



Michigan Waste & Recycling Association

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MWRA Part 115 Concerns (HB 5812-5817) (Landfill Gas Collection, Increased Postclosure Leachate Transportation & Disposal Costs, and Increased Landfill Operating Fees)

MWRA's remaining unresolved issues appear in **RED** and the Department of Environment, Great Lakes and Energy's response to those concerns are in **yellow** regarding Part 115. As expressed verbally in our testimony before the House Committee on Natural Resources, our industry is still reviewing HB 5817 and will follow-up to provide the committee with comments/questions soon.

MWRA Comment 1:

Applicability of SEC. 11512B.(2): MWRA still believes the provisions of federal NSPS Tier 2 and Tier 3 testing at smaller landfills should still be available to exempt qualifying landfills from active gas collection and control, mirroring NSPS. While MWRA understands the departments concerns, we would like the opportunity to review this further with EGLE before finalization of these regulations.

EGLE Response 1:

We understand your position on this issue. As we stated previously, EGLE does not agree that NSPS thresholds alone (e.g. Tier 2 and 3) are sufficient to address this issue.

MWRA's Justification for Comment 1:

The applicability of SEC. 11512B.(2) will likely require some small landfills to spend significant capital on adding an active gas collection and control system (flare) where the federal NSPS regulations allow for demonstrations, through testing, that gas collection and control systems are not required. Many of these landfills have been in existence for a long time without gas related issues.

MWRA Comment 2:

A previous MWRA concern has been addressed in SEC. 11512b.(2) where it now states: "The active gas collection and control system shall not be inoperable or unable to maintain vacuum for more that 5 consecutive days." The word "design" has been removed between the words "maintain" and "vacuum", and MWRA supports this change.

EGLE Response 2:

It is MWRA's understanding that EGLE is requesting the word "design" be inserted between the words "maintain" and "vacuum".

MWRA Justification for Comment 2:

Inserting the word "design" as requested by EGLE is a significant change as it will require actual field conditions to meet a theoretical "design" value where there are many variables and assumptions involved in the design process. Landfills are dynamic, not static and changing conditions can affect the system vacuum in unpredictable ways. System vacuum is normally "over-designed" to account for the variables, assumptions and changing conditions to ensure adequate vacuum is maintained. Not

maintaining a theoretical “design” vacuum at a specific location in the system does not mean the system is underperforming. SEC. 11512 b.(2)(e) already requires a minimum vacuum at the well located furthest from the blower. There are other more appropriate measurements of performance than system vacuum and the proposed Part 115 changes address those other measurements.

MWRA Comment 3:

Section 11512D(4) still requires Quality Assurance Officer certification of construction in accordance with a Construction Quality Assurance Plan (CQA Plan). As previously commented MWRA would prefer that Construction Documentation Reports rather than certifications be submitted which would include the requested information. Also, there is not a requirement for landfills to prepare a CQA Plan for landfill gas system construction.

EGLE Response 3:

We have removed the requirement to certify the construction to the CQA Plan. The new proposed language still includes certification, but it is to Part 115 and the Engineering Plans for the site.

MWRA Justification for Comment 3:

The requirement for a Quality Assurance Officer to certify gas collection and control system installations is unnecessary and burdensome to the landfill owners. Providing a Construction Documentation Report with the requested information should be sufficient. Certification adds considerable costs (in the tens-of-thousands of dollars per project) as it would require frequent visits by the certifying officer and full-time construction observation/documentation. Often, significant portions of any given phase of construction includes interim features which should not require construction certification since they are temporary.

MWRA Comment 4:

Section 11523a(2)(b)(ii-iii) increases the post closure leachate disposal and transportation costs for determining the required minimum financial assurance by a factor of 4. We understand that half of this increase is due to inflation since the original amounts were set, however, doubling the value again is arbitrary and excessive. During the Part 115 workgroup process MWRA proposed a site-specific rationale for establishing the post-closure financial assurance amount for leachate disposal and transportation.

EGLE Response 4:

EGLE did not accept MWRA’s proposed site-specific means for establishing the post-closure leachate disposal and transportation financial assurance cost. MWRA’s understanding is that EGLE thought the proposed rationale would not provide adequate financial assurance amounts, and it would be difficult to write into statute given its complexity.

MWRA Justification for Comment 4:

EGLE has stated that the current financial assurance formula for establishing post-closure costs for leachate management does not provide enough money based on their recent experiences. MWRA supports having appropriate levels of financial assurance where it is needed. MWRA understand the costs for managing landfill leachate is site-specific and can vary significantly from site to site. Using site-specific information is one method of accounting for the variability between landfills. The proposed doubling of the current costs is arbitrary and will add significant financial assurance costs to every landfill. If a flat-rate formula is to be used, it should be adjusted consistent with the other financial assurance costs, which were adjusted for inflation.

MWRA Comment 5:

In 2019, MWRA proposed the below recommendation as it pertains to landfill operating fees. We recognize the disparity in numbers and look forward to discussing a reasonable approach.

House Bill 5813; Page 20 Lines 2-19:

Page 20, Line 3. (8) ~~(7)~~ The application for a type II landfill operating license shall be accompanied by the following fee for the 5-year term of the operating license, ~~calculated in accordance with~~ SUBJECT TO subsection ~~(8)~~ (9):

- (a) Landfills receiving less than 100 tons per day, ~~\$250.00~~ **\$500.00**
- (b) Landfills receiving 100 tons per day or more, but less than 250 tons per day, ~~\$1,000.00~~ **\$2,000.00. (\$1500.00)**
- (c) Landfills receiving 250 tons per day or more, but less than 500 tons per day, ~~\$2,500.00~~ **\$5,000.00 (\$4,000.00)**
- (d) Landfills receiving 500 tons per day or more, but less than 1,000 tons per day, ~~\$5,000.00~~ **\$10,000.00. (\$6,500.00)**
- (e) Landfills receiving 1,000 tons per day or more, but less than 1,500 tons per day, ~~\$10,000.00~~ **\$20,000.00 (\$12,500.00)**
- (f) Landfills receiving 1,500 tons per day or more, but less than 3,000 tons per day, ~~\$20,000.00~~ **\$40,000.00 (\$22,500.00)**
- (g) Landfills receiving ~~greater~~ MORE than 3,000 tons per day, ~~\$30,000.00~~ **\$60,000.00 (\$33,000.00)** **The purple text is the recommendation from MWRA. The red text is from MMD based on maintaining parity with inflation.**

MWRA Question 1—Final Cover Slopes

HB 5813: MWRA is requesting clarity regarding final cover slopes. Page 49, Line 19 reads: "...final cover, shall not be steeper than 25%." The current Part 115 Rule 299.4425(8) reads: The final slope shall not be more than 1 vertical to 4 horizontal at any location, **except where necessary to install berms for erosion control.**

MWRA suggestion: The highlighted language in the current rule should be added after "25%" in HB 5813 to be consistent with the rule.

If the statute and rule do not agree, which will take precedent?

MWRA Question 2— Contaminant of Emerging Concern

HB 5812: MWRA is requesting clarity around the "contaminant of emerging concern" language on page 14, lines 21-29. The term isn't mentioned anywhere else within the bill package. Is it necessary to keep?