



House Bills Proposed to Amend Solid Waste Act and Promote Beneficial Use of Materials

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Foster Swift Agricultural Law Update

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Members of the Michigan House introduced three bills, HB5400, HB5401, and HB5403, to primarily amend Michigan's Solid Waste Act, Part 115 of the Natural Resources and Environmental Protection Act (NREPA) on March 11, 2014. If amended, the act would promote the use of inert, low hazard, industrial by-products, known as beneficial by-products, in lieu of having those materials sent to a landfill. Beneficial use by-products include materials that can be land applied. The proposed legislation would designate coal bottom or wood ash, pulp and paper mill ash, mixed wood ash, cement kiln dust, lime kiln dust, foundry sand, pulp and paper mill material, lime softening residuals, soil washed or removed from sugar beets and flue gas desulfurization material (synthetic gypsum) as materials suitable for beneficial use.

Materials that can be used on land as fertilizer, soil conditioner or a liming agent would be labeled as Beneficial Use 3 materials under the proposed legislation. The material must be licensed or registered in a similar manner to other materials that are currently licensed or registered under the fertilizer and specialty conditioner provisions of Part 85 of NREPA, as amended, and the liming agent provisions of Act 162 of 1955, as amended. The material must be applied at an agronomic rate consistent with generally accepted agricultural and management practices, and the use, placement or storage of the materials at the location of use cannot create a nuisance, cause groundwater to be no longer fit for one or more protected uses or violate surface water quality standards. The material also must be located certain distances from public or domestic water supply wells.

These proposed reforms represent an advancement over current regulatory rules that have limited the type of materials that can be reused and have imposed unreasonable testing standards that Michigan has actually abolished. Persons seeking to gain the benefit of this type of beneficial use will have to make an application or filing which contains a form label or form bill of lading and includes a laboratory

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analysis. As part of the form label or bill of lading, a person will have to provide directions for use to ensure that the material is applied at an agronomic rate. The testing requirements will look at certain constituents from an agronomic perspective or in the case of heavy metals from a toxic standpoint. One round of testing at the start may be sufficient and usable for subsequent years as long as the processes or materials generated are not changed.

If a person uses materials as required in accordance with the new and amended provisions, he or she will enjoy protection against liability under Michigan's environmental remediation statute, Part 201 of NREPA, as amended. These reforms have received broad support from a variety of industries, including foundry manufacturers, pulp and paper mills, and utilities. Other states have adopted similar provisions for land application. These reforms are expected to encourage the reuse of materials that would otherwise be disposed as waste, reduce disposal costs and provide economical savings over other raw materials, ensure the safety of materials for potential uses; extend the capacity of landfills and conserve resources, promote the concept of sustainability and provide protection against liability when used properly.

If you would like further information on these reforms, you may contact Charles (Chuck) Barbieri at 517-371-8155. Chuck has been actively involved in the reform process on behalf of the Michigan Manufacturers Association.