



Michigan Waste & Recycling Association

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WRITTEN TESTIMONY OF CHRIS PHILLIPS, MWRA VICE PRESIDENT AND

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HOUSE WAYS & MEANS COMMITTEE

PART 115 (HB 5812-5817)

SEPTEMBER 15, 2020

OPENING REMARKS AND INTRODUCTIONS

Chairman Iden and committee members, thank you for today's opportunity to highlight the Michigan Waste & Recycling Association and our work to serve Michigan's safe and responsible solid waste disposal needs. We appreciate the opportunity testify on the latest draft of the Part 115 solid waste rewrite bills.

My name is Chris Phillips. I am the community relations representative for Landfill Management, located in Watervliet, Michigan. I am addressing you today in my role as vice president for the Michigan Waste and Recycling Association. I am joined by MWRA's external counsel, Jeff Woolstrum who is with Honigman law firm.

MWRA's mission reflects the role our members and their facilities and people play each-and-every day of the year to keep Michigan communities clean, safe, and healthy:

MWRA represents businesses and municipalities that provide waste- and recycling-related services. We advocate for safe, economically sustainable, and environmentally sound waste hauling, disposal, recycling, composting, and landfill gas-to-energy programs. Our members provide a way for the Michigan residents and businesses to put discarded items to use as a valuable resource.

We take great pride in our people and the extraordinary service they provide. Our 250+ facilities employ more than 8,000 Michigan workers, contribute more than \$990 million to the state's economy and its tax base. We safely manage more than 11 million tons of solid waste per year. And, we are integral to the protection of Michigan's environment – its air, land, and water.

On behalf of MWRA, I want to thank everyone who has participated in the process that has led to the development of the bill package before you today.

Michigan's solid waste statute – Part 115 – has stood the test of time for several decades and the time has come for it to be updated to reflect the policy and regulatory needs of today.

The update process has spanned nearly six years, and members of MWRA, like many stakeholders in the room, have been deeply involved since day one. We have appreciated the department's leadership and openness, and we have valued the input and thinking of our fellow stakeholders.

These bills present an important policy opportunity for Michigan, and MWRA members seek to be good partners with the state and our communities. We also seek policies that provide clarity and certainty for our members – as we operate our businesses in a highly regulated and competitive environment.

COMMENTS ON PROPOSED PART 115

MWRA supports the policy goals behind the Part 115 update, including the emphasis on improving Michigan's recycling rates and material reuse. Satisfied that most concerns have been addressed, MWRA is prepared today to support House Bills 5812 – 5816.

We will focus the remainder of our comments today around outstanding concerns within House Bill 5817, which we are not prepared to support yet.

In front of you is MWRA's document that outlines five areas of concern we continue to have with the draft bill. I will address comment #5 on the document before turning the floor over to Jeff Woolstrum who will highlight the other comments on the document.

As you know, Northville Township is pursuing language in the bill that would give townships adjacent to a landfill – but not located within the boundaries of the host county – effective veto power over landfill expansions needed to serve solid waste disposal needs. The language, if approved, would adversely impact more than a dozen Michigan landfills that are located adjacent to non-host community units of government, the host communities themselves, and the public policy objectives contained in the Part 115 rewrite.

Specifically, MWRA strongly opposes any changes that would impair our ability to plan investment strategies needed to support our businesses or the disposal needs of the communities we serve. The language proposed in HB 5817 (Sec. 11578. Pg. 23 Line 23-29, Pg. 24 Lines 1-14), as well as an amendment being floated by Northville Township, threatens to do just that and more.

If approved, the provisions would dampen investments in infrastructure and operation upgrades of existing landfills; diminish the value of existing landfill facilities by imposing arbitrary and finite lifespans; and undermine the authority of the current host community/county jurisdiction by giving an adjacent community effective veto power over planning processes.

An unintended consequence of the language, if approved, would be a drive toward siting new greenfield landfills – something we and others do not believe to be necessary nor desirable.

Mechanisms already exist for adjacent communities to participate in county solid waste planning and state permitting processes when applications are under review for expansions or other operational needs. These are orderly, appropriate input and engagement opportunities that ensure solid waste disposal needs of the state continue to be met while also ensuring consideration of community needs.

Landfills are licensed and regulated by EGLE and should continue to comply as such. Giving an adjacent community regulation over private business is overreaching and sets a bad precedent.

Bottom line, the proposed language currently in HB 5817 – and the Northville Township proposed amendment – are simply bad public policy, and MWRA proposes the striking proposed language in both (b) and (d).

MWRA members recognize the opportunities to engage both our host communities and adjacent jurisdictions. We are committed to maintaining positive working to address long term planning needs and resolve concerns when they arise.

In summary, MWRA is opposed to the proposed language regarding adjacent community overreach, and we urge this committee to strike the language from HB 5817 before advancing the bill.

I now would like to turn the floor over to Jeff Woolstrum to cover the other four items on our document. Jeff ...

----- **WOOLSTRUM** -----

Good Morning Chairman Iden and members of the committee. Thank you for this opportunity on behalf of the association, and thank you, Chris, for the introduction to my remarks today.

The waste industry realizes the importance of this legislation and we appreciate the opportunity to provide specific comments for your consideration.

I have been asked by the association to provide further clarification and to emphasize the association's concerns with HB 5817 as it relates to two specific topics: (1) Part 115's preemptive effect over local ordinances governing disposal areas, and (2) the enforcement of county solid waste management plans. These concerns are summarized in Items 1 through 4 of the association's document.

First with respect to preemption, Part 115 establishes a comprehensive regulatory scheme that governs the collection, transportation, storage, processing, and disposal of Michigan's solid waste. As an integral segment of this comprehensive scheme, Part 115 requires each Michigan county to have a solid waste management plan that ensures that waste generated in the county will be collected and recovered, processed or disposed of in accordance with Part 115. The county planning process affords citizens and municipalities with significant input concerning the development and content of county plans; however, once these plans are approved by EGLE, a **cohesive scheme of centralized and uniform controls** emerges. Accordingly, Section 11538 of Part 115 expressly preempts local ordinances that are not contained in, or are not consistent with, an approved plan. This section states:

“An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute, which prohibits or regulates the location or development of a solid waste disposal area, and which is not part of or not consistent with the approved solid waste management plan for the county, shall be considered in conflict with this act and shall not be enforceable.”

The key Michigan Court of Appeals decision interpreting Part 115's preemptive effect is Southeast Oakland County Incinerator Authority v. Avon Township, 144 Mich. App. 39 (1985). In that case, decided thirty-five years ago, the Authority sought a declaration that Part 115 preempted Avon Township from regulating SOCIA's landfill operations.

The court held that **the Michigan Legislature intended that Part 115 would preempt all local ordinances governing location, development or operation of disposal areas in order to remedy the lack of uniform State standards and procedures which had hampered transportation and disposal of solid waste in Michigan**. This holding has withstood all subsequent court challenges and remains the law today. Thus, the location, development and operation of disposal areas is exclusively regulated by the provisions in the county plan and by EGLE's comprehensive administrative rules.

HB 5817 would change this long-established, court-defined, preemptive effect in two important ways. First, it would modify the language contained in Section 11538 by narrowing the universe of local ordinances that are expressly preempted under this section. Second it could actually allow local ordinances to control certain aspects of the operation and construction of disposal areas, albeit “minimally.” The association believes that this erosion of Part 115's preemptive effect is a slippery slope that could lead to a return to the patchwork of non-uniform standards that had hampered transportation and disposal of solid waste in Michigan many years ago.

Second, with respect to the enforcement of a county solid waste management plan, Part 115 makes clear that a plan's provisions are not enforceable simply because they appear in the plan. Rather, Part 115 requires that all plans contain “**enforceable mechanisms** for implementing the plan.” A plan's “enforceable mechanism” may be a contract, local ordinance or other law, but the mechanism must

exist independent of the plan and of Part 115. EGLE emphasized this fact in the letters it issued to counties approving their solid waste management plans. In those letters, EGLE stated:

“The Plan is enforceable, however, only to the extent the County properly implements [] enforceable mechanisms under applicable enabling legislation. The Plan itself does not serve as such underlying enabling authority, and the DEQ approval of the Plan neither restricts nor expands the County’s authority to implement these enforceable mechanisms.”

The association is concerned that two provisions in Sections 11578(o) and 11581(1) of HB 5817 may add ambiguity to this well-established aspect of Part 115 planning process, and requests that these provisions be clarified.

Thank you again, Mr. Chair and members of the committee. We stand ready to continue to work with you and the department to address these last remaining issues. We would be happy to answer any questions you or the committee may have.