

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic and/or scanned originals

disposal capacity that could be made available by implementing waste reduction measures; and

F. The impact of consumer packaging on waste generation, and the potential for waste reduction measures to reduce this impact.

4. Projected demand for capacity. The office shall identify the need in the State for current and future solid waste disposal capacity by type of solid waste. The analysis shall include, but not be limited to:

A. Estimation of waste generation by region and waste type over the next 5-year, 10-year and 20-year periods based on the best available forecasts of population growth, economic activity within the State, tourism, estimates provided by solid waste generators and other available information;

B. Estimation of the reduction in the waste stream needing disposal capacity as a result of public and private recycling efforts identified in subsection 3;

C. Comparison of the projected waste generation levels with existing capacity as identified in subsection 2; and

D. Identification of regional differences in available disposal capacity and recycling facilities. The office shall identify regions which are underserved with regard to recycling, management or disposal capacity or which have capacity in excess of regional needs. In determining regional needs, the office may consider economic criteria, including disposal and transportation costs, population densities, regional differences in current industrial mix and potential for economic growth, the level of competition in the solid waste disposal industry and any other factors as the office deems relevant.

5. Examination of options. The office shall examine various waste management options for dealing with the projected waste stream, available or anticipated disposal capacity and waste reduction and recycling activities.

6. State management goals and objectives. Based on the provisions of section 2100 and the information and analysis developed in subsections 1 to 5, the agency shall establish the following, including recommendations for waste management:

A. Goals and strategies that promote the maximum reduction of waste, the maximum feasible recycling utilization of waste and the safe and cost-effective management and disposal of those wastes that remain. Management and disposal alternatives shall be preferred which do not foreclose the future ability of the State to reduce, reuse and recycle waste;

B. Strategies designed to accomplish the state recycling goals, encourage and promote waste reduction and utilization research and initiatives, innovative pilot recycling or utilization

programs, development of recycling-related businesses and industry and public understanding and participation in recycling; and

C. Goals and strategies for the regional achievement of sound and cost-effective waste reduction and management. These goals and strategies shall be the guidelines for the development of district solid waste management plans.

7. Facility needs. The plan shall identify the number, size and type of solid waste facilities required to meet the agency's capacity needs. For every proposed facility, the plan shall:

A. Explain in detail how the facility is consistent with the waste management hierarchy and recycling goals in section 2100;

B. Describe alternative facilities or programs, including, but not limited to, waste reduction or recycling facilities or programs that were considered and provide reasonable assurances that the agency utilized a fair, open and competitive process for selecting such facilities or programs from among alternatives which were suggested to the agency;

C. Evaluate the environmental, energy, life cycle costs, costs of transportation to each facility considered and economic advantages and disadvantages of the proposed facility or program as well as the alternatives considered;

D. Provide for the maximum use of existing solid waste transfer stations as sites for recycling collection and processing centers;

E. Show that adequate provision for existing and reasonably anticipated future recycling has been made in designing the size of any proposed facility; and

F. Set forth a time schedule and program for planning, design, siting, construction and operation of each proposed facility or program.

8. Transition. Insofar as the state capacity needs analysis and state recycling plan developed under former sections 1310-K and 1310-O are consistent with the waste reduction and recycling goals and waste management hierarchy adopted herein, the office shall incorporate the data, analysis and recommendations of these documents into the management plan.

8. Candidate sites. Six months after the adoption of the state plan, the agency shall develop a list of candidate sites sufficient in capacity and suitable for siting of waste determined to be a state responsibility. Criteria for the designation of sites are described in subchapter IV.

§2123. Reports

The agency shall submit the adopted plan to the Governor, the

department and the joint standing committee of the Legislature having jurisdiction over natural resource matters.

INSERT Office of Recycling & Waste Reduction

SUBCHAPTER III

OFFICE OF WASTE REDUCTION AND RECYCLING

SUBCHAPTER IV

OFFICE OF SITING AND DISPOSAL OPERATIONS

§2130. Office of Siting and Disposal Operations

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

§2131. Responsibilities.

Consistent with the state waste management and recycling plan and provisions of section 2133, the office shall site, construct, operate, maintain, close, provide long-term care for solid waste landfill facilities with sufficient capacity to dispose of the solid waste generated by municipalities within this State and other solid waste as the agency finds consistent with the purposes of this chapter. The Facility Siting Board shall make all final decisions on the choice of specific sites for waste disposal facilities under the jurisdiction of the agency.

§2132 Siting criteria.

1. Siting criteria. The facility siting board shall adopt by rule, by May 1, 1990, siting criteria for solid waste disposal facilities based on the following criteria:

A. To the extent practicable, the site shall be located in proximity to the entities that generate the wastes placed at the site. Any site selected for a special waste facility shall, to the extent practicable, be close to the point or points of generation.

B. To the extent possible, the site shall be located in proximity to the transportation systems that are used to convey waste to the site or residuals and materials to be recycled from the site. Any site selected for a special waste facility shall, to the extent practicable, be close to the transportation system used to convey waste to and from the site.

C. The capacity or size of the site must be sufficient to accommodate the projected demand as determined in the state plan.

D. The site and its considered use are consistent with, and actively support, other waste management objectives, including waste reduction and recycling.

E. The projected price for site development, construction and operation must be fair and reasonable.

F. The site shall meet preliminary environmental standards developed jointly by the department and the Land Use Regulation Commission, including ground water and geological standards.

G. Existing uses on adjacent properties shall not be in significant conflict with or significantly jeopardized by the use of the site.

§2133 Initial site selection

2. Site screening. The agency shall complete a site screening and selection process on or before July 1, 1991, and subsequently as necessary to identify landfill capacity sufficient to meet the projected needs through 1995 identified in the analysis conducted under former section 1310-0, including the need for geographic distribution to adequately serve all regions of the State. The agency also shall consider in its site selection process the need for landfill capacity to dispose of incinerator ash resulting from the combustion of domestic and commercial solid waste generated within its jurisdiction. Prior to recommending a site, the agency shall hold a public hearing in every municipality or plantation identified in the screening process as a potential site. For potential sites within an unincorporated township, the agency shall hold a public hearing within the vicinity of the proposed site.

3. State facility required. On or before July 1, 1994, the agency shall develop facilities sufficient to meet the projected needs identified in the analysis conducted under former section 1310-0 and to serve all geographic areas of the State.

4. Agency ownership. The agency shall maintain ownership of any landfill facility it develops and shall maintain full control over the use of the facility or facilities.

§2134 Facility siting; general.

Within 6 months of the agency's adoption of the state plan, the agency shall adopt as an addendum to the plan a list of recommended sites for the facilities proposed in the plan. The agency shall hold a public hearing in each municipality within which the agency may recommend the location of any waste disposal or refuse-derived fuel processing facility.

§2135 Municipal notification.

The agency shall notify the municipal officers of any municipality within which a waste disposal facility site is recommended under this subchapter. The agency shall notify the municipal officers by certified mail within 30 days of making the recommendation.

§2136. Facility development

The agency shall initiate the development of necessary solid waste facilities as identified in the state plan at least 3 years in advance of the projected capacity need. The agency may undertake facility development itself or solicit proposals for development by private vendors. The agency shall provide for solid waste disposal facilities by undertaking facility development itself, or contracting with private vendors for facility design, construction or operation.

§2137. Review of proposed waste facilities

Any applicant for new or expanded waste facilities shall submit to a 2-phase review process. The first phase shall be a review conducted by the agency of the proposed facility's consistency with the state plan. The first-phase review must be completed before approval may be granted under the 2nd phase. The 2nd phase shall be a review conducted by the department of the facility's environmental impact pursuant to the laws and rules governing the department's actions.

No permit for a new or expanded waste facility from the board may be issued unless the applicant demonstrates to the agency that the proposed facility is a designated site and is provided for in the state plan or that the proposed facility is consistent with the implementation of the state plans.

1. Requirement. The applicant must demonstrate to the agency that the proposed facility:

A. Is a candidate site as required in the state plan and is consistent with the state plan; or

B. Meets all of the following requirements:

(1) The proposed facility shall be consistent with the implementation of the state plan;

(2) The proposed facility shall be consistent with local, regional or state waste collection, storage, transportation, processing or disposal in the host community; and

(3) The proposed facility is at least as suitable as candidate sites with respect to the criteria in section 2137, giving consideration to environmental and economic factors.

2. Departmental approval. This section imposes no limits on the department's ability to issue a permit prior to the adoption of the state plan.

3. Effective date. This subsection 1 becomes effective upon the adoption of the state plan.

§2138 Real and personal property; right of eminent domain

The agency may acquire and hold real and personal property which it deems necessary for its purposes, is granted the right of eminent domain and for those purposes may take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, for public use, any land, real estate, easements or interest therein, necessary for constructing, establishing, maintaining and operating solid waste disposal facilities.

§2139. Procedure in exercise of right of eminent domain

The right of eminent domain granted in section 2137 may only be exercised after complying with the following procedures.

1. Notice to owner. The agency shall provide to the owner or owners of record notice of the following:

A. The determination of the agency that it will exercise the right of eminent domain;

B. A description and scale map of the land or easement to be taken;

C. The final amount offered for the land or easement to be taken, based on the fair value as estimated by the agency; and

D. Notice of the time and place of the hearing provided in subsection 4.

Notice may be made by personal service in hand by an officer duly qualified to serve civil process in this State or by certified mail, return receipt requested, to the last known address of the owner or owners. If the owner or owners are not known or cannot be notified by personal service or certified mail, notice may be given by publication in the manner provided in subsection 4.

2. Notice to tenant. Notice shall be given to any tenant in the same manner notice is given to the owner of the property.

3. Notice to the affected municipality. Notice shall be given to the municipality in which the property to be acquired is located in the same manner notice is given to the owner of the property and shall be addressed to the municipal officers.

4. Hearing. The agency shall hold a public hearing on the advisability of the proposed exercise of the right of eminent domain.

Notice of the hearing shall be made by publication in a newspaper of general circulation in the area of the taking and shall be given once a week for 2 successive weeks, the last publication to be at least 2 weeks prior to the time appointed in the hearing. The hearing notice shall include:

- A. The time and place of the hearing;
- B. A description of the land or easement taken; and
- C. The name of the owners, if known.

§2140. Agency assistance in district siting

Upon request by a district, the agency may assist the district in the establishment of approved waste facilities, including assistance in planning, location, acquisition, development and operation of the site. The district shall describe fully the need and justification for the request. The agency may request information from the district necessary to provide assistance.

SUBCHAPTER V

HOST COMMUNITY BENEFITS

§2161. Citizen advisory committee

The municipal officers of each municipality identified in a regional plan as a proposed site for a waste disposal facility or a facility which produces refuse-derived fuel under this chapter and each contiguous municipality which may be affected by the construction or operation of that facility shall jointly establish a citizen advisory committee within 60 days of notification pursuant to section 2135.

1. Membership. The committee shall be comprised of citizens from each affected municipality, including, but not limited to: a municipal health officer; a municipal officer; and at least 3 additional residents of the municipality, including abutting property owners and residents potentially affected by pollution from the proposed facility. In addition, each committee may include members representing any of the following interests: environmental and community groups; labor groups; professionals with expertise relating to landfills or incinerators; experts in the area of chemistry, epidemiology, hydrogeology and biology; and legal experts.

2. Meetings. The committee shall meet as soon as practical following appointment of its members and shall select a chair from among its members. The committee shall establish procedures for the conduct of meetings.

3. Responsibilities. Each committee established under this section shall have the agency to:

A. Review proposed contracts, site analyses, applications and other documents relating to the location, construction, permitting and operation of the proposed facility;

B. Hold periodic public meetings to solicit the opinions of residents concerning the proposed facility and any permit applications, contracts or other provisions relating to the facility and the regional plan;

C. Provide the agency and department with any alternative contract provisions, permit conditions, plans or procedures it deems appropriate; and

D. Serve as a liaison between the community and the agency, project developer or the department to facilitate communications during the siting and operation of the facility, and provide residents with updated information about the project, including providing lay explanations of any technical terms.

4. Unincorporated townships and plantations. For the purposes of this subchapter, county commissioners shall act as municipal officers for unincorporated townships and assessors of plantations shall act as municipal officers for plantations.

§2162. Dispute resolution

A host municipality may establish a process, including, but not limited to, negotiation, mediation and arbitration to resolve disputes and to negotiate additional rights and benefits relating to the siting and operation of a waste disposal or refuse-derived fuel processing facility within the municipality. The citizen advisory committee shall be consulted and shall assist in the development and implementation of any process established under this section. At the option of the municipality, the agency may appoint a neutral mediator to resolve disputes. The municipality shall be eligible for grants from the agency to fund dispute resolution programs under this section.

§2163. Facility information and inspection

1. Right to information. The host municipality shall have a right to the following information from the department and facility operator. All information provided under this section shall be made available to the citizen advisory committee and the public by the host municipality.

A. The department shall provide all of the following information to the municipal officers of host municipalities of facilities licensed under chapter 13:

(1) Copies of any inspection report of the facility within 3 working days of the preparation of the report;

(2) Prompt notification of all enforcement or emergency orders for those facilities, including but not limited to, abatement orders, cessation orders, proposed and final civil penalty assessments and consent orders and decrees and notices of violation;

(3) Copies of all air, soil and water quality monitoring data, including leachate and ash testing results, collected by the department at such facilities, within 3 working days after complete laboratory analysis becomes available to the department; and

(4) Copies of all departmental analyses of the data under subparagraph (3).

B. The operator of the facility shall provide to the host municipality copies of all air, soil and water quality monitoring data, including leachate and ash testing results, conducted by or on behalf of the operator, within 3 days after that information becomes available to the operator.

2. Right to inspect facilities and issue orders. The rights of a host municipality to inspect facilities and issue orders are governed by this subsection.

A. The department shall establish and conduct a training program to certify host municipality inspectors. This program shall be made available to persons who have been designated by the municipality. The department shall hold training programs at least twice a year. The agency shall pay for the host inspection training program and for 50% of the municipalities' cost of employing a host municipality inspector for a period not to exceed 5 years. The department may decertify host municipality inspectors pursuant to rules promulgated by the Board of Environmental Protection.

B. Certified inspectors are authorized to enter property, inspect records required by the department, take samples and conduct inspections in accordance with departmental regulations applicable to employees of the department. A certified inspector may order the operator of a facility to cease any operation or activity at the facility which constitutes an immediate threat to public health and safety, or which represents a violation of state environmental laws or regulations, local environmental ordinances or the terms or conditions of a permit issued under those laws, regulations or ordinances. The order shall expire within 2 hours unless the inspector notifies the department and the municipal officers of the host municipality. The department may, after conducting an inspection, supersede the local inspector's order by issuing an order of its own which vacates or modifies the terms of the local order. If the department does not act to supersede the order, the order shall expire after 24 hours unless otherwise extended by a court of law.

3. Department inspections. Whenever any host municipality

presents information to the department which gives the department reason to believe that any facility, licensed under chapter 13, is in violation of any law or regulation protecting the environment, or any order or the condition of any permit issued pursuant thereto, the department shall promptly conduct an inspection of the facility.

If the department finds that there is insufficient information to believe that there is a violation, the department shall, within 10 working days of a municipality's request for an inspection, provide to the municipality a written explanation of its decision not to conduct an inspection.

The department shall notify the host municipality of any inspection planned by the department. The department shall permit representatives of the host municipality to accompany the department on any inspection of the facility. Authorized representatives of the municipality may include, without limitation, a certified municipal inspector, a representative of a citizen advisory committee, a representative of a local health department and paid or unpaid technical advisors to the municipality.

§2164. Property value offset

Owners of property which is contiguous to a district-owned or operated or agency-owned or operated facility licensed under chapter 13 are eligible for reimbursement for loss in property value directly attributable to the construction and operation of the facility. The agency shall issue rules to establish a formula and process for reimbursement, including, without limitation, definition of the impact area, a process for establishing baseline real estate values, a time frame within which the property value support program will be in effect, determination of the percentage of property value to be reimbursed, an accounting of real estate trends in the area and a determination of the reimbursement mechanism.

§2165. Impact payments

In addition to payment in lieu of taxes provided in section 21**, the agency shall make impact payments to a municipality in which an agency-owned solid waste landfill facility is located or, in the case of an unorganized territory, to the State Tax Assessor upon request by the community involved or by the State Tax Assessor. The agency shall base its impact payments on measurable criteria including, without limitation:

- A. Improvement, maintenance and repair of local roads directly affected by traffic to and from an agency-owned landfill facility;
- B. Development and maintenance of adequate local emergency response capacity; and
- C. Financial support for on-site, municipally employed personnel or for other means determined necessary to enable the municipality to monitor the facility's compliance with state and

local requirements.

§2166. Water supply monitoring and protection

Upon written request from persons owning land contiguous to a waste landfill, the operator of the landfill shall have quarterly sampling and analysis conducted of private water supplies used by the persons for drinking water. The sampling and analysis shall be conducted in a manner and meeting criteria developed by the department.

Any person owning or operating a waste management facility that adversely affects a public or private water supply by pollution, degradation, diminution or other means which result in a violation of the state drinking water standards as determined by the department shall restore the affected supply at no additional cost to the owner or replace the affected supply with an alternative source of water that is of like quantity and quality to the original supply at no additional cost to the owner.

1. Required water sampling. Upon written request from persons owning land contiguous to a solid waste landfill, the operator of that landfill shall have quarterly sampling and analysis conducted of private water supplies used by those persons for drinking water. Sampling and analysis shall be at the expense of the landfill operator.

2. Extent of analysis. Water supplies shall be analyzed for all parameters or chemical constituents determined by the department to be indicative of typical contamination from solid waste landfills. The laboratory performing the sampling and analysis shall provide written copies of sample results to the landfill owner, the landowner and to the department.

3. Additional sampling required. If the analysis indicates possible contamination from a solid waste landfill, the department may conduct, or require the landfill operator to have the laboratory conduct, additional sampling and analysis to determine more precisely the nature, extent and source of contamination.

4. Written notice of rights. On or before December 1, 1989, for permits issued under this chapter prior to October 1, 1989, and at or before the time of permit issuance for permits issued under this chapter after October 1, 1989, the operator of each municipal waste landfill shall provide contiguous landowners with written notice of their rights under this section on a form prepared by the department.

SUBCHAPTER VI

LIABILITY AND LIMITATIONS

§2170. Effect on tort claims

Nothing in this subchapter may be construed or understood as in any way increasing any liability that may otherwise arise under Title 14, chapter 741.

§2171. Liability limited

A host municipality or a district or municipality within the district may not be held liable for bodily injury or property damage resulting from pollution occurrence solely by reason of participation in the preparation or adoption of a district solid waste plan or in the preparation of the state plan. Nothing in this subchapter may be construed to prevent any host municipality, district or the State from obtaining or giving such indemnities as may be appropriate in connection with the ownership, operation or control of a municipal solid waste facility.

§2172. Indemnification

The agency and districts may indemnify persons providing solid waste disposal or resource recovery services or operating solid waste or resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities.

§2173. Transfer of liability

The liability established under the Maine Hazardous Waste, Septage and Solid Waste Management Act and chapter 13-B and any regulations for the owner or operator of a solid waste disposal facility shall be transferred to and assumed by the Solid Waste Trust Fund established under this chapter when:

1. Compliance with state requirements. The facility and the owner and operator of the facility have complied with the requirements of the Maine Hazardous Waste, Septage and Solid Waste Management Act and rules under that Act, and any applicable contract for the provision of waste services entered into by the State or district, which may affect the performance of the facility after closure; and

2. Monitoring. The facility has been closed in accordance with state rules and contractual agreements, and the facility and the surrounding area have been monitored as required by the rules for a period not to exceed 30 years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substances or other risk to public health, welfare or the environment will occur as determined by the department.