

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY

H.P. 310 - L.D. 401

An Act To Preserve State Landfill Capacity and Promote Recycling

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1303-C, sub-§6, as amended by PL 2011, c. 655, Pt. GG, §7 and affected by §70, is further amended to read:

6. Commercial solid waste disposal facility. "Commercial solid waste disposal facility" means a solid waste disposal facility except as follows:

A-2. A solid waste facility that is owned by a public waste disposal corporation under section 1304-B, subsection 5:

- (1) As long as the public waste disposal corporation controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and
- (2) If the facility is a solid waste landfill, the facility accepts only waste ~~that is~~ generated within the State unless the commissioner finds that the acceptance of waste that is not waste generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A;

B-2. A solid waste facility that is owned by a municipality under section 1305:

- (1) As long as the municipality controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and
- (2) If the facility is a solid waste landfill, the facility accepts only waste ~~that is~~ generated within the State unless:
 - (a) The commissioner finds that the acceptance of waste that is not waste generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A; and
 - (b) Acceptance of waste that is not waste generated within the State is approved by a majority of the voters of the municipality by referendum election;

C-2. A solid waste facility that is owned by a refuse disposal district under chapter 17:

(1) As long as the refuse disposal district controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste ~~that is~~ generated within the State unless the commissioner finds that the acceptance of waste that is not waste generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A;

D. Beginning January 1, 2007, a solid waste facility owned and controlled by the Department of Administrative and Financial Services, Bureau of General Services under chapter 24;

E. A solid waste facility owned and controlled by a single entity that:

(1) Generates at least 85% of the solid waste disposed of at a facility, except that the facility may accept from other sources, on a nonprofit basis, an amount of solid waste that is no more than 15% of all solid waste accepted on an annual basis; or

(2) Is an owner of a manufacturing facility that has, since January 1, 2006, generated at least 85% of the solid waste disposed of at the solid waste facility, except that one or more integrated industrial processes of the manufacturing facility are no longer in common ownership, and those integrated industrial processes will continue to generate waste that will continue to be disposed of at the solid waste facility. This exemption only applies if the source and type of waste disposed of at the solid waste facility remains the same as that previously disposed of by the single entity.

For the purposes of this paragraph, "single entity" means an individual, partnership, corporation or limited liability corporation that is not engaged primarily in the business of treating or disposing of solid waste or special waste. This paragraph does not apply if an individual partner, shareholder, member or other ownership interest in the single entity disposes of waste in the solid waste facility. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph.

For purposes of this paragraph, "integrated industrial processes" means manufacturing processes, equipment or components, including, but not limited to, energy generating facilities, that when used in combination produce one or more manufactured products for sale; or

F. A private corporation that accepts material-separated, refuse-derived fuel as a supplemental fuel and does not burn waste other than its own.

~~For purposes of this subsection, "waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste whether generated within the State or outside of the State if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.~~

Sec. 2. 38 MRSA §1303-C, sub-§22-A is enacted to read:

22-A. Recycling facility. "Recycling facility" means a facility engaged exclusively in the recycling of materials.

Sec. 3. 38 MRSA §1303-C, sub-§40-A is enacted to read:

40-A. Waste generated within the State. "Waste generated within the State" means:

A. Waste initially generated within the State;

B. Residue generated by an incineration facility or a recycling facility that is located within the State, regardless of whether the waste incinerated or processed by that facility was initially generated within the State or outside the State;

C. Residue generated by a solid waste processing facility that is located within the State, regardless of whether the waste processed by that facility was initially generated within the State or outside the State, as long as:

(1) The residue is used at a solid waste landfill for daily cover, frost protection or other operational or engineering-related purpose, including, but not limited to, landfill shaping or grading, and such use has been approved by the department under the landfill's license and such use complies with all applicable rules of the department and all applicable conditions of the landfill's license; and

(2) The use of the residue under subparagraph (1) complies with the requirements of section 1310-N, subsection 5-A, paragraph B, subparagraph (2);

D. Residue generated by a solid waste processing facility that is located within the State, regardless of whether the waste processed by that facility was initially generated within the State or outside the State, as long as:

(1) The residue does not meet the requirements of paragraph C; and

(2) The residue is generated by the facility only as an ancillary result of the facility's processing operations; and

E. Residue generated by a solid waste processing facility that is located within the State, regardless of whether the waste processed by that facility was initially generated within the State or outside the State, as long as:

(1) The residue does not meet the requirements of paragraph C or D;

(2) The residue is not considered recycled under section 1310-N, subsection 5-A, paragraph B, subparagraph (2) and is disposed of at a solid waste landfill; and

(3) The solid waste processing facility is in compliance with the requirements of section 1310-N, subsection 5-A, paragraph B, subparagraph (2).

Sec. 4. 38 MRSA §1310-N, sub-§5-A, ¶B, as amended by PL 2009, c. 412, Pt. A, §1, is further amended by amending subparagraph (2) to read:

(2) A solid waste processing facility that generates residue requiring disposal shall recycle or process into fuel for combustion all waste accepted at the facility

to the maximum extent practicable, but in no case at a rate less than 50%. For purposes of this subsection, "recycle" includes, but is not limited to, ~~reuse of waste as shaping, grading or alternative daily cover materials at landfills; aggregate material in construction; and boiler fuel substitutes~~ the reuse of waste generated within the State as defined in section 1303-C, subsection 40-A, paragraph C; the recovery of metals from waste; the use of waste or waste-derived product as material substitutes in construction; and the use of waste as boiler fuel substitutes.

At least 50% of the waste that a solid waste processing facility characterizes as recycled under this subparagraph must have been reused or recycled by the facility through methods other than placement of the waste in a solid waste landfill, except that a solid waste processing facility that was in operation during calendar year 2018, that accepts exclusively construction and demolition debris and that accepted more than 200,000 tons of such debris in calendar year 2018 shall:

(a) Reuse or recycle at least 15% of such debris through methods other than placement in a solid waste landfill by January 1, 2022; and

(b) Reuse or recycle at least 20% of such debris through methods other than placement in a solid waste landfill by January 1, 2023.

A solid waste processing facility that was in operation during calendar year 2018, that accepts exclusively construction and demolition debris and that accepted more than 200,000 tons of such debris in calendar year 2018 may request and the department may grant a waiver of the applicable provisions of this subparagraph for a specified period of time if the facility is able to demonstrate that compliance with the applicable provisions of this subparagraph would result in an unreasonable adverse impact on the facility. The demonstration may include results of a 3rd-party audit of the facility. In determining whether to grant such a waiver request, the department may consider trends in local, regional, national and international markets; the availability and cost of technologies and services; transportation and handling logistics; and overall costs that may be associated with various waste handling methods.

Sec. 5. 38 MRSA §1310-N, sub-§11, as enacted by PL 2007, c. 414, §3, is amended to read:

11. Waste generated within the State. Consistent with the Legislature's findings in section 1302, a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State. ~~For purposes of this subsection, "waste generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste, whether generated within the State or outside of the State, if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.~~

Sec. 6. 38 MRSA §1310-AA, sub-§1-A, as amended by PL 2011, c. 566, §2, is further amended to read:

1-A. Public benefit determination for acceptance by publicly owned solid waste landfills of waste generated out of state. Prior to accepting waste that is not waste generated within the State, a solid waste facility that is subject to this subsection shall apply to the commissioner for a determination of whether the acceptance of the waste provides a substantial public benefit.

A. A facility is subject to this subsection if the facility is a solid waste landfill that is not a commercial solid waste disposal facility pursuant to:

- (1) Section 1303-C, subsection 6, paragraph A-2;
- (2) Section 1303-C, subsection 6, paragraph B-2; or
- (3) Section 1303-C, subsection 6, paragraph C-2.

B. A facility that is subject to this subsection may not accept waste that is not waste generated within the State unless the commissioner determines that the acceptance of the waste provides a substantial public benefit.

C. The commissioner shall make the determination of public benefit in accordance with subsections 2 and 3.

~~D. For purposes of this subsection, "waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State; waste whether generated within the State or outside of the State used for daily cover, frost protection or stability in accordance with all applicable rules and licenses; and waste generated within 30 miles of the solid waste disposal facility.~~

Sec. 7. 38 MRSA §1310-AA, sub-§2, as amended by PL 2011, c. 566, §3, is further amended to read:

2. Process. Determinations by the commissioner under this section are not subject to Title 5, chapter 375, subchapter 4. The applicant shall provide public notice of the filing of an application under this section in accordance with department rules. The department shall accept written public comment during the course of processing the application. In making the determination of whether the facility under subsection 1 or the acceptance of waste that is not waste generated within the State under subsection 1-A provides a substantial public benefit, the commissioner shall consider the state plan, written information submitted in support of the application and any other written information the commissioner considers relevant. The commissioner shall hold a public meeting in the vicinity of the proposed facility under subsection 1 or the solid waste landfill under subsection 1-A to take public comments and shall consider those comments in making the determination. The commissioner shall issue a decision on the matter within 60 days of receipt of the application. The commissioner's decisions under this section may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision under this section.

Sec. 8. 38 MRSA §1310-AA, sub-§3, as amended by PL 2011, c. 566, §§4 and 5, is further amended to read:

3. Standards for determination. The commissioner shall find that the proposed facility under subsection 1 or the acceptance of waste that is not waste generated within

the State under subsection 1-A provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility or the acceptance of waste that is not waste generated within the State:

A. Meets immediate, short-term or long-term capacity needs of the State. For purposes of this paragraph, "immediate" means within the next 3 years, "short-term" means within the next 5 years and "long-term" means within the next 10 years. When evaluating whether a proposed facility meets the capacity needs of the State, the commissioner shall consider relevant local and regional needs as appropriate and the regional nature of the development and use of disposal capacity due to transportation distances and other factors;

B. Except for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy as set out in section 2101;

C. Is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal; and

D. For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted.

Sec. 9. Department of Environmental Protection; 2024 update to state waste management and recycling plan. The Department of Environmental Protection shall include in its 2024 update to the state waste management and recycling plan required under the Maine Revised Statutes, Title 38, section 2122 an evaluation of and any recommendations concerning the provisions of Title 38, section 1310-N, subsection 5-A, paragraph B, subparagraph (2) and whether amendments to those provisions are necessary.