



STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING




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TO: Solid Waste Landfill Owners and Operators

FROM: George W. Bruchmann, Chief, Waste and Hazardous Materials Division 

SUBJECT: Implementation of Solid Waste Amendments Regarding Prohibited Waste
Amendment of Plans and Procedures

This memo is to provide further guidance to landfill owners and operators in the implementation of, and compliance with, 2004 PA 34 (Act 34) and 2004 PA 40 (Act 40), copies of which are attached. Acts 34 and 40 amended Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, to prohibit certain waste from disposal in Michigan landfills.

As you may know, in *National Solid Wastes Management Association v. Jennifer M. Granholm et al.*, the United States District Court for the Eastern District of Michigan placed a moratorium on the enforcement of Act 40 through October 31, 2004. Effective November 1, 2004, the provisions of Act 40 became and remain enforceable.

The Part 115 administrative rules require that engineering plans for a landfill shall include engineering reports that describe the "procedures for separating recyclable materials from general refuse, if applicable" and the "process for receiving and unloading solid waste" including "procedures for inspecting loads for hazardous waste" (see R 299.4911[2][i] and [k]). Compliance with Acts 34 and 40 will require amendment of these engineering plans, especially if the landfill is actively removing prohibited waste and documenting such removal on the Prohibited Waste Removal Record form (EQP 5222) in order to comply with Act 40. Attachment 1 provides guidance for modified landfill operation plans designed to detect and prevent the disposal of prohibited waste under Acts 34 and 40. Attachment 2 provides additional guidance for those landfills acting as the "other facility" under Section 11526a(1)(b) of Part 115.

Please note that Section 11526a(1), Michigan Compiled Laws 324.11526a(1), added by Act 40, specifies that:

Beginning October 1, 2004, in order to protect the public health, safety, and welfare and the environment of this state from the improper disposal of waste that is prohibited from disposal in a landfill, and in recognition that the nature of solid waste collection and transport limits the ability of the state to conduct cost effective inspections to ensure compliance with state law, the owner or operator of a landfill **shall not accept for disposal** in this state solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of this state unless 1 or more of the following are met:

(a) The solid waste is composed of a uniform type of item, material, or substance, other than municipal solid waste incinerator ash, that meets the requirements for disposal in a landfill under this part and the rules promulgated under this part.

(b) The solid waste was received through a material recovery facility, a transfer station, or **other facility that has documented that it has removed from the solid waste being delivered to the landfill** those items that are prohibited from disposal in a landfill.

(c) The country, state, province, or local jurisdiction in which the solid waste was generated is approved by the department for inclusion on the list compiled by the department under section 11526b. (Emphasis added.)

Although Operational Memo 115-27, Revision 1, states that the "receiving landfill itself may act as the 'other facility' if removal of prohibited items is conducted in a manner that otherwise complies with Part 115 and its rules," Act 40 is clear that such removal must occur (a) prior to delivery to the landfill and (b) before acceptance for disposal (see bolded language, above). Accordingly, landfills acting as the "other facility" under Section 11526a(1)(b) must remove the prohibited items at a location other than the working face to which the waste is "being delivered" for disposal. In addition, the method used by the landfill must be effective, given the volume and nature of waste received, to identify and remove all prohibited waste.

The Michigan Department of Environmental Quality (MDEQ) is requesting that all landfills update their operation plans and waste acceptance procedures, as necessary, to incorporate the requirements of Acts 34 and 40. Updated operation plans should be maintained in the facility operating record and be made available to the MDEQ upon request. The MDEQ requests that all Type II facilities complete this update to modify their engineering and operation plans by no later than April 1, 2005. Landfill owners and operators may submit revised plans to the appropriate MDEQ, Waste and Hazardous Materials Division (WHMD), District Supervisor for review and approval.

Landfill owners and operators may obtain further MDEQ guidance in implementing Acts 34 and 40 via MDEQ's Web site at <http://www.michigan.gov/deqprohibitedwaste>. This information may be useful to you in amending your plans.

Please note that MDEQ staff will be monitoring how effective landfill plans are at detecting and removing prohibited waste on an ongoing basis and will require such plans to be amended further in the future, if necessary.

If you have any questions, please contact your local WHMD District Office.

Attachments

cc: Robert Ratz, Wayne County Department of Environment
Liane Shekter Smith, MDEQ
John Craig, MDEQ
Lonnie Lee, MDEQ
WHMD District Supervisors, MDEQ

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.11514 Promotion of recycling and reuse of materials; materials prohibited from disposal in landfill; applicability of subsection (2)(b) to green glass beverage containers; task force; report; “de minimis” defined.

Sec. 11514. (1) The legislature declares that optimizing recycling opportunities and the reuse of materials shall be a principal objective of the state's solid waste management plan and further that recycling and reuse of materials are in the best interest of promoting the public health and welfare. The state shall develop policies and practices that promote recycling and reuse of materials and, to the extent practical, minimize the use of landfilling as a method for disposal of its waste.

(2) A person shall not knowingly deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, knowingly permit disposal in the landfill of, any of the following:

(a) Medical waste, unless that medical waste has been decontaminated or is not required to be decontaminated but is packaged in the manner required under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(b) Subject to subsection (4), more than a de minimis amount of open, empty, or otherwise used beverage containers.

(c) More than a de minimis number of whole motor vehicle tires.

(d) More than a de minimis amount of yard clippings, unless they are diseased or infested.

(3) A person shall not deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, permit disposal in the landfill of, any of the following:

(a) Used oil as defined in section 16701.

(b) A lead acid battery as defined in section 17101.

(c) Low-level radioactive waste as defined in section 2 of the low-level radioactive waste authority act, 1987 PA 204, MCL 333.26202.

(d) Regulated hazardous waste as defined in R 299.4104 of the Michigan administrative code.

(e) Liquid waste as prohibited by R 299.4432(2)(c) of the Michigan administrative code.

(f) Sewage.

(g) PCBs as defined in 40 CFR section 761.3.

(h) Asbestos waste, unless the landfill complies with 40 CFR section 61.154.

(4) Subsection (2)(b) does not apply to green glass beverage containers before June 1, 2007. The department shall convene a task force to make recommendations to the legislature on the special recycling problems posed by green glass beverage containers, including, but not limited to, whether the June 1, 2007 date for applicability of subsection (2)(b) to green glass beverage containers should be changed. The task force shall include, but need not be limited to, all of the following:

(a) A representative of the landfill industry.

(b) A representative of a company that manufactures or uses green glass beverage containers.

(c) A representative of a recycling company.

(d) A representative of an environmental organization.

(5) The task force under subsection (4) shall issue its recommendations by December 31, 2004.

(6) If the department determines that a safe, sanitary, and feasible alternative does not exist for the disposal of any items described in subsection (2), the department shall submit a report setting forth that determination and the basis for the determination to the standing committees of the senate and house of representatives with primary responsibility for solid waste issues.

(7) As used in this section, “de minimis” means incidental disposal of small amounts of these materials that are commingled with other solid waste.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 34, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: Act 641

Popular name: Solid Waste Act

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.11526a Solid waste generated out of state; acceptance by owner or operator of landfill prohibited; exceptions; disposal capacity.

Sec. 11526a. (1) Beginning October 1, 2004, in order to protect the public health, safety, and welfare and the environment of this state from the improper disposal of waste that is prohibited from disposal in a landfill, and in recognition that the nature of solid waste collection and transport limits the ability of the state to conduct cost effective inspections to ensure compliance with state law, the owner or operator of a landfill shall not accept for disposal in this state solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of this state unless 1 or more of the following are met:

(a) The solid waste is composed of a uniform type of item, material, or substance, other than municipal solid waste incinerator ash, that meets the requirements for disposal in a landfill under this part and the rules promulgated under this part.

(b) The solid waste was received through a material recovery facility, a transfer station, or other facility that has documented that it has removed from the solid waste being delivered to the landfill those items that are prohibited from disposal in a landfill.

(c) The country, state, province, or local jurisdiction in which the solid waste was generated is approved by the department for inclusion on the list compiled by the department under section 11526b.

(2) Notwithstanding section 11538 or any other provision of this part, if there is sufficient disposal capacity for a county's disposal needs in or within 150 miles of the county, all of the following apply:

(a) The county is not required to identify a site for a new landfill in its solid waste management plan.

(b) An interim siting mechanism shall not become operative in the county unless the county board of commissioners determines otherwise.

(c) The department is not required to issue a construction permit for a new landfill in the county.

History: Add. 2004, Act 40, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: Act 641

Popular name: Solid Waste Act

ATTACHMENT 1

Michigan Department of Environmental Quality Waste and Hazardous Materials Division

GUIDELINES FOR DETECTING AND PREVENTING THE DISPOSAL OF PROHIBITED WASTE AT MUNICIPAL SOLID WASTE (MSW) LANDFILLS

The 2004 amendments to Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, prohibit the disposal of a variety of wastes in MSW landfills in Michigan. The Part 115 administrative rules also require that the owner and operator of a landfill implement a program for detecting and preventing the disposal of such wastes and that landfill engineering plans and operation plans describe the procedures and processes used for such activities [see R 299.4430(3) and R 299.4911(2)(i), (k), and (l)].

The Michigan Department of Environmental Quality (MDEQ) believes that in order to comply with 2004 PA 34 and 2004 PA 40 and the Part 115 administrative rules, the engineering and operation plans for MSW landfills should, at a minimum, include the following components as part of the required program:

1. Gate Screening

- Gate staff should be trained to recognize prohibited waste. Staff should be trained in the use of any special equipment to detect prohibited wastes.
- All incoming industrial waste and remediation waste should be characterized in advance to determine their acceptability for disposal.
- Gate staff should question vehicle drivers as to whether any prohibited wastes are known or suspected to be in the load.
- Gate staff should have effective means of inspecting loads from overhead, such as by using a camera or mirror system.
- Gate staff should be trained to recognize haulers who have brought prohibited waste in the past.
- Gate staff should screen out-of-state loads for compliance with Section 11526a of Part 115 by receiving a copy of either the Prohibited Waste Removal Record form (EQP 5222), the Solid Waste Manifest Record form (EQP 5223), or the Uniform Solid Waste Record form (EQP 5224).*
- Landfill staff should take steps to verify the accuracy of information provided on the forms referenced above.

*If the landfill is acting as the "other facility" pursuant to Section 11526a(1)(b), then landfill staff should complete the Prohibited Waste Removal Record form (EQP 5222) and follow Attachment 2.

2. Public Unloading Areas

- The public unloading area should have signs posted detailing wastes that are prohibited from disposal.
- There should be a mechanism or methodology to supervise or survey the public unloading area.
- Containers should be available for prohibited items that are accepted for recycle or compost (such as motor vehicle scrap tires, yard waste, and beverage containers).

- Procedures should exist for handling, storing, and properly disposing of or recycling prohibited wastes that are rejected for landfill disposal.

3. Operations at the Active Portion of the Landfill

- Operations staff should be trained to recognize prohibited waste. Staff should be trained in the use of any special equipment to detect prohibited wastes.
- Operations staff should conduct random inspections of incoming loads and should inspect any suspicious load.
- Equipment should be available to detect, remove, store, and properly recycle or otherwise dispose of prohibited waste at an alternate location.
- If the landfill is acting as the “other facility” pursuant to Section 11526a(1)(b) by documenting the removal of prohibited waste, then the landfill’s engineering and operation plans should follow Attachment 2.

4. Management Responsibilities

- Plans should include training programs that identify:
 - i. Who is trained
 - ii. What items are prohibited
 - iii. What is “*de minimis*”
 - iv. What to do with prohibited items
 - v. What to do if questions arise
 - vi. How records are to be kept
- Plans should address safety issues.
- Procedures should identify a process whereby the landfill owner or operator, upon the discovery of prohibited waste, rejects the waste, follows up with the generator and hauler of such waste, and if necessary, notifies the MDEQ or local agencies.
- Plans should describe recordkeeping procedures for forms, load inspections, and cases in which prohibited waste are discovered and its disposition.

ATTACHMENT 2

Michigan Department of Environmental Quality Waste and Hazardous Materials Division

GUIDANCE FOR MUNICIPAL SOLID WASTE (MSW) LANDFILLS DOCUMENTING THE REMOVAL OF PROHIBITED ITEMS FROM WASTE GENERATED OUTSIDE OF MICHIGAN

Section 11526a(1) of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, provides that “the owner or operator of a landfill shall not accept for disposal in this state solid waste, including but not limited to, municipal solid waste incinerator ash, that was generated outside of this state” unless one of three criteria is met. One of these criteria is that the solid waste was “received through a material recovery facility, a transfer station, or other facility that has documented that it has removed from the solid waste being delivered to the landfill those items that are prohibited from disposal in a landfill.” The Part 115 administrative rules also require that landfill engineering plans include “procedures for separating recyclable materials from general refuse, if applicable,” and the “process for receiving and unloading solid waste” including “procedures for inspecting loads for hazardous waste” [see R 299.4911(2)(i) and (k)].

In the event that an MSW landfill acts as the “other facility” under Section 11526a(1)(b), the Michigan Department of Environmental Quality (MDEQ) believes that in order to comply with 2004 PA 34 and 2004 PA 40 and the Part 115 administrative rules, the landfill’s engineering plan should be updated to include, in addition to those components specified in Attachment 1, the following minimum components:

- The plan must demonstrate that removal of all prohibited waste occurs: (a) prior to delivery to the landfill and (b) before acceptance for disposal, given the volume and nature of waste received.
- Plans should identify where waste will be screened for prohibited items or content prior to disposal. Waste cannot be screened at the location of disposal (the active face).
- Plans should identify equipment and personnel to be used to screen loads and remove prohibited items. Such equipment and personnel shall be adequate to perform these tasks in a timely and thorough manner.
- Plans must provide for the screening of each load that was generated outside of Michigan.
- If waste is stockpiled, then the volume of waste stockpiled must be small enough to allow thorough screening for prohibited items.
- Plans should identify where prohibited items will be stored after removal. Such storage areas must have adequate controls to prevent contaminated runoff, blowing debris, or other violations of Part 115.
- Plans should identify where prohibited items will be recycled or disposed of other than at the landfill and in what time frame.
- Plans should identify who at the landfill completes the documentation of removal and should describe how this documentation is maintained. If documentation of removal is completed by both gate staff and operations staff, the plan should identify how communications are conducted and how notification is made to the hauler or generator.
- Plans should identify any special training and safety needs.
- If any regulated hazardous waste or PCB waste is discovered at the facility, the requirements of R 299.4430(3)(e) must be met.