

Michigan Waste & Recycling Association

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Part 115 Draft 3 Comments

MWRA’s comments on the draft legislation are preliminary.  MWRA expressly reserves its right to submit additional comments, and to raise new issues.  MWRA’s participation in this legislative process, and MWRA’s specific comments (or lack thereof) should not be construed as MWRA taking any position, either in support or opposition, with respect to any portion of the draft legislation.

General Comments:

1. Review document for appropriate changes of “solid waste” to “managed materials”.
2. Include in all references to tons an allowance for cubic yard conversion.

Specific Comments:

1. Page 2, line 3
* Strike “duly executed” and add “written and binding” to read: “Agreement” means a written and binding contract. (MWRA)
1. Page 14, lines 1-5
* Strike lines 1-5 (MWRA)
* Explanation: term “discharge” is not used in the document
1. Page 14, line 15
* Add at the end “, other than a facility primarily engaged in: the acquisition, processing and shipment of ferrous or nonferrous metal scrap, the shredding of motor vehicles or motor vehicle parts, the processing of material generated from the shredding of motor vehicles or motor vehicle parts.” (MWRA)
1. Page 15, line 16
* Rewrite to read as follows: “take action to ~~guarantee compliance~~ further the goals and objective of ~~with~~ an approved” (MWRA)
1. Page 15, line 19
* After “regulations” add “, but shall not include this part. An approved materials management plan is only enforceable through the enforceable mechanisms contained in the plan.” (MWRA)
* Explanation: consistent with page 6 paragraph 6 of the 2017 SWSAP Report.
1. Page 19, line 16
* Strike “or” and replace with “and” to read: “manufacturing or industrial processes and originates from an” (MWRA)
1. Page 24, lines 18-19
* Strike “AND OTHER MATERIALS AS DETERMINED BY THE DEPARTMENT.”
* Add “Managed material does not include materials or products that contain iron, steel, or nonferrous metals and that are directed to or received by a person subject to the scrap metal regulatory act, 2008 P.A. 429, M.C.L. 445.421 to 445.443, or materials generated from the shredding or dismantling of motor vehicles or parts of motor vehicles.” (MWRA)
1. Page 24, line 20
* After “facility” add “or facility” (MWRA)
1. Page 24, line 27
* After “manages” add “or processes” (MWRA)
1. Page 25, lines 10-13
* Strike lines 10-13 (MWRA)
* Explanation: term “materials management plan modification” not used in document.
1. Page 25, line 22
* Add new sentence: Shall not include source separate materials or recycled materials without a viable market. (MWRA)
* Inquiry: what is the definition of solid waste residuals? (MWRA)
* Concern: consideration required for source separated materials that do not have a viable market? (MWRA)
1. Page 29, line 23
* Strike definition of “recycling” and replace with the definition used in Part 175 “Recycling” means an action or process, such as separation, sorting, bailing, or shipping, applied to reportable recyclable materials for the purposes of reuse or conversion into raw materials or new products. (MWRA)
* Explanation: make the definition of “recycling” consistent with Part 175.
1. Page 30, line 2
* Strike “solid waste” and replace with “managed materials” (MWRA)
1. Page 31, line 12
* Add at end of sentence, new sentence: “Scrap metal processor” means a person, utilizing machinery and equipment and operating from a fixed location, whose principal business is the processing and manufacturing of iron, steel, and nonferrous metal bearing materials, into prepared grades of products suitable for consumption by recycling mills, steel mills, foundries, and other scrap metal processors. (MWRA)
1. Page 34: lines 24 and 25
* Strike “solid waste”; replace with “managed materials” (MWRA)
1. Page 35, line 11
* After “ferrous or nonferrous metal scrap,” add a plant engaged in the shredding or dismantling of motor vehicles or part of motor vehicles, a plant engaged in the processing of the materials generated from the shredding or dismantling of motor vehicles or part of motor vehicles or a plant engaged primarily in. (MWRA)
1. Page 35, line 25
* After “separated,” add from solid waste; strike ~~or from [“AT”?]~~ (MWRA)
1. Page 35, lines 26-27
* Strike ~~a materials management facility that complies with this part and rules promulgated under this part~~ (MWRA)
1. Page 38, line 12-14
* Strike lines 12-14 (MWRA)
* Explanation: Term “state policy” not used in document
1. Page 39, line 14
* After “for residential purposes.” Add new sentence: A waste diversion center does not include a building or property designated for the (a) the management or processing of materials or products that contain iron or steel or non-ferrous metals that are directed to or received by a person subject to the scrap metal regulatory act, 2008 P.A. 429, M.C.L. 445.421 to 445.443, (b) shredding or dismantling of motor vehicles or motor vehicle parts or (c) processing of material generated from the shredding or dismantling of motor vehicles or parts of motor vehicles. (MWRA)
1. Page 39 – line 16
* Substitute the word “waste” at each use of the word “material” to read: converting solid waste into energy rather than disposing of the solid waste.
1. Page 39 - line 17-18
* Strike ~~“is an authorized facility that includes”~~ replace with “are any of the following that handle or process solid waste for waste utilization:”
1. Page 40, line 1
* After “managed.” add “A Waste Utilization Facility does not include a facility that that (a) manages or processes materials or products that contain iron or steel or non-ferrous metals that are directed to or received by a person subject to the scrap metal regulatory act, 2008 P.A. 429, M.C.L. 445.421 to 445.443 (b) shreds or dismantles motor vehicles or motor vehicle parts, or (c) processes material generated from the shredding or dismantling of motor vehicles or parts of motor vehicles, except, and only to the extent, that any facility described in (a), (b), or (c) uses solid waste in the production of energy.” (MWRA)
1. Page 41, line 3
* Strike ~~This State,~~ replace with the Department; strike  ~~shall~~; replace with “should”; strike ~~“promote”~~ replace with “allow for”
1. Page 41, line 6
* Strike ~~Promote~~; add allow for (MWRA)
1. Page 41, lines 11-13
* Strike lines 11-13 (MWRA)
1. Page 41: lines 25-26
* Insert “process”, strike “solid waste”; replace with “managed materials”: to read A person shall not process, dispose, store or transport managed materials in this state unless the person complies with the
1. Page 42, line 3
* After line 3, add section (7) – (10)

(7) This part is not intended to prohibit the continuation of the private sector from doing business in regulated materials management, disposal and transportation. This part is intended to encourage the continuation of the private sector in the regulated materials management, disposal and transportation business when in compliance with the minimum requirements of this part.

(8) This part is not intended to prohibit salvaging.

(9) This part does not prohibit the department from conveying, leasing, or permitting the use of state land for a solid waste disposal area or a resource recovery facility as provided by applicable state law. [3]

(10) Except as provided in subsection (9), a municipality or county that provides regulated material collection, transfer, processing or disposal services outside of its jurisdictional boundaries shall do all of the following with respect to those services:

(a) Keep all records of the services performed outside of its jurisdictional boundaries separate from all other records.

(b) For all equipment and land, and any portion thereof, used by a municipality or county to provide services outside its jurisdictional boundaries, and for any net income generated from providing such services, make an in-lieu contribution to all state, municipality, county and other taxing districts equal to the taxes, including any income tax obligation, that would be required of or incurred by private companies performing the same services.

(c) Pay all fees and costs imposed on services performed outside of its jurisdictional boundaries that are applicable to private companies performing the same services, including any surcharge imposed under this part.

(d) Ensure that no municipal or county taxes, fees or revenues are used to subsidize the services conducted outside of its jurisdictional boundaries.  (MWRA)

1. Page 43, line 7
* Strike “and type” (MWRA)
1. Page 48, line 26
* After “made.” add “The department shall specify, in writing, the reasons for denial of a permit, further specifying those particular sections of this part or rules promulgated under this part that may be violated by granting the application and the manner in which the violation may occur.” (MWRA)
1. Page 59, line 18
* Strike “an approved materials management plan, or ” (MWRA)
1. Page 69, line 20
* After “any” add “managed” (MWRA)
1. Page 72, lines 21-22
* Insert after “After”: a licensed professional engineer has certified closure (MWRA)
* Strike ~~THE DEPARTMENT APPROVES THE CLOSURE CERTIFICATION~~ (MWRA)
* Explanation: streamline lengthy process
1. Page 73, line 4
* Strike “a minimum of [????]” (MWRA)
1. Page 74, lines 8-10:
* Amend to read: Ground water or surface water requiring ongoing corrective action during the preceding five years of the post-closure care period. (ii) There is ~~either~~ no evidence of ~~continued or~~ significant differential subsidence of waste in the unit or such subsidence has ceased. (MWRA)
1. Page 78, lines 20-21
* Delete ~~an approved solid waste MATERIALS management plan or~~ (MWRA)
1. Page 84, line 19
* Strike ~~bond~~, replace with perpetual care fund maintained under section 11525 (MWRA)
1. Page 84, line 22
* Strike ~~bond~~, replace with perpetual care fund (MWRA)
1. Page 87, line 9
* Amend to read: site, and submitted closure certification to ~~had closure certified by~~ the department. (MWRA)
1. Page 88, lines 7-8
* Amend to read: has been certified by a licensed professional engineer and submitted to the department. ~~And approved by the department.~~ (MWRA)
1. Page 89, lines 12-26
* Strike lines ~~12-26~~, replace with A person that provides required financial assurance in the form of a perpetual care fund bond may request a reduction in the bond if the amount of the perpetual care fund bond plus all other allowable financial assurance mechanisms in place exceeds the amount of the financial assurance required under subsection (1). A person requesting a perpetual care fund bond reduction shall do so on a form consistent with this part and provided by the department. The department shall grant this request if the amount of the perpetual care fund bond plus all other allowable financial assurance mechanisms in place exceeds the amount of the financial assurance required under subsection (1) unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the perpetual care fund bond within 60-days after the request is made. (MWRA)
1. Page 90, lines 3-7
* Strike lines ~~3-7~~
1. Page 91, line 10
* Strike “not” (MWRA)
1. Page 92, line 24
* After line 24, add:

(iii) A leachate management cost estimate based on site-specific leachate generation rates, and current leachate treatment, transportation and disposal costs.

(a) The facility shall estimate the total volume of leachate that will be managed during post-closure utilizing the facility’s average leachate generation rate based on the most recent five years of actual generation to determine an average leachate generation rate on gallons per acre per day (GPAD) basis.

(b) The “initial annual volume” of leachate to be managed during the post-closure period shall be estimated by multiplying the average GPAD, as determined in (iii)(a), by the acreage for which financial assurance is required x 365-days per year.

(c) The total volume of leachate to be managed during post-closure shall be determined as follows:

I.      Facilities not in post-closure: Multiply the “initial annual volume” x 2 to determine the leachate volume generated during an assumed 2-year closure period, then reduce this volume by 25% per year for post-closure years 1 through 20, then apply the year 20 volume to years 21 through 30.  The sum of the 2-year closure volume and 30 post-closure year volumes equals the estimated total leachate volume to be managed during post-closure.

ii.      Facilities in years 1 through 20 of post-closure: Begin with the “initial annual volume” then reduce this volume by 25% per year of post-closure through post-closure year 20, then apply the year 20 volume to years 21 through 30.  The sum of the “initial annual volume” and remaining post-closure year volumes equals the estimated total leachate volume to be managed during post-closure.

iii.      Facilities in years 21 through 30 of post-closure: Apply the initial annual volume to each of the remaining years of post-closure and sum these annual volumes to estimate total remaining leachate volume to be managed during post-closure.

(d) To determine the total leachate management costs for which financial assurance must be provided, multiply the total leachate volume determined in (iii)(c)(i, ii or iii) by the facility’s current actual cost per gallon to treat, transport and dispose of leachate.  These costs shall be adjusted to reflect third party costs where appropriate.

 (iv)    A leachate collection system maintenance cost of $100.00 per acre per year shall be included as part of the post-closure leachate management cost estimate. (MWRA)

1. Page 93/94, lines 25-27/1-4
* Strike: ~~A leachate disposal and …~~ (through) ~~… dispose of leachate generated at each site~~. (MWRA)
1. Page 94, lines 12-12
* Strike ~~FINACIAL ASSURANCE SHALL BE PROVIDED IN AN AMOUNT SUFFICIENT FOR A PERIOD OF 30 YEARS AT ANY GIVEN TIME~~.
1. Pages 94-95, lines 27-1
2. Add a period after the word “maintenance.” (MWRA)
3. Strike “~~as determined appropriate by the department~~.” (MWRA)
4. Page 96, line 15
* At end of sentence, add A certification that has not been disapproved after the 60-day period, shall be deemed approved. (MWRA)
1. Page 99, lines 11-12
* After “fund” add “throughout the post-closure period” (MWRA)
* Strike “~~for a period minimum of 30 years after final closure~~” (MWRA)
1. Page 99 line 18 through Page 101 line 12
* Strike page 99, line 18 through page 101, line 12 (MWRA)
1. Page 101, line 19
* Strike ~~Until the~~ (MWRA)
1. Page 101, lines 20-24
* Strike lines 20-24 (MWRA)
1. Page 101, line 25
* Strike through “any” (MWRA)
1. Page 101, line 26
* Insert “on the perpetual care fund” after earnings (MWRA)
1. Page 102, lines 20-24
* Revise to read: funds from a perpetual care fund whenever the amount of money in the fund plus all other allowable financial assurance mechanisms in place exceeds the total amount of financial assurance requirements of sections 11523 and 11523a.
1. Page 105, lines 12-13
* Strike “Type II and/or Type II” and replace with “managed material facilities” (MWRA)
1. Page 105, lines 15-17
* Amend to read: ~~solid waste or municipal solid waste incinerator ash~~ managed materials that is disposed managed ~~of in the landfill~~ before (MWRA)
1. Page 113, lines 8-15
* Strike lines 8-15 (MWRA)
1. Page 116, line 23
* Strike “materials”; replace with “managed materials” (MWRA)
1. Page 119, lines 13-17
* Strike beginning at: ~~If a municipality~~ and ending at: ~~other municipality is located.~~
1. Page 120, lines 20-26
* Strike lines 20-26 (MWRA)
1. Page 125, lines 8-15
* Strike lines 8-15 (MWRA)
1. Page 126, line 3
* Replace ~~direct~~ with assist (MWRA)
1. Page 136 and 137, lines 25-27 and lines 1-2
* After “need” on line 25, strike remainder of line 25, line 26, line 27, Page 137, lines 1 and 2. (MWRA)
1. Page 137, lines 9-21
* Strike lines 9-21. (MWRA)
1. Page 144, line 27 and Page 145, line 1
* Line 27: strike “include an” replace with “specify the” (MWRA)
* Line 1: strike “program and process” replace with “mechanism” (MWRA)
1. Page 146, lines 3-4
* Strike “solid waste” (MWRA)
1. Page 147, lines 18-19
* Strike lines 18-19 (MWRA)
1. Page 148, line 13
* Strike “communities”; replace with “municipalities” (MWRA)
1. Page 150, lines 8-27
* Strike lines 8-27 (MWRA)
1. Page 151, lines 1-6
* Strike lines 1-6 (MWRA)
1. Page 151, line 24
* Strike “mechanism to ensure” replace with “lawful means” (MWRA)
1. Page 152, line 6
* Strike “for the county unless” (MWRA)
1. Page 152, lines 7-15
* Strike lines 7-15
1. Page 152, after line 6
* Insert “An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority shall not regulate the operation of a licensed materials management facility.” (MWRA)
1. Page 152, lines 7-15
* Strike lines 7-15 (MWRA)
1. Page 152, lines 16-17
* Amend to read “A ~~planning entity,~~ county, municipality~~,~~ or authority, ~~or regional planning agency~~ (MWRA)
1. Page 152, line 20
* Strike “planning entity” (MWRA)
* After “A” add “county or municipality” (MWRA)
1. Page 152, line 23
* After “entity” add “within the boundaries of the jurisdiction.” (MWRA)
1. Page 152/153, lines 24-27
* Strike lines 24-27 (MWRA)
* Strike lines 1-2

Language to strike:

~~A planning entity may establish material management authorizations or fees or any other regulatory ordinances, agreements, or contracts needed to ensure that each county or planning area has a sufficient mechanism to reach its established waste utilization goals.~~

1. Page 153, Line 10-11
* Strike: ~~The director may promulgate rules to implement this section.~~
* Explanation: Statute should be clear.
1. Page 157, line 19
* After “rules” add in accordance with the Administrative Procedures Act and legislative approval process. (MWRA)