

**AGREEMENT  
COUNTY OF KENT  
AND THE COUNTY OF OTTAWA**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2023, between the County of Kent (“Kent”), by and through its Board of Commissioners, and the County of Ottawa County, by and through its Board of Commissioners (“Ottawa”). The Agreement coordinates the materials handling fees of solid waste generated from within Kent County and permanently disposed within one of the two landfills located within Ottawa County.

**Recitals**

A. Part 115 (“Act”) authorizes “municipalities” (cities, villages, or townships) that host landfills to charge the landfill operator an impact fee (See MCL 324.11532). The Act as interpreted by the courts also allows Michigan counties to assess fees on waste deposited in landfills (“County Materials Fee”) to fund the costs of the County’s implementation of its solid waste management or materials management plan, including recycling, waste diversion, facility development, plan development and administration, and the County’s costs of managing historical landfills (“Plan Expenses.”) See *County of Saginaw v John Sexton Corp of Michigan*, 232 Mich App 202, 211 (1998). This County Materials Fee is to be distinguished from the host governmental impact fee because it is set by the County and because it has a different purpose; namely, to defray the costs of Plan Expenses through-out the County.

B. Kent imposes a materials handling fee upon all solid waste generated within Kent County, even if it is deposited in Ottawa County. Ottawa will be imposing a materials handling fee upon all solid waste haulers who are permanently depositing waste within landfills in Ottawa County, including waste generated within Kent County.

C. Pursuant to authority granted in the MCL 124.1 et seq, two counties may enter into an intergovernmental service agreement to coordinate their exercise of the same or similar powers.

D. The purpose of this Agreement is to coordinate the fees that are being charged so as to avoid double assessment of the same waste and to share revenues so as to assist in the defraying of Plan Expenses.

It is agreed as follows:

1. **Coordination.** Kent will not assess a materials handling fee (or similar Part 115 assessment) on any waste generated from within Kent County that is permanently deposited in landfills located in Ottawa County.

2. **Sharing.** Ottawa will remit \_\_\_\_% of the materials handling fee that it sets and receives from waste that was generated in Kent County but permanently deposited in Ottawa County ("Kent Share").

3. **Remittance.** Ottawa will remit to Kent the Kent Share within thirty (30) days of its receipt of such funds.

4. **Termination.** This Agreement shall run indefinitely, provided that either party shall have the right to notify the other party of its intent to terminate this Agreement upon at least one hundred and twenty (120) days advance written notice. This Agreement will terminate immediately if either Kent or Ottawa terminates the assessment of a materials handling or other Part 115 fee or if any portion of this Agreement or the materials handling fee that Ottawa charges is deemed without legal authority or in violation of any fee imposed by Ottawa by contract.

5. **Claw Back.** Kent agrees to promptly return to Ottawa any remittance of the Kent Share that Ottawa paid in the event that the materials handling fees collected and remitted are deemed without authority or violation of any agreement and the Court orders Ottawa to return such fees to the waste hauler. This section shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the County of Ottawa and County of Kent have caused this Agreement to be executed by their respective Board of Commissioners' Chairperson and County Clerk.

COUNTY OF KENT

COUNTY OF OTTAWA

By: \_\_\_\_\_  
Stanley Stek, Chairperson  
Kent County Board of Commissioners

By: \_\_\_\_\_  
Joe Moss, Chairperson  
Ottawa County Board of Commissioners

By: \_\_\_\_\_  
Lisa Posthumus Lyons  
Kent County Clerk

By: \_\_\_\_\_  
Justin F. Roebuck  
Ottawa County Clerk



Waste Management of Michigan, Inc.  
700 – 56<sup>th</sup> Avenue  
Zeeland, Michigan 49464

February 10, 2023

Via Public Comment Portal:

Ottawa County Solid Waste  
Planning Committee  
12220 Fillmore Street  
West Olive, MI 49460

**Re: Public Comment of Waste Management of Michigan, Inc. (“WM”) on Proposed Amendment of Ottawa County Solid Waste Management Plan (the “Proposed Amendment”)**

To Whom It May Concern:

As a long-standing community partner of Ottawa County (the “County”), WM appreciates the opportunity to submit this public comment on the Proposed Amendment. The Proposed Amendment would impact the municipal solid waste landfills of WM (Autumn Hills) and Republic (Ottawa County Farms) more than any other businesses in the County. As a general statement, WM believes the Proposed Amendment constitutes a breach by the County of the County’s binding agreements with WM; includes unlawful provisions; creates substantial delay, uncertainty, and risk; and, perhaps most importantly, is unnecessary—as WM is confident the County could achieve its goals in a much faster, cooperative, and legally sound manner through amicable contractual negotiations with WM and Republic.

- 1. The Proposed Amendment impermissibly seeks to alter Ottawa County’s binding contractual commitments through a unilateral Proposed Amendment of the County’s Solid Waste Management Plan and includes unlawful provisions that could result in unnecessary litigation, expense, and liability.**

WM and the County entered into an Agreement dated April 12, 1991 related to the Autumn Hills landfill. The Agreement was amended on April 17, 1997 and again on July 31, 1998. In its current Solid Waste Management Plan (updated in 2015), Ottawa County relied on this Agreement, as amended, and recognized its continued effectiveness and viability (*See* p. III-5). In an August 11, 2022 email to WM counsel regarding the Proposed Amendment, Ottawa County Corporation Counsel Doug Van Essen likewise confirmed the County’s view that the Agreement was still in effect. However, as the Proposed Amendment process moved forward and WM voiced its concerns, Corporation Counsel announced in a September 27, 2022 meeting of the Solid Waste Planning Committee (SWPC) that the County’s agreements would come to an end as a result of the Proposed Amendment, as if the County could make that decision unilaterally; and stated in an

October 18, 2022 e-mail to WM counsel: “The agreement is not enforceable. It is dead. You got your landfill move on.” WM strongly objects to the legally insupportable position that Ottawa County can unilaterally alter or terminate its contractual agreements with WM through a plan Proposed Amendment. Corporation Counsel’s baseless conclusion regarding the status of the Agreement is in direct conflict with his prior communication and the County’s own Solid Waste Management Plan, which explicitly relies on and cites to the Agreement.

This is more than an academic concern. The Proposed Amendment deals with three general topics: (1) an increase in the annual volume cap on the amount of waste accepted by the WM’s Autumn Hills landfill, (2) an attempt to mandate that landfills within Ottawa County (except for the JH Campbell landfill) accept particular kinds of waste generated within the County, and (3) the fees charged on waste deposited in the WM’s Autumn Hills landfill. All three topics are covered in the Agreement, as amended, and if the parties’ legal arrangements are going to change, it must be through bilateral contractual negotiation and not unilateral plan Proposed Amendment. To wit:

- (1) The Agreement, as amended, provides for an annual volume cap of 750,000 (*See* 1998 Proposed Amendment at ¶2). While WM welcomes the Proposed Amendment’s increase of this cap (and would be willing to negotiate for it), the proper manner to address the issue is a contract negotiation.
- (2) The Agreement, as amended, provides that Autumn Hills will provide disposal capacity for solid waste generated in the County until 2015 (*See* 1998 Proposed Amendment at ¶1). The Proposed Amendment attempts to unilaterally prolong that commitment indefinitely.
- (3) The Agreement, as amended, sets forth the surcharge on waste deposited in the Autumn Hills landfill (*See* Agreement at Section IV).

In addition to the overriding fact that the County cannot amend its contractual commitments with a plan Proposed Amendment, the proposed Amendment is legally defective and subject to challenge for several other reasons. First, the Proposed Amendment purports to require the WM and Republic landfills to accept particular types of waste. WM believes such a provision is unprecedented and unlawful as an attempt by the County to control the operation of private landfills. In addition, the County’s overreaching into the day-to-day operations of a landfill could render the County an “operator” for purposes of CERCLA liability. Second, Corporation Counsel has acknowledged on more than one occasion that the primary purpose of the Proposed Amendment’s materials fee is to cover pre-existing liabilities at the Southwest Ottawa County Landfill (SOCL). This raises multiple legal questions including whether the materials fee is an unlawful tax, rather than a fee, as pointed out in an August 12, 2022 letter to the SWPC from the Michigan Waste & Recycling Association and whether the “materials fee” violates prior settlements between WM and the County related to SOCL. Third, the materials fee provision, as drafted, would penalize haulers who deliver waste from Kent County to Ottawa County landfills and subject them to double payment on the same waste. This is the case because Kent County charges a surcharge on all waste collected in Kent County. The County’s proposed solution to this

inequity has been to send a letter to Kent County, which to WM's knowledge has generated no response and no solution to the problem.

These overreaches are indicative of the needlessly antagonistic nature of the SWPC process to date. WM does not wish to rehash the entire process but some examples include:

- Corporation Counsel included provisions related to flow control that had to be removed because they were unlawful.
- Corporation Counsel included language purporting to control the rates charged by the WM and Republic Landfills. This language also had to be removed because it is unlawful.
- Corporation Counsel included provisions unlawfully attempting to require the WM and Republic landfills to accept sludge, which raises significant environmental concerns. He withdrew those provisions only after strenuous protest and after he verbally threatened to condemn the Autumn Hills landfill. WM has expressed its willingness to meet with community partners to address sludge disposal, while consistently maintaining its legal objection to an unlawful mandate.

**2. The goals the County is pursuing through the Proposed Amendment could be accomplished more properly, more expeditiously, and more cooperatively through a contractual negotiation.**

WM has suggested that the parties engage in an amicable contractual negotiation for many months. In addition to being the legally proper way to proceed, WM believes such a negotiation has a good likelihood of success, as both sides stand to benefit—the landfills from higher capacity limits and the County from better solutions to its waste disposal needs and financial obligations. WM has no desire whatsoever to be in conflict with the County and, as stated, views itself as a long-term community partner. If WM can assist the County, consistent with the needs of WM's business, it will.

Further, a contractual negotiation could be completed in a matter of weeks. By comparison, after over a year of deliberations, the SWPC approved a draft amendment in December 2022 and is in the middle of the statutory 90-day public comment period. After that, the Proposed Amendment will return to the SWPC and then the Board of Commissioners for further deliberation and public hearing. If the SWPC and Board approve the draft, it then must be approved by 2/3 of the municipalities in the County. If the municipalities approve the Proposed Amendment, it must be approved by EGLE. In addition, Part 115 was amended in December 2022. Once it approves the new template, EGLE will be requiring each county in Michigan to submit a new Solid Waste Management Plan (now called a Materials Management Plan). This raises the question of why the County would go through the cumbersome amendment approval process when it will have to go through a similar approval process for its new Materials Management Plan.

February 10, 2023

Page 4

For the reasons set forth above, in its current form, WM will be opposing the Proposed Amendment at every step and will be forced to challenge it in Court on multiple grounds if it is finally approved. There is simply no good reason for the parties not to at least attempt to negotiate before going down this road.

Respectfully

Waste Management of Michigan, Inc.

signed *Fred Sawyers*

Fred Sawyers

Area Manager of Disposal Operations

Cc: John Gibbs (Ottawa County)  
Jack Jordan (OC Corporate Counsel)  
Matt Rosser (WM)  
Micah Hamstra (WM)  
Joe Viviano (KHVPF)



# Ottawa County

## Corporation Counsel

**Douglas W. Van Essen**  
Ottawa County Corporate Counsel

12220 Fillmore Street, Room 331, West Olive, Michigan 49460

P: (616) 738-4861

F: (616) 738-4888

dvanessen@miottawa.org

www.miottawa.org

February 13, 2023

Ottawa County Solid Waste Planning Committee

RE: Response to Waste Management's February 10, 2023 Letter

Dear Committee:

Ordinarily, I would not respond to public comment, but Waste Management's referenced letter is a personal attack with false information that demands to be corrected. First, of all, personal attacks are beneath the process and the dignity of the Committee, which has worked in a collegial, cooperative fashion. Second, it is an untrue statement that the 1991 Contracts are coming to an end. They are not. They always recognized that no county board of commissioners can indefinitely bind the hand of future elected officials on issues such as the cap or a solid waste 'fee,' much less restrict an elected board 32 years later. Waste Management knows that the contracts contain a procedural remedy, which WM is promising to use. The Agreements will remain, although the County will not enforce its landfill host fee nor the landfill cap therein, as those are being superseded by the proposed amendment and the facts that exist in 2023.

Third, while the Michigan Court of Appeals has unequivocally held that waste flow to a landfill is a legitimate subject of a county plan, the proposed plan amendment **only** mandates acceptance of county generated waste at an Ottawa County landfill **if** no other landfill in the County's planning will accept the waste and if the waste meets the landfills' standards for safety. This is arguably the number one purpose of a solid waste management 'plan' for the community, as the plan requires that each county assure through the plan that its solid waste has a place to go.

Fourth, contrary to the misrepresentations of Waste Management, there was never a proposal to control the rates charged by Waste Management or Republic. This is an allegation asserted out of thin air. Finally, there was never a suggestion that either landfill take public wastewater treatment plant sludges if the sludges did not meet the landfill's safety standards. Instead, Republic volunteered to work with the POTW's in the County in attempt to ensure a 'home' for such sludges, and the Committee properly concentrated on a planning process to address sludges and leachate if and only if there is no regional solution for those materials. Counsel has repeatedly praised the Committee for its work and the compromises that emerged, which is the reason why the Committee and the Planning process is the place for these discussions, not private backroom deals that are 32 years old. It is unfortunate, that certain officials at Waste Management have chosen personal attacks and falsehoods to replace proper policy debates and facts.

Very Truly Yours,

Douglas W. Van Essen  
Ottawa County Corporation Counsel