

Out-of-State Waste Concerns Prompts Legislature Into Action

In a flurry of proposed legislation, Michigan lawmakers have recently introduced a variety of bills in an attempt to stem the flow of out-of-state solid waste being disposed of in Michigan landfills. The out-of-state waste issue has received significant attention following the City of Toronto's vote to export all of its municipal solid waste into Michigan. The Michigan Department of Environmental Quality reports that 20 percent of all solid waste disposed of in Michigan landfills last year originated from outside the state. Canadian waste accounted for slightly more than half of the total out-of-state waste.

Since the beginning of this year, over 25 bills or resolutions have been introduced in the Michigan Legislature that would regulate the flow of out-of-state waste. On May 15, 2003 alone, the following bills were introduced in the Michigan House and Senate in an effort to address this matter:

- HB 4686 - Prohibiting out-of-state or out-of-country waste unless restricted waste has been removed or the other state or province has solid waste stream standards as stringent as Michigan's.
- HB 4687 - Prohibiting disposal of out-of-state or out-of-country waste unless the state or country has solid waste stream standards as stringent as Michigan's.
- HB 4689 – Expanding the list of wastes prohibited from disposal in Michigan landfills to include beverage containers, whole tires, oil, lead acid batteries, low-level radioactive waste and hazardous waste, which may be found in out-of-state waste streams.

- SB 488 - Prohibiting state and local units of government from entering into contracts with landfills that receive out-of-state solid waste.
- SB 489 - Exempting landfills that accept only in-state waste from property tax.
- SB 497 – Expanding the list of prohibited products in landfills to include beverage containers, whole tires, oil, lead acid batteries, low-level radioactive waste and hazardous waste (similar to HB 4689).
- SB 502 – Providing for the regulation of imported solid waste.

Attempts at regulating out-of-state waste, however, often run afoul of the United States Constitution. In the 1992 U.S. Supreme Court decision in *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources*, the Court invalidated portions of Michigan's solid waste laws that regulated out-of-state waste flow because they violated the Commerce Clause of the United States Constitution. The Commerce Clause vests in Congress the power to regulate commerce among the several states and prohibits states from "advancing their own commercial interests by curtailing the movement of articles of commerce." Solid waste, the court held, was an article of commerce protected under the Commerce Clause and, accordingly, state laws that burden the movement of solid waste across state lines are generally prohibited. Since that Supreme Court decision, Legislators opposed to out-of-state waste disposal in Michigan have struggled to draft constitutional legislation that will effectively address the issue.

Recently, a series of public hearings was held to allow Michigan residents to air their concerns about the problem of out-of-state waste. The hearings were conducted jointly by the Senate Natural Resources and Environmental Affairs Committee and the House Land Use and Environment Committee and took testimony from residents and interested parties on the pending

Legislation. A press release from Senator Ken Sikkema and Representative Rick Johnson stated that these public information hearings were intended to “give Michigan residents the opportunity to discuss with legislative leaders their opinion on the amount of trash and waste that crosses our borders from other states and Canada” and their “environmental health and safety concerns that arise with this issue.” The hearings were held on May 21 in Rochester, May 28 in Northville, and June 3 in Lansing.

Governor Jennifer Granholm has also weighed in on this politically-charged issue. In an April 10, 2003 letter to the Chairman of the U.S. House of Representatives’ Subcommittee on Environment and Hazardous Materials, Governor Granholm, together with the governors of Ohio, Pennsylvania, Wisconsin, Indiana, and Kentucky, urged the passage of federal legislation that would “provide state and local governments with needed tools to reasonably limit the amount of out-of-state and international waste that crosses their borders, maintain disposal capacity for their own waste, and assure protection of states’ natural resources.” This joint letter concedes that, “in the absence of Congressional action, our states can continue to expect increasing percentages of annual waste disposal to originate from outside our borders.”

Governor Granholm also announced on March 11 of this year that the MDEQ would conduct additional inspections at solid waste landfills throughout the state to “ensure that prohibited solid waste is not entering these facilities.” Prohibited wastes include items such as regulated hazardous wastes and polychlorinated biphenyl (PCB) waste, bulk liquids, used lead acid batteries, yard clippings, and other wastes banned by law or for which special handling is required. The MDEQ press release announcing this inspection program suggested that its underlying purpose was to produce ammunition in the fight against out-of-state waste. MDEQ noted that State Senator Liz Brater and State Representative Paul Gielegem, “strong supporters

of actions to stem the flow of out-of-state waste into Michigan, expressed support for the increased inspections at Michigan landfills.” The inspections, however, found almost no evidence of prohibited materials entering Michigan’s landfills and, in fact, revealed that Canadian waste contained less recyclable materials than waste generated in Michigan.

Not surprisingly, members of the solid waste industry operating in Michigan are generally opposed to the legislative efforts to control the movement of solid waste. The Michigan Waste Industries Association (MWIA), an industry trade organization representing companies engaged in the collection, processing, recycling and disposal of solid waste within the State of Michigan, supports the use of the free market to determine the movement of solid waste rather than artificial legislative controls. MWIA also contends that there is currently no legitimate reason to interfere with the free market and, in any case, the state should stop attempting to regulate interstate waste shipments in violation of the Commerce Clause.

Senator Sikkema’s and Representative Johnson’s press release states that, now that the recent public hearings on out-of-state waste have concluded, the Legislature will move forward “with the ideas received that are expected to withstand judicial review.” It remains to be seen, however, whether any of the proposed Michigan legislation will pass constitutional muster.

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