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Drafter: DCT

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New Title?: NO

Add Emergency?: NO

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LD 112
SPONSOR'S PROPOSED AMENDMENT

Amend the bill by striking everything after the title and before the summary and inserting the following:

PART A

Sec. A-1. 38 MRSA §1303-C, sub-§§1-C, 6 and 32-A are amended to read:

1-C. Bypass. "Bypass" means any solid waste that is destined for disposal, processing or beneficial use at a an operating solid waste facility but that cannot be disposed of, processed or beneficially used at that facility because of the facility's temporary malfunction, temporary insufficient capacity, temporary inability to process or burn; or temporary downtime ~~or any other comparable reason.~~

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

A.

A-1.

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.

B-1.

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.

C-1.

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;

D-1.

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.~~

32-A. Solid waste processing facility. "Solid waste processing facility" means a land area, structure, equipment, machine, device, system or combination thereof, other than an incineration facility, that is operated to reduce the volume or change the chemical or physical characteristics of solid waste. "Solid waste processing facility" includes but is not limited to a facility that employs shredding, baling, mechanical and magnetic separation or composting or other stabilization technique to reduce or otherwise change the nature of solid waste. "Solid waste processing facility" does not include a recycling facility.

Sec. A-2. 38 MRSA §1303-C, sub-§§22-A and 40-A are enacted to read:

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

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 that has specifically been approved by the department under the landfill's license and where 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) is consistent with the requirements of section 1310-N(5-A)(B)(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.

Sec. A-3. 38 MRS §1310-N, sub-§5-A, ¶B, sub-¶(2) is amended 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, the reuse of waste generated within the State as provided in section 1303-C, subsection 40-A, paragraph C, as shaping, grading or alternative daily cover materials at landfills; the recovery of metals from waste, the use of waste as aggregate material 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.

Sec. A-4. 38 MRS §1310-N, sub-§11 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. A-5. 38 MRSA §1310-AA, sub-§1-A is 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. A-6. 38 MRSA §2152-A is enacted to read:

§2152-A. State-owned solid waste disposal facilities; purpose, management and operation; disposal of municipal solid waste

1. Purpose of State-owned solid waste disposal facilities. The Legislature finds that the purpose of State-owned solid waste disposal facilities is to ensure that adequate disposal capacity is available for the disposal of solid waste generated within the State through the development of new disposal capacity for anticipated State disposal capacity needs and the operation of existing facilities to address current State disposal capacity needs.

2. Consistency with solid waste management hierarchy. The Legislature intends that

all aspects of the management and operation of State-owned solid waste disposal facilities be conducted in a manner that maximizes alignment with the solid waste management hierarchy under section 2101.

The bureau, the operators of State-owned solid waste disposal facilities and the department shall ensure that the acceptance of waste at State-owned solid waste disposal facilities is consistent with the hierarchy and that options for the management of such waste that represent a higher priority on the hierarchy are not otherwise reasonably available.

3. Disposal of municipal solid waste at State-owned solid waste disposal facilities; department authorization criteria; department limitation of disposal. The Legislature intends that the State prioritize the disposal at State-owned solid waste disposal facilities of special wastes for which there are limited disposal options in the State and minimize the disposal at State-owned solid waste disposal facilities of non-bypass, unprocessed municipal solid waste. In accordance with this intent and with the provisions of this chapter and chapter 13, the department may:

A. Authorize the land disposal of non-bypass, unprocessed municipal solid waste at State-owned solid waste disposal facilities only when:

(1) A specific need for the disposal has been identified by the bureau and the operator of the facility;

(2) The disposal is consistent with the solid waste management hierarchy under section 2101, as determined by the department; and

(3) Options for the management of the waste that represent a higher priority on the hierarchy are not otherwise reasonably available, as determined by the department;

B. Limit the volume of municipal solid waste disposed of at a State-owned solid waste disposal facility and the duration of such disposal through the imposition of such limitations under the facility's license.

Sec. A-7. 38 MRS §2156-A, sub-§1 is amended to read:

1. Planning for development. ~~The bureau, in consultation with the department, shall plan for the development of facilities sufficient to meet anticipated unmet needs for municipal solid waste and special waste identified in the state plan and any revisions to the plan and to serve all geographic areas of the State. The bureau, in consultation with the department, may plan for the development of facilities sufficient to meet needs for special waste identified in the state plan and any revisions to the plan and to serve all geographic areas of the State.~~

PART B

Sec. B-1. 38 MRS §1310-B, sub-§2 is amended to read:

2. Hazardous waste information and information on mercury-added products and electronic devices; chemicals; recyclables. Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information related to priority toxic chemicals submitted to the department under chapter 27-~~01~~, information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 or information related to reporting on reportable recyclable materials submitted to the department under section 2145 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

Sec. B-2. 38 MRSA §2101-A, sub-§§4 and 5 are enacted to read:

4. Recycling establishment. “Recycling establishment” means an establishment engaged in the marketing, brokering or purchasing of reportable recyclable materials generated in the State. “Recycling establishment” does not include an establishment that directs all reportable recyclable materials it markets, brokers or purchases to brokers and purchasers that are located in the State.

5. Reportable recyclable materials. “Reportable recyclable materials” means any of the following categories of recyclable materials that are separated from household, commercial

or institutional waste and that are delivered to a recycling establishment for recycling: glass; cardboard, paper and paper products; plastic and plastic products; cartons, multi-laminates and other packaging; nonferrous and ferrous metals, including white goods; textiles; and mixed streams of recyclable materials that include any combination of the materials listed in this subsection.

Sec. B-3. 38 MRSA §2124-A, first ¶ is amended to read:

By January 1, ~~2020~~ 2021 and biennially thereafter, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over environmental and natural resources matters and the Governor setting forth information on statewide generation of solid waste, statewide recycling rates and available disposal capacity for solid waste.

Sec. B-4. 38 MRSA §2133, sub-§7 is amended to read:

7. Recycling progress reports. Municipalities shall report ~~annually~~ biennially, on forms provided by the department, on their solid waste management and recycling practices. ~~The annual biennial report must include how much of each type of solid waste is generated and how that solid waste is managed~~ identify the options available to residents and businesses within the municipality for managing solid waste, including any provisions for the separate management of reportable recyclable materials and organic waste and the disposal of other municipal solid waste, including construction and demolition debris. The department shall assist ~~municipal reporting~~ municipalities in developing and tracking a municipal or regional recycling rate by developing a municipal waste stream management assessment model. The model must rely on actual waste data whenever possible, but incorporate default generation estimates when needed. Default generation estimates must incorporate factors such as commercial activity, geographical differences and municipal population.

Sec. B-5. 38 MRSA §2145 is enacted to read:

§2145. Recycling reporting

1. Reporting requirement. Beginning March 1, 2020 and annually thereafter, a recycling establishment shall report to the department regarding its recycling of reportable recyclable materials generated in the State. The report must be on a form provided by or a format approved by the department and must include:

A. The business name, location, postal mailing address, physical address, electronic mail address, contact person and telephone number of the recycling establishment;

B. The amount of each category of reportable recyclable materials received by generator by the recycling establishment; and

C. The amount of each category of reportable recyclable materials shipped by destination by the recycling establishment.

The report must specify the quantity of reportable recyclable materials required to be reported under paragraphs B and C in tons, delineated into distinct material types to the extent possible. If the report specifies the quantity of reportable recyclable materials as determined using a volume-to-weight conversion formula, the report must include that conversion formula for review and approval by the department. The report may provide an aggregate quantity for multiple locations operated by a recycling establishment as long as the report specifically identifies each location used in determining the aggregate quantity.

The department shall establish reporting guidelines to ensure that reportable recyclable materials to be included in a report under this subsection is not counted more than once.

2. Data aggregation. The department shall aggregate data contained within the reports submitted under this section for the purpose of determining statewide quantities of reportable recyclable materials recycled.

3. Confidentiality. Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions of section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.

SUMMARY

This amendment replaces the bill, which is a concept draft, and makes the following changes to the State's solid waste management laws.

Part A of the amendment:

1. Adds definitions to the State's solid waste management laws for the terms "recycling facility" and "waste generated within the State" and amends certain other related definitions and provisions within the solid waste management laws consistent with those new definitions;
2. Provides that at least 50% of the waste characterized as "recycled" by a solid waste processing facility that generates residue requiring disposal must have been reused or recycled through methods other than landfilling;
3. Specifies through legislative findings and statements of legislative intent the purpose, management and operation of State-owned solid waste disposal facilities consistent with the solid waste management hierarchy under the Maine Revised Statutes, Title 38, section 2101;
4. Stipulates that the Department of Environmental Protection may authorize the land disposal of non-bypass, unprocessed municipal solid waste at State-owned solid waste disposal facilities only when a specific need for the disposal has been identified by the Bureau of General Services and the facility operator; the disposal is consistent with the solid waste management hierarchy; and options for the management of the waste that represent a higher priority on the hierarchy are not otherwise reasonably available; and

5. Authorizes the department to limit the volume of municipal solid waste disposed of at a State-owned solid waste disposal facility and the duration of such disposal through imposition of such limitations under the facility's license.

Part B of the amendment:

1. Requires that, beginning March 1, 2020, and annually thereafter, a recycling establishment engaged in the marketing, brokering or purchasing of recyclable materials generated in the State shall report to the department regarding its recycling of such materials;

2. Clarifies the existing recycling reporting requirement for municipalities and changes such reporting to biennially rather than annually; and

3. Changes the existing due date for the department's biennial report on statewide generation of solid waste, recycling rates and available disposal capacity to the joint standing committee of the Legislature having jurisdiction over environmental and natural resources matters from January 1, 2020 and biennially thereafter to January 1, 2021 and biennially thereafter.