

MAINE STATE LEGISLATURE

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L.D. 1896

(Filing No. H-417)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1398, L.D. 1896, Bill, "AN ACT to Prevent any Landfill from being Constructed Over or Near an Aquifer, to Maintain Regional Landfills and to Clarify the Intent of the Solid Waste Law."

Amend the bill by striking out all of sections 1 and 2 and inserting in their place the following:

'Sec. 1. 38 MRSA §1310-N, sub-§2-A is enacted to read:

2-A. Aquifer protection. The board shall not issue a license for a solid waste disposal facility when it finds that the proposed facility overlies a significant sand and gravel aquifer or when the board finds that the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer which it does not overlie, or to an underlying fractured bedrock aquifer.

A. "Significant sand and gravel aquifer" is defined as a porous formation of ice-contact and glacial outwash sand and gravel that contains significant recoverable quantities of water which are likely to provide drinking water supplies.

B. "Fractured bedrock aquifer" is defined as a consolidated rock formation which is fractured and which is saturated and recharged by precipitation percolating through overlying sediments to a degree which will permit wells drilled into the rock to produce a sufficient water supply for domestic use.

C. In determining whether or not the proposed facility poses an unreasonable threat to the

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1 quality of a significant sand and gravel aquifer
2 or to an underlying fractured bedrock aquifer,
3 the board shall require the applicant to provide:

4 (1) A thorough hydrogeological assessment
5 of the proposed site and the contiguous area
6 including any classified surface waters,
7 significant sand and gravel aquifers and
8 fractured bedrock aquifers which could be
9 affected by the proposed facility during
10 normal operation or in the event of unfore-
11 seen circumstances including the failure of
12 any engineered barriers to ground water
13 flow. The assessment shall include a de-
14 scription of ground water flow rates, the
15 direction of ground water flow in both the
16 horizontal and vertical directions, and the
17 degree of dilution or attenuation of any
18 contaminants that may be released from the
19 proposed site and flow toward any classified
20 surface water, significant sand and gravel
21 aquifer or fractured bedrock aquifer.

22 **Sec. 2. 38 MRSA §1310-Q**, as enacted by PL 1987,
23 **c. 517, §25**, is repealed and the following enacted in
24 its place:

25 §1310-Q. Transfer of license

26 1. Transfer. No person may transfer a license
27 issued pursuant to this Title without the transfer of
28 the license being approved by the board prior to
29 transfer of the ownership of the property, facility
30 or structure which constitutes or is part of the sol-
31 id waste disposal facility. The board, at its dis-
32 cretion, may require that the proposed new owner of
33 the facility apply for a new license or may approve
34 the transfer of the existing license upon a satisfac-
35 tory showing that the new owner can abide its terms
36 and conditions and will be able to comply with the
37 provisions of this Title. The board shall consider
38 the extent to which the disposal facility was sited

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1 and developed and is currently operated to meet the
2 capacity needs of municipalities within a specific
3 geographic region. The board shall approve the
4 transfer of license when, in addition to all other
5 requirements of this Title, the applicant has demon-
6 strated that:

7 A. The facility will continue to be operated to
8 meet the municipal disposal capacity needs for
9 which the facility was sited and developed and
10 for which it is currently operated;

11 B. The applicant has made substantially equiva-
12 lent, alternative provisions to satisfy these
13 disposal capacity needs; or

14 C. These disposal capacity needs no longer ex-
15 ist.'

16 Further amend the bill by striking out all of
17 sections 4 and 5 and inserting in their place the
18 following:

19 'Sec. 4. 38 MRSa §1310-V as enacted by PL 1987,
20 c. 517, §25, is amended to read:

21 §1310-V. Moratorium

22 Prior to 91 days after the First Regular Session
23 of the 113th Legislature adjourns, the department
24 shall not process or act upon any application for,
25 and the board shall not issue, a license for a new
26 commercial landfill facility or the substantial ex-
27 pansion of a commercial landfill facility. In pro-
28 cessing applications after the moratorium, priority
29 shall be given to applications for commercial
30 landfill facilities used for the disposal of solid
31 waste which is generated by an energy recovery facil-
32 ity designed to reduce the volume or alter the physi-
33 cal characteristics of municipal solid waste and to
34 produce electricity through incineration. Notwith-
35 standing the provisions of Title 1, section 302, any

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1 application for a new or substantially expanded com-
2 mercial landfill facility pending or filed after the
3 effective date of this article and any application
4 for an expanded commercial landfill facility filed
5 after October 8, 1987, shall be subject to departmen-
6 tal rules regarding solid waste adopted pursuant to
7 section 1304 and the provisions of Private and Spe-
8 cial Law 1987, chapter 28. Notwithstanding other
9 provisions of this Title, the department shall not
10 issue a license for a new or substantially expanded
11 waste disposal facility under this article or for an
12 expanded commercial landfill facility, the applica-
13 tion for which was filed after October 8, 1987, until
14 it has adopted rules pursuant to the provisions of
15 Private and Special Law 1987, chapter 28.

16 For the purposes of this section, the term, "com-
17 mercial landfill facility" is defined pursuant to
18 section 1303, subsection 1-C, except that the term
19 does not include a waste facility that is controlled
20 by the owners of an energy recovery facility or fa-
21 ilities and that is used exclusively for the dispos-
22 al of ash or other wastes processed and thereby gen-
23 erated by such energy recovery facility or facili-
24 ties.

25 **Sec. 5. 38 MRSA §1310-W is enacted to read:**

26 §1310-W. County commissioners

27 1. General authority. County commissioners may
28 enact ordinances to apply within the unincorporated
29 townships and plantations within their jurisdiction
30 for the regulation of solid waste disposal provided
31 that these ordinances are not less stringent than or
32 inconsistent with this Title or the land use regula-
33 tion law, Title 12, sections 681 to 689.

34 2. Scope. Ordinances adopted by the county com-
35 missioners under this section may include such stan-
36 dards as the county commissioners find reasonable and
37 necessary to protect the public health, safety and

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1 welfare and the environment, including without limi-
2 tation, conformance with federal and state solid
3 waste rules; fire safety; traffic safety; levels of
4 noise which can be heard outside the facility; dis-
5 tance from existing residential, commercial or insti-
6 tutional uses; ground water protection; and compati-
7 bility of the solid waste disposal facility with zon-
8 ing and land use controls administered by the Maine
9 Land Use Regulation Commission.

10 3. Limitation. County commissioners are prohib-
11 ited from enacting stricter standards than those con-
12 tained in this chapter and in the solid waste manage-
13 ment rules adopted pursuant to this chapter governing
14 the hydrogeological criteria for siting or designing
15 solid waste disposal facilities or governing the en-
16 gineering criteria related to waste handling and dis-
17 posal areas of a solid waste disposal facility.'

18 STATEMENT OF FACT

19 This majority report to the original bill accom-
20 plishes several purposes.

21 The amendment makes certain definitions of aqui-
22 fers consistent with those already found in the ex-
23 isting Site Location of Development Law and limits
24 the absolute siting prohibition on the siting of
25 landfills to those areas overlying "significant sand
26 and gravel aquifers." The amendment further directs
27 the Board of Environmental Protection to scrutinize
28 waste disposal facility applications for potential
29 impacts on fractured bedrock aquifers.

30 The amendment revises the provisions dealing with
31 the transfer of licenses for waste disposal facili-
32 ties to tie the new provisions more closely to the
33 existing transfer provisions of the existing solid
34 waste law and limits their application to considera-
35 tion of municipal waste disposal. It is not the com-

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1 mittee's intent that this additional requirement be
2 applied during the transfer of a waste disposal fa-
3 cility which has never accepted municipal solid waste
4 for disposal, such as a noncommercial industrial
5 landfill.

6 The amendment revises the provisions authorizing
7 the county commissioners to adopt solid waste ordi-
8 nances in unorganized areas to make this authority
9 more consistent with the existing authority granted
10 to municipalities in the solid waste law.

11 The amendment alters the moratorium provisions of
12 the existing solid waste law to clearly state that
13 new and substantially expanded commercial landfills
14 cannot be licensed until the Department of Environ-
15 mental Protection adopts new solid waste rules pursu-
16 ant to Private and Special Law 1987, chapter 28. All
17 other solid waste facilities including without limi-
18 tation, incinerators, municipal landfills, transfer
19 stations and noncommercial industrial landfills are
20 currently eligible for processing and licensing by
21 the department.

22 Finally, the amendment augments the existing def-
23 inition of "commercial landfill" to clearly exclude a
24 landfill controlled by the same parties which own an
25 energy recovery facility as long as the landfill is
26 used only for the disposal of waste consisting of in-
27 cinerator ash and any other material which is physi-
28 cally processed and handled at the energy recovery
29 facility. It is not the intent of the committee that
30 solid waste not burned at the energy recovery facili-
31 ty because of mechanical failure at the facility or
32 any other cause be included in the waste at such a
33 landfill.

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