

MAINE STATE LEGISLATURE

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L.D. 1023

(Filing No. H-298)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 756, L.D. 1023, Bill, "An Act to Amend and Clarify the Solid Waste Management Laws"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

PART A

Sec. A-1. 32 MRSA §1734, sub-§2, as amended by PL 1991, c. 177, §1 and affected by §2, is further amended to read:

2. Health and safety requirements; feasibility; post-consumer materials. The manufacturer, supplier or distributor petitions the agency for an exemption for a particular package or packaging component and the agency grants an exemption for one or more of the following reasons.

A. The package or packaging component contains lead, cadmium, mercury or hexavalent chromium added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of state or federal law.

B. There is no feasible alternative to the use of lead, cadmium, mercury or hexavalent chromium in the package or packaging component. For the purposes of this section, "no feasible alternative" means a use in which the regulated substance is essential to the protection, safe handling or function of the package's contents.

C. The addition of post-consumer materials causes the package or packaging component to exceed the maximum concentration levels set forth in section 1733, subsection 3.

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2 For packages or packaging components exempted under paragraph A
or B, a 2-year exemption may be granted and that exemption may be
4 renewed for an additional 2 years. An exemption granted under
paragraph C ~~expires 4 years after the effective date of this~~
6 ~~chapter~~ is valid for 6 years; or

8 Sec. A-2. 32 MRSA §1735, as enacted by PL 1989, c. 849, §1,
is amended to read:

10 **§1735. Certificate of compliance**

12 A certificate of compliance is a document developed by a
14 manufacturer and ~~filed with the agency~~ furnished to its
purchasers that attests that one or more packages or packaging
16 components ~~meets~~ meet the standards established in section 1733
or ~~is~~ are exempt under the provisions of section 1734. If
18 compliance is achieved under the exemptions provided in section
1734, the certificate must state the specific basis upon which
20 the exemption is claimed. A certificate of compliance must be
signed by an authorized official of the manufacturer. A
22 certificate of compliance may cover more than one type of package
or packaging component as long as they are separately identified.

24 1. **New or reformulated packaging.** If the manufacturer
reformulates or creates a new package or packaging component, the
26 manufacturer shall ~~provide the agency~~ furnish its purchasers with
an amended or new certificate of compliance for the reformulated
28 or new package or packaging component.

30 2. **Presentation of certificates.** Each manufacturer shall
32 furnish the agency, at the agency's request, with an ~~original~~ a
copy of any certificate of compliance and each manufacturer or
34 supplier shall furnish, at the agency's request, copies of a
certificate of compliance for distribution to the public.

36 Sec. A-3. 38 MRSA §2123, sub-§7, as enacted by PL 1989, c.
38 858, Pt. A, §7, is repealed.

40 Sec. A-4. 38 MRSA §2141, as amended by PL 1991, c. 644, §§2
to 4, is repealed.

42 Sec. A-5. 38 MRSA §2142 is enacted to read:

44 **§2142. Advertising and marketing claims; waste reduction**
46 **and recycling**

48 A person who labels, advertises or promotes a product in
violation of guidelines for the use of environmental marketing
50 claims published by the Federal Trade Commission in 16 Code of

Federal Regulations, Part 260 (1993), as amended, commits a violation of the Maine Unfair Trade Practices Act.

PART B

Sec. B-1. 38 MRSA c. 24, sub-c. V, first 2 lines are repealed and the following enacted in their place:

SUBCHAPTER V

HOST COMMUNITY COMPENSATION AND FACILITY OVERSIGHT

Sec. B-2. 38 MRSA §2170 is enacted to read:

§2170. Host community benefits: application limited to facilities owned or operated by the agency

This subchapter applies only to solid waste disposal facilities owned or operated by the agency. Wherever in this subchapter the term "solid waste disposal facility" or "facility" are used, those terms may be construed only to mean a solid waste disposal facility owned or operated by the agency.

Sec. B-3. 38 MRSA §2171, first ¶, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

The municipal officers of each municipality identified by the Facility Siting Board as a proposed potential site for a waste disposal facility or ~~a facility which produces refuse-derived fuel under this chapter~~ and each contiguous municipality which that may be affected by the construction or operation of that facility shall jointly establish a single citizen advisory committee within 60 days of notification pursuant to section 2155.

Sec. B-4. 38 MRSA §2171, sub-§1, as amended by PL 1989, c. 869, Pt. A, §12, is further amended to read:

1. **Membership.** The committee must be comprised of citizens from each affected municipality, appointed by the municipal officers, 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 areas of

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chemistry, epidemiology, hydrogeology and biology; and legal experts.

Sec. B-5. 38 MRSA §2171, sub-§3, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §291, is further amended to read:

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

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 project developer and department with any alternative contract provisions, permit conditions, plans or procedures it deems considers appropriate; and

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

Sec. B-6. 38 MRSA §2172, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

§2172. 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 related to the siting and operation of a solid waste disposal or refuse-derived-fuel-processing facility within the municipality. The citizen advisory committee shall must be consulted and shall assist in the development and implementation of any process established under this section. At the option of the municipality, the Chair of the Board of Environmental Protection may appoint a neutral mediator to resolve disputes. The municipality shall-be is eligible for grants from the agency to fund dispute resolution programs under this section related to the siting and operation of a solid waste disposal facility.

2 **Sec. B-7. 38 MRSA §2173, first ¶**, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

4 A municipality may adopt a local ordinance authorizing the
6 municipal officers to issue a local permit containing the same
8 findings, conclusions and conditions contained in the license
 issued by the department for a solid waste disposal facility
 ~~owned by the agency or a regional association and~~ located within
10 the municipality's jurisdiction. The municipal officers may also
12 attach to the permit additional conditions for the operation of
 the solid waste disposal facility on any issues not specifically
14 addressed in any condition of the department's license. These
 conditions may not unreasonably restrict the operation of the
16 facility and must be attached to the local permit by the
 municipal officers within 90 days of issuance of the department's
 license or within 30 days of a final decision by the department
 to relicense the facility.

18 **Sec. B-8. 38 MRSA §2174, sub-§§2 to 4**, as affected by PL 1989,
20 c. 890, Pt. A, §40 and amended by Pt. B, §292, are further
 amended to read:

22 **2. Information.** The host municipality of a solid waste
24 disposal facility ~~owned by the agency or a regional association~~
 ~~shall have~~ has a right to all information from the department and
26 the ~~solid waste disposal facility operator~~ agency, pursuant to
 Title 1, chapter 13, subchapter I. All information provided
28 under this subsection must be made available to the citizen
 advisory committee and the public by the host municipality.

30 **A.** The commissioner shall provide all of the following
32 information to the municipal officers of the host
 municipality:

34 (1) Copies of any inspection report of the facility
36 within 5 working days of the preparation of the report;

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

44 (3) Copies of all air, soil and water quality
46 monitoring data collected by the commissioner at such
 facilities, including leachate and ash testing results,
48 within 5 working days after complete laboratory
 analysis becomes available to the commissioner; and

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

4 B. The operator of the facility shall provide the host
6 municipality copies of all air, soil and water quality
8 monitoring data, including leachate and ash testing results,
conducted by or on behalf of the operator, within 5 days
after that information becomes available to the operator.

10 C. The municipality shall provide all of the following
12 information to the commissioner:

14 (1) Copies of any inspection report of the facility
within 5 working days of the preparation of the report;

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

22 (3) Copies of all air, soil and water quality
24 monitoring data collected by the municipality at such
26 facilities, including leachate and ash testing results,
within 5 working days after complete laboratory
analysis becomes available to the municipality; and

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

32 3. **Inspection; emergency orders.** A certified inspector is
authorized to enter property of the agency ~~or any regional~~
34 ~~association~~ within the inspector's jurisdiction, inspect records
required by the department, take samples and conduct inspections
in accordance with departmental rules applicable to employees of
36 the department. A certified inspector may order the ~~operator of~~
~~the facility~~ agency to cease any operation or activity at the
38 facility that constitutes an immediate threat to public health or
safety or to the environment. The inspector shall notify the
40 commissioner and the municipal officers of the host municipality
within 2 hours of issuing such an order.

42 4. **Commissioner inspections.** Whenever any host
44 municipality notifies the commissioner of an order issued
pursuant to a local permit requirement under section 2173 and
46 gives the commissioner reason to believe that any solid waste
disposal facility ~~owned by the agency or regional association~~ is
48 in violation of any law or regulation administered by the
department, or any order or the condition of any permit issued

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pursuant to any law or rule administered by the department, the commissioner shall promptly conduct an inspection of the facility.

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

Sec. B-9. 38 MRS A §2175-A, as enacted by PL 1991, c. 794, §7, is amended to read:

§2175-A. Property value offset

Owners of property whose, the value of which has been affected by an ~~agency operated or agency approved~~ a solid waste disposal facility licensed under ~~chapter 13~~, are eligible for reimbursement from the agency for loss in property value directly attributable to the construction and operation of the facility. The agency shall adopt rules to establish the formula and procedure 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 offset program will be in effect and an accounting of real estate trends in the area.

Sec. B-10. 38 MRS A §2176, first ¶, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

In addition to payment in lieu of taxes provided in section 2105, the agency shall make impact payments to a municipality in which an ~~agency-owned~~ a solid waste landfill disposal 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:

Sec. B-11. 38 MRS A §2176, sub-§1, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

1. Roads. Improvement, maintenance and repair of local roads directly affected by traffic to and from an ~~agency-owned~~ landfill the facility;

Sec. B-12. 38 MRS A §2177, as amended by PL 1991, c. 517, Pt. B, §14, is further amended to read:

§2177. Water supply monitoring and protection

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2 Upon written request from persons owning land contiguous to
3 a solid waste landfill ~~approved under subchapter IV~~ disposal
4 facility, the operator ~~of the landfill~~ agency shall have
5 quarterly sampling and analysis conducted of private water
6 supplies used by the requestors for drinking water. The sampling
7 and analysis must be conducted in a manner specified by and that
8 meets criteria developed by the department.

9 ~~Any person owning or operating a solid waste landfill that~~
10 If a facility adversely affects a public or private water supply
11 by pollution, degradation, diminution or other means that result
12 in a violation of the state drinking water standards as
13 determined by the commissioner, the agency shall restore the
14 affected supply at no cost to the owner consumer or replace the
15 affected supply with an alternative source of water that is of
16 like quantity and quality to the original supply at no cost to
17 the owner consumer.

18
19 1. **Extent of analysis.** Water supplies must be analyzed for
20 all parameters or chemical constituents determined by the
21 commissioner to be indicative of typical contamination from solid
22 waste ~~landfills~~ disposal facilities. The laboratory performing
23 the sampling and analysis shall provide written copies of sample
24 results to the ~~landfill owner~~ agency, the landowner and to the
25 commissioner.

26
27 2. **Additional sampling required.** If the analysis indicates
28 possible contamination from a solid waste ~~landfill~~ disposal
29 facility, the commissioner shall conduct, or require the ~~landfill~~
30 ~~operator to have the laboratory~~ agency to conduct, additional
31 sampling and analysis to determine more precisely the nature,
32 extent and source of contamination. The commissioner shall, if
33 necessary, require this sampling beyond the boundaries of the
34 contiguous property.

35
36 3. **Written notice of rights.** On or before December 1,
37 1989, for permits issued under this chapter prior to October 1,
38 1989, and at or before the time of permit issuance for permits
39 issued under this chapter after October 1, 1989, the ~~operator of~~
40 ~~each waste landfill~~ agency shall provide owners of contiguous
41 land with written notice of their rights under this section on a
42 form prepared by the commissioner.

44 PART C

45 **Sec. C-1. 38 MRSA §1705, sub-§12, as enacted by PL 1983, c.**
46 **820, §2, is amended to read:**

47
48 12. **Revenues.** "Revenues" means the proceeds of bonds, all
49 revenues, rates, tolls, assessments, rents, tipping fees,
50

2 transportation charges and other charges and receipts derived by
3 the district from the operation of a waste facility and other
4 properties, including, but not limited to, investment earnings
5 and the proceeds of insurance, condemnation, sale or other
6 disposition of properties, and shall must include proceeds from
7 assessments where the power of assessment has been granted to the
8 district under section 1754 1755.

9
10 **Sec. C-2. 38 MRS A §2202, sub-§3** is enacted to read:

11 3. Payment. A person who delivers solid waste to a solid
12 waste disposal facility shall pay all fees established under this
13 article to the operator of the solid waste disposal facility.

14
15 **Sec. C-3. 38 MRS A §2204, sub-§3**, as enacted by PL 1991, c.
16 517, Pt. B, §17, is amended to read:

17 **3. Imported municipal solid waste.** To support those
18 regulatory and administrative costs associated with imported
19 municipal solid wastes, an administrative fee of \$4 per ton is
20 assessed on any municipal solid waste originating outside the
21 State and delivered to a commercial solid waste disposal facility
22 or solid waste disposal facility owned by the agency or a
23 regional association for disposal.
24

25 **Sec. C-4. Retroactivity.** Section 2 of this Part takes effect
26 retroactively to September 30, 1989.
27

28 STATEMENT OF FACT

29 This amendment replaces the bill.

30
31 Part A of the amendment revises the toxics reduction in
32 packaging laws to require that manufacturers furnish certificates
33 of compliance to purchasers instead of to the agency and to
34 establish a 6-year exemption for packaging that can not meet the
35 statutory concentration levels because of the addition of
36 post-consumer materials. Part A also repeals the transition no
37 longer applicable and repeals the provisions pertaining to a
38 voluntary waste reduction and recycling labeling program. New
39 language establishes a waste reduction or recycling marketing and
40 advertising claim made in violation of Federal Trade Commission
41 guidelines as a violation of the Maine Unfair Trade Practices Act.
42
43

44
45 Part B amends the host community benefits provisions of the
46 solid waste management laws to clarify that the provisions of the
47 Maine Revised Statutes, Title 38, chapter 24, subchapter V apply
48 only to solid waste disposal facilities owned or operated by the
49 Maine Waste Management Agency.
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2 Part C clarifies that the imported municipal solid waste fee
is assessed on municipal solid waste going to commercial solid
waste disposal facilities. Section C-2 clarifies the fee payment
4 procedure for waste delivered to solid waste disposal facilities
and makes that procedure retroactive to September 30, 1989, the
6 effective date of the laws governing waste disposal fees and
contracts under Title 38, chapter 24, subchapter VII.

Reported by the Committee on Energy and Natural Resources
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