



# Agricultural Law Update

April 2014

## HOUSE BILLS PROPOSED TO AMEND SOLID WASTE ACT AND PROMOTE BENEFICIAL USE OF MATERIALS

- Charles E. Barbieri

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 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.

## NEW WINE BUSINESS AND ENTREPRENEURSHIP CERTIFICATE AVAILABLE AT VESTA ONLINE

---

- Guest Author: Joanne Davidhizar, Michigan State University Extension and MSU Product Center

Many individuals are interested in entering Michigan's expanding grape and wine industry, but lack the knowledge or skills to get started. The Viticulture and Enology Science and Technology Alliance (VESTA) has aided hundreds of individuals through easy educational access to basic and advanced resources for new and established grape growers or wine makers.

Many VESTA enrollees were found to be utilizing their knowledge to start new businesses. Hence, the new VESTA wine business and entrepreneurship program was developed to further meet the identified need. The wine business and entrepreneurship track offers courses in business planning, finance, safety, legal aspects of wineries, marketing, equipment, winery design and human resources. This program joins the established viticulture and enology certificates.

VESTA, sponsored by the National Science Foundation, in partnership with the Michigan State University Institute of Agriculture Technology and colleges and universities in 17 other states throughout the United States offers online credit courses, workshops and

mentoring to people looking to enter the grape industry or further their skills through professional development. Participants may seek a VESTA certificate, a community college associates degree or a Michigan State University Institute of Agriculture Certificate in Viticulture through its off-campus programs in southwest and northwest Michigan.

To obtain information about VESTA and off-campus MSU IAT Applied Plant Science certificate programs and admission requirements, visit the MSU Institute of Agriculture Technology or call 517-355-0190. Lake Michigan College-based Coordinator, Stacey Rocklin, may be reached at 269-927-8772 or [rocklin@msu.edu](mailto:rocklin@msu.edu), Northwestern Michigan College-based Coordinator, Brian Matchett at 231-995-1719 or [matchet4@msu.edu](mailto:matchet4@msu.edu), and MSU Campus-based Tom Smith at 517-353-4822 or [smitht48@anr.msu.edu](mailto:smitht48@anr.msu.edu).

- Read the article on Michigan State University's Extension website here: <http://bit.ly/Q4WZ00>
- Go to the VESTA website: <http://bit.ly/1iBIWrk>

## AG RESOURCES

---

Want to keep up-to-date on the latest in agribusiness? These are a few of our favorite sources for information.

- AgWeb: <http://www.agweb.com/>
- Michigan Agri-Business Association: <http://miagbiz.org/>
- Michigan Ag Council: <http://www.michiganagriculture.com/>
- MDARD: <http://www.michigan.gov/mdard>
- Michigan Farm Bureau: <https://www.michfb.com/mi/>
- Michigan Farmer: <http://farmprogress.com/michigan-farmer>
- Michigan State University Extension: <http://msue.anr.msu.edu/>

## LITIGATION CORNER

---

- Liza C. Moore

### WHICH COURT DOES WHAT IN FEDERAL COURTS?

The last *Agricultural Law Update* gave an overview of the courts created by Michigan's Constitution and laws. The federal court system has its own courts that were created by Article III of the United States Constitution and Congress.

**United States District Court for the Western District of Michigan and the United States District Court for the Eastern District of Michigan.** The U.S. district courts are the trial courts of the federal judicial system. Federal courts decide cases that involve the U.S. government and federal agencies and cases that involve a "federal question," such as whether a law is constitutional under the U.S. Constitution, whether a federal statute or treatise has been violated, or whether someone is entitled to a federal benefit, like Social Security. The U.S. district courts also hear admiralty cases, matters involving ambassadors, and all bankruptcy cases. Federal courts may also decide cases where the plaintiff and defendant are from different states, if those cases involve claims for more than \$75,000 in damages. Michigan is divided into two districts. The Western District hears cases from the Western side of the state and the Upper Peninsula. The Eastern District hears cases from the Eastern side of the state.

### United States Court of Appeals for the Sixth Circuit.

The federal district courts are organized into twelve regional circuits. Michigan is in the Sixth Circuit, along with Ohio, Kentucky, and Tennessee. Final decisions from Michigan's U.S. District Courts are appealed to the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit hears oral argument in Cincinnati, Ohio. The Court of Appeals for the Federal Circuit has nationwide jurisdiction over appeals in specialized areas, such as patent litigation.

**United States Supreme Court.** The U.S. Supreme Court chooses what cases it will hear. Parties can ask the Supreme Court to hear their cases by filing a petition for *writ of certiorari*. Parties can try to appeal to the U.S. Supreme Court from a decision of state or federal appellate courts. The U.S. Supreme Court hears only a few cases each year. The Supreme Court only grants petitions for *certiorari* in cases the Court decides involve legal questions of great significance.

Like the state court system, the federal court system has its own sets of rules and procedures. Each court has its own specific requirements, and many judges set their own individualized rules for his or her courtroom. Only your attorney can be sure that you comply with the court rules and that you do not miss important deadlines that could have serious financial implications for you and your business.

## RECENT EQUINE LAW COURTROOM VICTORY

---

We're pleased to share that Attorney Julie Fershtman won a case in Michigan where she defended a boarding and training stable that was sued by a visitor who was injured in the barn aisle. Julie cautions that this case might have been avoided altogether if the stable required every visitor to sign its waiver/release of

liability. (Julie, interestingly, drafted that stable's release document years ago but the stable only presented it to customers.) Make sure that your release is well-worded and complies with the laws of your state. For the latest equine law updates subscribe to our blog here: <http://www.equinelawblog.com/>.



## UPCOMING AG EVENTS

- April 23, 2014** Jean Shtokal will present "Know Before You Go Overseas: Complying with EAR and ITAR Regulations," at the Global Outlook in Aerospace and Defense Conference, Troy - <http://bit.ly/1qs9jmK>
- April 24, 2014** Right to Farm Act and Local Zoning, Stanton - <http://bit.ly/Q646FQ>
- April 24, 2014** 2014 Local Produce Grower's Workshop: Safety, Soil Management, and Sales Networking, Grand Rapids - <http://bit.ly/1iy61eJ>
- May 2, 2014** Julie Fershtman will present "From Pug to Pugnacious: Animal Liability," at the Michigan Adjusters Association Seminar, Frankenmuth - <http://bit.ly/1kLL9SC>
- July 16-20, 2014** Michigan Livestock Expo, MSU Pavilion - <http://bit.ly/1hpOhoo>
- July 22-24, 2014** Michigan Ag Expo, MSU grounds - <http://bit.ly/1k52zLr>
- July 21-25, 2014** Michigan Dairy Expo and Dairy Days, MSU Pavilion - <http://bit.ly/1eJz5Dk>

### AGRICULTURAL ATTORNEYS:

#### GROUP LEADER

**Liza C. Moore**  
517.371.8281  
lmoore@fosterswift.com

**Charles E. Barbieri** | 517.371.8155  
**Scott A. Chernich** | 517.371.8133  
**James B. Doezema** | 616.726.2205  
**Julie I. Fershtman** | 248.785.4731  
**Brian G. Goodenough** | 517.371.8147  
**Todd W. Hoppe** | 616.726.2246  
**Charles A. Janssen** | 517.371.8262  
**Ryan E. Lamb** | 616.796.2503

**David M. Lick** | 517.371.8294  
**Steve L. Owen** | 517.371.8282  
**Jean G. Shtokal** | 517.371.8276  
**Patricia J. Scott** | 517.371.8132  
**Scott A. Storey** | 517.371.8159  
**Deanna Swisher** | 517.371.8136  
**Lynwood P. VandenBosch** | 616.726.2201  
**David VanderHaagen** | 517.371.8102

LANSING

FARMINGTON HILLS

GRAND RAPIDS

DETROIT

HOLLAND

Foster Swift Collins & Smith, PC **Agricultural Law Update** is intended for our clients and friends. This newsletter highlights specific areas of law. This communication is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.

**IRS Circular 230 Notice:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication.

Proud supporter  
of

