programs at both the state and local levels (see Issues 1 and 4e).
3. Requiring the inclusion of waste diversion data in Plans (see Issue 3).
4. Requiring Plan updates to be done would require additional DEQ staff (see Issue 4a).
5. Increasing technical assistance to counties for Planning would require additional DEQ staff (see Issue 4a).

All additional recommendations should not require additional funding if they could be implemented over a sufficient period of time utilizing existing DEQ staff.