

MAINE STATE LEGISLATURE

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CHAPTER 24

MAINE WASTE MANAGEMENT AGENCY

SUBCHAPTER I

MAINE WASTE MANAGEMENT AGENCY
GOALS AND ESTABLISHMENT

§2100. Solid waste management hierarchy

1. Priorities. It is the policy of the State to pursue and implement an integrated approach to solid waste management, which shall be based on the following order of priority:

A. Reduction of waste generated at the source, including both amount and toxicity of the waste;

B. Reuse of waste;

C. Recycling of waste;

D. Composting of biodegradable waste;

E. Waste processing which reduces the volume of waste needing land disposal, including incineration; and

F. Land disposal of waste.

§2101. Establishment of the Maine Waste Management Agency

1. Establishment of agency. The Maine Waste Management Agency is created. The agency is an instrumentality of the State and a body corporate and politic. The exercise by the agency of the powers conferred on it under this chapter and the implementation of its purpose and duties are essential governmental functions.

2. Organization and function of the agency. The Maine Waste Management Agency shall be comprised of 3 offices: the Office of Planning, the Office of Siting and Disposal Operations and the Office of Waste Reduction and Recycling.

3. Executive director. The governor shall appoint an executive director subject to review by the joint standing committee of the Legislature having jurisdiction over natural resources and to confirmation by the Legislature. The executive director shall serve at the pleasure of the governor. The salary of the executive director shall be established by the governor at the time of appointment. The executive director is the chief executive officer of the agency.

§2102. Powers and duties of the agency

1. General powers. In order to accomplish the purposes of this chapter and in addition to any other powers conveyed by this chapter, the agency may exercise the following powers:

- A. Sue and be sued;
- B. Have a seal and alter the seal at its pleasure;
- C. Adopt from time to time and amend bylaws covering its procedure, publish those bylaws as necessary or advisable and cause records of its proceedings to be kept;
- D. Promulgate in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, all rules necessary to carry out its responsibilities under this chapter, including procedural rules;
- E. Acquire, hold and dispose of personal property;
- F. Acquire in the name of the agency by purchase, lease or otherwise, real property and interests in real property determined necessary or desirable for its purposes and use the property;
- G. Establish and collect fees, assessments and other charges and expend money received as provided in this chapter;
- H. Employ such assistants, agents, engineering, architectural and construction experts and inspectors and attorneys and such other employees as it deems necessary or desirable to carry out its purposes;
- I. Obtain any information and conduct investigations useful or convenient for carrying out any of its purposes, powers or duties;
- J. Enter during normal working hours upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings, examinations and inspections as it deems necessary for the purpose of this chapter. The entry shall not be deemed a trespass;
- K. Procure insurance or other assurances in aid of any of its purposes;
- L. Exercise any of its powers in the public domain of the United States, unless the exercise of those powers is not permitted by the laws of the United States;
- M. Take all other lawful actions necessary and incidental to these powers in carrying out the requirements of this chapter;

N. Borrow money or otherwise obtain credit in its own name or lend money or otherwise extend credit to any person and exercise all powers of a lender or creditor;

O. Provide interest rate subsidies on commercial loans or grants to businesses and nonprofit organizations;

P. Direct solid, special and hazardous wastes from one public or private waste facility to another facility when an emergency is determined to exist by rule or by the Governor. The agency may negotiate to provide to the receiving facility fair compensation for the disposal or processing of waste at that facility during the period of emergency;

Q. Make agreements pertaining to the purchase, sale and use of products, including the generation, transmission and sale of energy in connection with the purposes of the agency;

R. Make contracts, including, but not limited to, the power to:

(1) Contract with architects, engineers, financial and legal consultants and other experts for services;

(2) Contract with persons, firms, corporations, limited partnerships, partnerships, associations, authorities and agencies for the operation of waste facilities and for services relating to the recycling and disposal of solid waste, resource conservation and resource recovery;

(3) Contract for the handling of solid waste on the basis of guaranteed amounts, whether delivered for disposal and accepted for disposal or not, with payments based on the guaranteed amounts, whether actually disposed of or not. The payments may be variable and may be determined by formulas expressed in those contracts;

(4) Contract with the State, the United States or any subdivision or agency thereof for services; and

(5) Contract with any municipality for the services of that municipality or its facilities.

S. Use a negotiated or competitive bid process or any other process which may be advantageous to the agency.

2. Duties. The agency shall undertake the following duties:

A. Develop and adopt the state waste management and recycling plan pursuant to the provisions of this chapter;

B. Approve, partially approve or disapprove regional plans;

C. Coordinate regional and municipal waste planning, recycling and waste reduction programs and provide technical assistance to districts, municipalities, state agencies and private entities to assist their implementation of this chapter;

D. Promote and emphasize recycling and waste reduction in the State;

E. Identify and designate candidate sites and may review applications for new or expanded waste facilities pursuant to this chapter.

F. Plan, design, construct and operate, or enter into contract for, waste facilities for those solid, special and hazardous wastes that present a special statewide need including, but not limited to, tires, asbestos, incinerator ash or hazardous wastes;

G. Recommend candidate sites or develop generic siting criteria for wastes determined to warrant state level attention and review and approve applications for new and expanded waste facilities for consistency with state siting recommendations and waste management objectives outlined in state and regional waste management plans;

H. Initiate, conduct and support research, demonstration projects and investigations and coordinate all state agency research programs pertaining to waste management and recycling;

I. Institute, in a court of competent jurisdiction, proceedings against any person to compel compliance with the provisions of this chapter, any regulation promulgated pursuant thereto, any order of the department or the terms and conditions of any approved regional plan;

J. Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out its duties under this chapter;

K. Work with other state agencies, districts, municipalities, regional planning agencies and other community, private sector and environmental organizations to manage the State's solid waste;

§2103 Facility Siting Board

1. Board established. The Facility Siting Board is established to conduct a site screening and selection process for disposal facilities owned, operated, controlled or approved by the agency. The board consists of 5 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resources and to confirmation by the Legislature.

A. One of the members shall initially be appointed to a term of 3 years, 2 members to terms of 4 years and 2 members to terms of 5 years. The successor of each appointed member shall be appointed for a term of 5 years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term. Each board member shall serve until the appointment and qualification of a successor.

B. No appointed board member may be an officer or employee of the United States Government or this State. All members of the board shall be residents of the State. Appointed members may be removed from the board by the Governor for cause.

C. The Commissioner of Environmental Protection and the Director of the Maine Geological Survey shall serve as technical advisors to the board.

2. Qualifications. The governor shall select the membership of the board to include members of the general public and persons with expertise in engineering, hydrogeology, public health and government. The governor shall also select the membership of the board to include broad geographic representation from all areas of the state.

3. Selection of officers; quorum. Annually, the board shall elect one of its appointed members as the chair of the board. Three members of the board shall constitute a quorum and the affirmative vote by 3 members shall be necessary for any action taken by vote of the board.

4. Compensation. The appointed board members shall be compensated as provided in Title 5, section 12004-D.

5. Meeting schedule. The board shall meet at least 4 times annually and at any time upon the call of its chair or upon the request in writing to the chair of 3 board members.

§2104. Regional advisory boards

In the conduct of its responsibilities, the agency shall consult with regional advisory boards established under this section. A regional advisory board shall advise the agency in developing the solid waste management plan for its respective region, selecting solid waste management facility sites and overseeing the construction, operation, maintenance and closure of solid waste management facilities in that region. The regional advisory boards shall be selected as follows.

1. Municipal selection. The municipal officers of the municipalities within a regional planning and development district designated under Title 30-A, section 2341 shall decide whether to authorize the board of directors of a regional council established pursuant to Title 30-A, chapter 119, as the regional advisory board for their region. Prior to October 1, 1989, the agency shall solicit

in writing a yes or no response from each municipality in the State to the question:

"Does the municipality of (name) choose the board of directors of the (name of regional council) to be the regional advisory board for (name of municipality)'s solid waste management region?"

The majority of municipalities within a solid waste management region must respond in the affirmative by January 1, 1990, to the agency for a board of directors of a regional council to be selected as the regional advisory board.

2. Appointment by Governor. If the municipalities in a regional planning and development district do not choose an existing board pursuant to subsection 1, the Governor shall appoint a regional advisory board for that region within 90 days of notification by the agency of the result from the municipal selection process. Each regional advisory board appointed by the Governor shall consist of 7 members. The Governor shall appoint members to represent different geographic areas in a region who have knowledge and expertise in local government and solid waste management.

The initial meeting of each regional advisory board shall be called by the chair of the agency. Subsequent meetings shall be called by the chair of the regional advisory board.

§2105. Exemption from taxes; payment in lieu of taxes

1. Exemption from taxes. The agency shall not be required to pay any taxes on any property required or used by it for the purposes provided in this chapter, nor may the agency be required to pay any tax upon its income, except as may be required by the laws of the United States.

2. Payment in lieu of taxes. The agency shall annually pay a municipality an amount in lieu of taxes equal to the amount of property taxes on a solid waste disposal facility not paid to that municipality during the previous calendar year due to the statutory property tax exemption provided in this section. In the case of an unorganized territory, the agency shall annually pay the amount to the State Tax Assessor who shall deposit that amount in the Unorganized Territory Education and Services Fund established in Title 36, chapter 115. If the agency disagrees with the amount determined to be due in lieu of taxes under this subsection, it may appeal to the State Board of Property Tax Review as provided in Title 36, section 271.

§2106. Annual audit

Each year an audit shall be made of the accounts of the agency. For this purpose, authorized agents of a certified public accounting firm appointed by the agency shall have access to all necessary papers, books and records. Upon the completion of each audit, a report shall be made to the chair of the board of directors and a

copy shall be sent to the Governor and the Legislature.

§2107. Fiscal year

The fiscal year of the agency shall coincide with that of the State.

§2108. Staff employees; conflict of interest

1. Agency staff. The executive director may hire, on a temporary or permanent basis, such staff as necessary, including legal counsel and financial experts.

2. Civil Service Law. Employees of the agency shall be subject to Title 5, chapters 71 and 372 except that the executive director and the directors of each office within the agency shall not be subject to Title 5, chapters 71 and 372.

3. Conflict of interest. Notwithstanding Title 5, section 18, subsection 1, each member of the agency and each employee, contractor, agent or other representative of the agency is deemed an "executive employee" solely for purposes of Title 5, section 18. In addition, Title 17, section 3104, shall be applicable, in accordance with its provisions, to all such representatives of the agency.

§2109. Limitation of liability

No employee of the agency, including the executive director, and no member of the Facility Siting Board is subject to any personal liability for having acted within the course and scope of this membership or employment to carry out any power or duty under this chapter. The agency shall indemnify any employee of the agency, including the executive director, and any member of the Facility Siting Board against expenses actually and necessarily incurred by the person in connection with the defense of any action or proceeding in which the person is made a party by reason of past or present association with the agency.

§2110. Sunset

1. Justification report; evaluation and analysis. For purposes of the Maine Sunset Act, Title 3, chapter 23, the agency shall be considered an independent agency, with its first justification report in accordance with Title 3, section 504, due no later than October 31, 1998, and the evaluation and analysis in accordance with Title 3, section 505, by the joint standing committee of the Legislature having jurisdiction over audit and program review due no later than December 31, 1999, but notwithstanding Title 3, sections 506 and 507, the agency shall not terminate.

§2111. Property

All property of the agency and all property held in the name of the State pursuant to this chapter shall be exempt from levy and sale

by virtue of any execution, and no execution or other judicial process may be a lien upon its property held pursuant to this chapter, provided that the agency shall not lease, sell or otherwise convey any of its real or personal property or easements in property, franchises, buildings or structures, except that the agency may permit the erection or installation of electric power, telegraph, telephone, water, sewer or pipeline facilities.

§2112. Contractors; contracts

1. Use authorized. The agency may determine to carry out any authorized activity through use of contractors, subject to the requirements of law.

2. Approval. Contracts and agreements for more than \$10,000 shall be awarded only after competitive bid and approval by the agency.

3. Rules. The agency shall promulgate rules for the awarding of contracts by October 1, 1989.

§2113. Confidential information

Except as provided in section 1310-B, subsections 2 and 3, information obtained by the agency under this chapter shall be a public record as provided by Title 1, chapter 13, subchapter I.

§2114 District responsibilities.

A district may assume any or all of the waste management duties of the agency subject to the approval of the agency. The agency may establish procedures, by rule, for review and approval of applications from districts to assume waste management duties. The agency shall not approve any application under this section which is inconsistent with any portion of this chapter or with the state plan. The siting and development of waste disposal facilities by a district that has assumed duties under this section shall remain subject to review and approval by the agency.

SUBCHAPTER II

OFFICE OF PLANNING

§2120. Office of Planning

The Office of Planning, referred to as the "office" in this subchapter, is established to carry out the purposes of this subchapter. The Director of the Office of Planning shall administer the office in accordance with the policies of the agency and consistent with the state waste management and recycling plan.

§2121. Recycling and management plan; schedule coordination

The office shall prepare and adopt, by rule, an analysis of, and plan for, the management, reduction and recycling of solid waste for the State by March 1, 1990. The plan shall be based on the priorities and recycling goals established in section 2100. The plan shall provide guidance and direction to the agency and municipalities in planning and implementing waste management and recycling programs at the State, regional and local level. To the extent that commercial entities continue to have a role in developing waste management and recycling facilities in the State, the plan shall provide guidance and direction to those entities.

1. Consultation. In developing the plan, the office shall consult with the Bureau of Solid Waste Management in the Department of Environmental Protection and the Office of Waste Reduction and Recycling, and shall submit its draft plan to these offices for review and written comment prior to publishing the plan as a proposed rule. The office shall also seek comment and advice on its draft plan from the Recycling Advisory Council. The office shall also seek comment and advice on its draft plan from the Regional Advisory Committees established under section 2104.

2. Revisions. The office shall revise the analysis at least every 2 years to incorporate changes in the waste generation trends, changes in waste recycling and disposal technologies, the development of new waste generating activities and other factors affecting solid waste management as the office finds appropriate. If the office finds that rapidly changing conditions necessitate more timely revisions of the analysis, it may make those revisions pursuant to the rule-making provisions of Title 5, chapter 375, subchapter II, including emergency rulemaking if necessary.

§2122. Plan contents

1. Data collection. The office shall develop and maintain a comprehensive data base on solid waste generated or disposed of in the State. Data collected shall include, but not be limited to:

A. The amount of waste currently generated, handled or transported within the State;

B. The source of the waste;

C. The type of waste;

D. The costs and types of management technologies currently employed, including, without limitation, recycling, composting, landspreading, incineration or landfilling;

E. The costs of transporting solid waste to disposal or management facilities; and

F. Assessment of the level of competition in the solid waste disposal and recycling industry.

2. Determination of existing and planned disposal capacity.

The office shall identify existing solid waste disposal and management capacity within the State, and the potential for expansion of that capacity. The analysis shall include, but not be limited to:

A. The capacity of existing licensed solid waste management and disposal facilities receiving waste generated within the State. This assessment shall identify the regional availability of capacity, including consideration of transportation costs;

B. The capacity of existing licensed solid waste management and disposal facilities which is being utilized to dispose of waste generated outside the State;

C. A survey of the solid waste generators and the recycling and disposal facilities they utilize;

D. Identification of projected facility closures with a projected timetable for the closures and an estimate of the amount of capacity these facilities represent;

E. The extent to which the State relies on solid waste disposal capacity outside its jurisdiction; and

F. Additional disposal capacity anticipated to become available within the next 2 to 5 years.

3. Waste reduction and recycling assessment. The plan shall include investigation and assessment of the extent to which waste generation could be reduced at the source, and the potential for recycling to replace the need for traditional disposal capacity. The assessment shall include the following elements:

A. The current level of public and business recycling efforts, including the quantities and categories of waste currently recycled;

B. The current market structure of the recycling industry in the State and in those areas receiving recycled materials from the State. This element shall include identification of the existing private and public recycling operations, recycling capacity and the quantities and categories of materials currently recycled;

C. Identification of solid wastes by type which are capable of being reused or recycled in an environmentally sound manner and the types and costs of the technologies which may be utilized;

D. The potential for recycling in various regions of the State, including estimates of the types and quantities of waste available for recycling and an analysis of the economic and institutional obstacles to increased recycling;

E. The potential for reducing waste quantities and toxicity by reduction at the source, and the amount and type of traditional