

MAINE STATE LEGISLATURE

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Date: 06-14-07

(Filing No. S- 318)

AGRICULTURE, CONSERVATION AND FORESTRY

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**STATE OF MAINE
SENATE
123RD LEGISLATURE
FIRST REGULAR SESSION
Majority**

COMMITTEE AMENDMENT "A" to S.P. 176, L.D. 564, Bill, "An Act To Streamline the Regulation of Agricultural Composters"

Amend the bill by inserting after the enacting clause the following:

'Sec. 1. 7 MRSA §4203, sub-§1, ¶B, as amended by PL 2003, c. 283, §2, is further amended to read:

B. When an aggrieved party within 30 days of the commissioner's decision appeals a decision of the commissioner regarding a livestock operations permit under section 4205, a request for a variance under section 4204, subsection 8 or, a certification under section 4210 or a commercial agricultural composting operations permit under section 4302, the board shall hold a hearing in accordance with Title 5, chapter 375, subchapter 4. The board may affirm, amend or reverse a permit or certification decision made by the commissioner. The board's decision is a final agency action; and

Sec. 2. 7 MRSA §4203, sub-§1, ¶C, as enacted by PL 2003, c. 283, §2, is further amended to read:

C. When an aggrieved party within 30 days of the commissioner's decision appeals a decision of the commissioner regarding site-specific best management practices prescribed for a farm or other issue governed under Title 17, section 2701-B or 2805 or regarding best management practices prescribed for a commercial agricultural composting operations permit under section 4302, the board shall hold a hearing in accordance with Title 5, chapter 375, subchapter 4. The board may affirm, amend or reverse a decision made by the commissioner. The board's decision is a final agency action. The board may also conduct an information-gathering meeting at the request of the department or any party with a legitimate interest to facilitate the complaint resolution process under Title 17, section 2701-B or 2805.'

Amend the bill in section 1 in §4301 by striking out all of subsection 5 (page 1, lines 27 and 28 in L.D.) and inserting the following:

COMMITTEE AMENDMENT

1 '5. Farm. "Farm" means land on which the commercial production of crops and
2 animals useful to humans occurs, including, but not limited to, the production of seed,
3 forages, sod, grains, feed, berries, flowers, vegetables, milk and milk products, poultry
4 and poultry products, livestock and livestock products and other plants grown or animals
5 raised for food, feed or fiber. To qualify as a farm under this chapter, the person owning
6 or operating the farm must file an Internal Revenue Tax Form 1040 under the appropriate
7 schedule for the reporting of profit or loss from a farm.'

8 Amend the bill in section 1 by striking out all of §§4302 and 4303 and inserting the
9 following:

10 '§4302. Commercial agricultural composting operations permit

11 Beginning on January 1, 2008, a permit issued by the commissioner pursuant to this
12 section is required for a commercial agricultural composting operation.

13 1. Permit applications for commercial agricultural composting operation
14 operational on April 1, 2007. An owner or operator of a commercial agricultural
15 composting operation that was operational on April 1, 2007 shall submit an application
16 on a form prescribed by the commissioner no later than October 31, 2007. The
17 commissioner shall issue a permit for a commercial agricultural composting operation in
18 accordance with rules adopted under subsection 3.

19 2. Permitting of a commercial agricultural composting operation expanding or
20 becoming operational after April 1, 2007. A person developing a commercial
21 agricultural composting operation after April 1, 2007 shall obtain a permit from the
22 commissioner prior to the facility becoming operational. A person proposing the
23 expansion or significant modification of an operation eligible for permitting or permitted
24 under subsection 1 shall obtain a permit prior to the expansion or modification of that
25 operation. An applicant for a permit under this subsection shall submit an application on
26 a form prescribed by the commissioner and the design and operation plans for the new
27 operation or expansion or modification of an existing operation.

28 Upon receipt of an application under this subsection, the commissioner shall provide the
29 Commissioner of Environmental Protection with a copy of the application and the design
30 and operation plans. The commissioner shall review the application materials, consider
31 written comments submitted by the Department of Environmental Protection and evaluate
32 the proposal's conformity to best management practices established under subsection 3
33 prior to issuing a permit. A permit may not be issued under this subsection without the
34 approval of both departments. The departments shall enter into a memorandum of
35 agreement to facilitate application review and permitting decisions.

36 3. Rulemaking. The commissioner shall adopt rules to establish criteria for
37 reviewing applications and issuing permits and to establish application fees for new and
38 expanding operations based on the capacity of the proposed operation and other rules
39 necessary to implement this chapter. The rules must describe the required components of
40 the design and operation plans to be submitted under subsection 2.

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1 The commissioner shall adopt rules to establish best management practices for
2 commercial agricultural composting operations, a process for developing site-specific
3 best management practices for an individual agricultural composting operation and
4 timelines for implementation of best management practices prescribed by the
5 commissioner. Rules adopted pursuant to this subsection are routine technical rules as
6 defined in Title 5, chapter 375, subchapter 2-A.

7 4. Inspection; assistance. The commissioner or commissioner's designee may enter
8 the premises of a commercial agricultural composting operation for the purposes of
9 inspecting the operation for compliance with best management practices. When the
10 commissioner determines that best management practices are not in use or that standard
11 best management practices are insufficient to prevent environmental harm or an adverse
12 impact on neighboring residents or landowners the commissioner shall assist the owner or
13 operator of the commercial agricultural composting operation in developing site-specific
14 best management practices for that operation. At the commissioner's request, an
15 employee of the Department of Environmental Protection designated by the
16 Commissioner of Environmental Protection may enter the premises of a commercial
17 agricultural composting operation to assist in developing best management practices to
18 prevent an adverse impact on water quality.

19 5. Permit fees. A permit fee of \$25 must accompany an application submitted under
20 subsection 1. The commissioner shall establish permit fees for proposals reviewed under
21 subsection 2 through rulemaking. The fees may not be less than \$25 or more than \$100.
22 The appropriate fee must accompany the application. The commissioner shall deposit all
23 permit fees received under this section into the Nutrient Management Fund established in
24 section 4208.

25 6. Violations. The following are civil violations for which a fine of up to \$1,000
26 plus an additional \$250 a day for each day the violation continues may be adjudged:

27 A. Operation of a commercial agricultural composting operation without a permit;
28 and

29 B. Failure to implement best management practices in accordance with rules adopted
30 under subsection 3 or site-specific best management practices developed under
31 subsection 4.

32 7. Enforcement of environmental laws. If the commissioner finds that a possible
33 violation of Title 38, chapter 3 or 13 has occurred, the commissioner shall send a written
34 report describing the alleged violation to the Commissioner of Environmental Protection
35 and a copy of the report to the Attorney General. Both departments shall work with the
36 Attorney General to take appropriate enforcement action.

37 **§4303. Revocation of commercial agricultural composting operation permit**

38 If the commissioner finds that a person issued a permit under section 4302 has failed
39 to comply with the best management practices, the commissioner may revoke that
40 person's permit.

41 1. Notice. The commissioner shall give written notice of a revocation immediately
42 following a decision to revoke. A notice of revocation must state the reason the permit is

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1 being revoked and the effective date of the revocation and must inform the person of the
2 hearing provisions under subsection 2 and the appeals process under subsection 3.

3 2. Hearing. A person receiving a notice of revocation under subsection 1 may
4 request a hearing on that revocation. A request for a hearing must be in writing and must
5 be made not later than 30 days after receipt of the revocation notice required under
6 subsection 1. The commissioner shall notify the person of the date and location of the
7 hearing.

8 A person may present evidence at a hearing that might justify reinstatement of the
9 permit.

10 3. Decisions; appeal. Decisions of the commissioner must be in writing. A person
11 whose permit is revoked by the commissioner may appeal that decision to the Nutrient
12 Management Review Board.'

13 Amend the bill in section 2 in §373 in the first paragraph in the 5th line (page 2, line
14 39 in L.D.) by striking out the following: "4303, subsection 4" and inserting the
15 following: '4302, subsection 7'

16 Amend the bill in section 2 in §373 in the first paragraph in the next to the last line
17 (page 3, line 1 in L.D.) by inserting after the following: "and" the following: 'working
18 with the Department of Agriculture, Food and Rural Resources and the Attorney General'

19 Amend the bill in section 3 in subsection 20 in the first paragraph in the 2nd line from
20 the end (page 3, line 10 in L.D.) by striking out the following: "4303, subsection 4" and
21 inserting the following: '4302, subsection 7'

22 Amend the bill in section 3 in subsection 20 in the first paragraph in the last line
23 (page 3, line 11 in L.D.) by inserting after the following: "and" the following: 'working
24 with the Department of Agriculture, Food and Rural Resources and the Attorney General'

25 Amend the bill by inserting after section 3 the following:

26 'Sec. 4. Appropriations and allocations. The following appropriations and
27 allocations are made.

28 **AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF**
29 **Division of Animal Health and Industry 0394**

30 Initiative: Provides funding for one additional Agricultural Compliance Supervisor
31 position and operating costs necessary to administer certain agricultural composting
32 requirements.

33	GENERAL FUND	2007-08	2008-09
34	POSITIONS - LEGISLATIVE COUNT	1.000	1.000
35	Personal Services	\$53,303	\$48,929
36	All Other	\$12,126	\$10,322
37			
38	GENERAL FUND TOTAL	<u>\$65,429</u>	<u>\$59,251</u>

COMMITTEE AMENDMENT



123rd MAINE LEGISLATURE

LD 564

LR 446(02)

An Act To Streamline the Regulation of Agricultural Composters

Fiscal Note for Bill as Amended by Committee Amendment "A "

Committee: Agriculture, Conservation and Forestry

Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Net Cost (Savings)				
General Fund	\$65,429	\$59,251	\$0	\$0
Appropriations/Allocations				
General Fund	\$65,429	\$59,251	\$0	\$0
Revenue				
Other Special Revenue Funds	(\$2,000)	(\$2,000)	(\$2,000)	(\$2,000)

Fiscal Detail and Notes

This bill includes General Fund appropriations of \$65,429 and \$59,251 in fiscal years 2007-08 and 2008-09, respectively, for the Department of Agriculture, Food and Rural Resources for one additional Agricultural Compliance Supervisor position and operating costs necessary to administer certain agricultural composting requirements. In addition, the Nutrient Management Fund within the department will experience a minor increase in dedicated revenue from certain agricultural composting fees.

The Department of Environmental Protection will incur minor costs to provide assistance in composting facility compliance and other activities. In addition, certain composting facilities will no longer require a DEP license, resulting in a loss of approximately \$2,000 each year in annual licensing fees to the Maine Environmental Protection Fund within the Department of Environmental Protection.