

Legislative Analysis



LATERAL EXPANSION TO ACCOUNT FOR THE BOUNDARY OF EXISTING COAL ASH LANDFILL

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5496 (H-1) as passed by the House
Sponsor: Rep. Gary Howell
1st Committee: Natural Resources and Outdoor Recreation
2nd Committee: Ways and Means [Discharged]
Complete to 4-24-20

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 85 of 2020)

BRIEF SUMMARY: House Bill 5496 would amend the Natural Resources and Environmental Protection Act to modify the definition of lateral expansion of a coal ash landfill to include a horizontal expansion beyond the solid waste boundary of an existing coal ash landfill.

FISCAL IMPACT: House Bill 5496 would not affect revenues or costs for the Department of Environment, Great Lakes, and Energy (EGLE) or local governments.

THE APPARENT PROBLEM:

2018 PA 640 was enacted to facilitate transfer of the responsibility for monitoring coal ash in Michigan from the U.S. Environmental Protection Agency (EPA) to the Department of Environmental Quality (EGLE's predecessor agency).¹ However, according to committee testimony, technical changes to applicable statutory definitions are needed to finally allow EGLE, rather than the EPA, to be the enforcement agency for coal ash landfills in Michigan.

THE CONTENT OF THE BILL:

House Bill 5496 would amend Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act to modify the definition of *lateral expansion* of a coal ash landfill to include a horizontal expansion beyond the solid waste boundary of an existing coal ash landfill.

Currently under the act, *lateral expansion* includes a horizontal expansion of the solid waste boundary of a coal ash landfill, if the expansion is beyond the limit established in a construction permit issued after December 28, 2018.

Under the bill, a *lateral expansion* of a coal ash landfill would also include an expansion made after October 19, 2015, that is a horizontal expansion of the outermost boundary, as defined by a construction certification or operating license, of an *existing coal ash landfill*.

Existing coal ash landfill would mean a coal ash landfill to which either of the following applied:

- The landfill received coal ash both before and after October 19, 2015.

¹ HB 6269: <http://legislature.mi.gov/doc.aspx?2018-HB-6269>

- Construction of the landfill commenced before October 19, 2015, and the landfill received coal ash on or after October 19, 2015. For the purposes of this definition, construction of a landfill commenced before October 19, 2015, if both of the following requirements were met before that date:
 - The owner or operator obtained the federal, state, and local approvals or permits necessary to begin physical construction.
 - A continuous, on-site physical construction program began.

MCL 324.11503 and 324.11504

ARGUMENTS:

For:

Supporters of the bill argue that in order to streamline the coal ash landfill process and facilitate better communication, oversight of those landfills should be the responsibility of EGLE and not the EPA. In order to effect this, Michigan’s coal ash landfill regulations must align with federal regulations. Supporters argue that this bill is the last step in achieving that alignment.

Against:

No arguments against the bill were presented in House committee testimony. Concerns that were raised on this issue in considering HB 6269 in the 2017-18 legislative session included the potential burden of having to continually amend the statute to keep up with ever-changing federal rules and a desire expressed by some for stricter guidelines for coal ash landfill liners to further decrease the chance of contaminants leaking and polluting Michigan’s invaluable water resources.

POSITIONS:

A representative of DTE Energy testified in support of the bill. (3-3-20)

The following entities indicated support for the bill (3-10-20):

- Department of Environment, Great Lakes, and Energy
- Consumers Energy
- Michigan Chamber of Commerce

The following organizations indicated a neutral position on the bill (3-10-20):

- Michigan Environmental Council
- Michigan League of Conservation Voters

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Austin Scott

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.