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Report: Proposal to Strengthen Maine's Recycling Effort

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PROPOSAL: TO STRENGTHEN MAINE'S RECYCLING EFFORT

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I. INTRODUCTION

This report is submitted to the Joint Standing Committee on Natural Resources pursuant to Public Law 2007 Chapter 583 (An Act to Improve Solid Waste Management). Among other provisions, the law required that the Department of Environmental Protection submit a report “detailing a method for setting mandatory recycling standards for all solid waste disposal facilities”. Public Law 2007 Chapter 583 is attached as **Appendix A**.

II. BACKGROUND

Maine statute provides that: “It is the goal of the State to recycle or compost, by January 1, 2009, 50% of the municipal solid waste tonnage generated each year within the state.” The law further provides that municipalities are not required to meet the state recycling goal, but must demonstrate “reasonable progress” toward that goal. The State Planning Office is currently responsible for measuring reasonable progress and for providing recycling assistance to municipalities.

Current statute (38 MRSA §1310-N(5-A) also requires that applicants for new or expanded solid waste disposal facilities demonstrate that: “The proposed solid waste disposal facility will accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law.” It also requires that applicants show consistency with the recycling provisions of the State Solid Waste Management and Recycling Plan. During the last session of the Legislature, the law was amended to also require certain recycling and reuse demonstrations by solid waste processing facilities. Specifically, it is required that: “A solid waste processing facility that generates residue requiring disposal shall recycle or process into fuel for combustion all waste accepted at the facility to the maximum extent practicable, but in no case less than 50%”. It further requires these facilities to demonstrate consistency with the recycling provisions of the State Plan.

In an effort to strengthen the recycling and source reduction provisions of state law, and to address concerns about the volumes of residue from processing facilities that may require disposal, the department had put forward a proposal during the last legislative session to require not only processing facilities to achieve a recycling standard, but disposal facilities as well. Under that proposal, disposal facilities would have been required to demonstrate that the waste streams they accept, in the aggregate, have been subject to recycling and source reduction programs sufficient to meet the statutory state recycling goal of 50% prior to their

acceptance at the disposal facility. A number of concerns about the proposal were raised and it was not included in the bill that was ultimately passed.

The legislative reaction to the department's mandated recycling proposal last session led us to consider other approaches, in lieu of mandatory recycling, that might support achievement of the state's statutory recycling goal of 50%. To that end, the department proposes a system of fees that penalizes disposal of waste that has not been processed to remove recyclable or reusable wastes, and that dedicates all fee revenue to unfunded municipal recycling/universal waste infrastructure needs and to unfunded municipal and industrial landfill closure/remediation.

III. RECYCLING MANDATES IN OTHER STATES

The department has researched the subject of recycling mandates in other states. Many states establish recycling goals or require the development of plans by municipalities or regions to achieve some level of recycling. Many states have put disposal bans in place for a variety of waste streams including tires, yard waste, metal, glass, corrugated cardboard, white goods, electronic wastes, plastics, and certain types of paper. These bans are designed to encourage recycling and to conserve landfill capacity. Attached as **Appendix B**, is a table prepared by the New York City Department of Sanitation in 2004, summarizing recycling requirements in all 50 states. Although this table was compiled several years ago and there likely have been some changes since then, it provides a comprehensive look at the general approaches taken by the states to achieving their recycling goals.

IV. PROPOSAL TO STENGTHEN MAINE'S RECYCLING EFFORTS

The State Planning Office projects that to simply maintain the state's current 36% recycling rate over the next 20 years, public and private programs would have to double their recycling handling abilities due to increased waste generation (from 700,000 tons in 2005, to 1.5 million tons in 2025). To achieve and maintain the 50% goal, capacity to recycle 2.1 million tons would be required by 2025. It is anticipated that significant infrastructure development will be required to increase the state's recycling rate. The department proposes that the Committee consider legislation that would make financial support for recycling available to Maine municipalities and regions.

After consideration of the approaches taken by other states to increase recycling rates, the potential barriers to increased recycling rates in Maine, and the interests of Maine municipalities, the department focused its effort on developing an approach to increasing recycling rates in Maine based on incentives and disincentives for waste processors and disposers and municipal support, rather than on a regulatory recycling mandate. The department's proposal:

- Revise the current statutory “waste handling fee” structure to increase revenues into the Maine Solid Waste Management Fund; and,
- Make funding available to municipalities and regions for capital costs associated with certain recycling and waste handling improvements.

Under the proposal, the existing waste handling fee structure (38 MRSA §2203-A and 2204) would be revised to extend fees to include: construction and demolition debris accepted at both disposal facilities and processing facilities (\$4 per ton); residues from the processing of construction and demolition debris accepted at disposal facilities (\$3 per ton); municipal solid waste previously exempted and accepted at landfills and incinerators (\$2 per ton); and, special waste disposed at incinerators (\$5 per ton). A new subsidiary account of the Maine Solid Waste Management Fund would be established to receive all new fee revenues. These revenues would be applied to payment of, interest on, or redemption of premiums on revenue obligation securities issued by the Finance Authority of Maine.

Provisions would be included for a reduction in the fee amount paid by municipalities and regions for municipal solid waste if recycling and source reduction targets to be established by the department are met. There would also be a provision requiring the establishment of procedures by the department for rebate of a percentage of the fees paid by processing facilities, based upon their rates of materials recovery and recycling.

At least 85% of the new revenues would be dedicated to municipal and regional financial support for local waste management, recycling, and universal waste handling capital costs. Funding for this purpose would be distributed from the proceeds of revenue bonds issued by the Finance Authority of Maine.

The remainder of the funds (up to 15%) could be used for capital costs of remedial work at closed municipal and industrial landfills. In the absence of bond funds for remediation, the department has drawn, to the extent possible, on existing funds for some of the immediately necessary work at these sites (e.g. leachate pumping and disposal, and water quality monitoring). Funds are not sufficient however, to meet this need completely or to meet the broader need for longer term remediation and final closure work at some of these sites.

The new revenues would be dedicated to these two purposes only; no additional funds for staffing or other expenses would be made available to the department or other government agencies. Preliminary department projections indicate that between \$2.5 and \$3 million in new revenue could be anticipated annually if fees are established at the levels described above.

This proposal is designed to encourage recycling and reuse rather than disposal, through financial incentives/disincentives and support, and to conserve landfill capacity.

APPENDIX A

Public Law 2007 Chapter 583 An Act to Improve Solid Waste Management

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Improve Solid Waste Management

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1303-C, sub-§32-A is enacted to read:

32-A. Solid waste processing facility. "Solid waste processing facility" means a land area, structure, equipment, machine, device, system or combination thereof, other than an incineration facility, that is operated to reduce the volume or change the chemical or physical characteristics of solid waste. "Solid waste processing facility" includes but is not limited to a facility that employs shredding, baling, mechanical and magnetic separation or composting or other stabilization technique to reduce or otherwise change the nature of solid waste.

Sec. 2. 38 MRSA §1310-N, sub-§1, ¶C, as repealed and replaced by PL 1997, c. 393, Pt. A, §47, is amended to read:

C. In the case of a disposal facility or a solid waste processing facility that generates residue requiring disposal, the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal. This paragraph does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling or to any other facility exempt from the requirements of subsection 5-A. The department shall find that the provisions of this paragraph are satisfied when the applicant demonstrates that the applicable requirements of subsection 5-A have been satisfied.

Sec. 3. 38 MRSA §1310-N, sub-§5, as repealed and replaced by PL 1997, c. 393, Pt. A, §48, is repealed.

Sec. 4. 38 MRSA §1310-N, sub-§5-A is enacted to read:

5-A. Recycling and source reduction determination. The requirements of this subsection apply to solid waste disposal facilities and to solid waste processing facilities that generate residue requiring disposal.

A. An applicant for a new or expanded solid waste disposal facility shall demonstrate that:

(1) The proposed solid waste disposal facility will accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law. The department shall attach this requirement as a standard condition to the license of a solid waste disposal facility governing the future acceptance of solid waste at the proposed facility; and

(2) The applicant has shown consistency with the recycling provisions of the state plan.

This paragraph does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

B. The provisions of this paragraph apply to solid waste processing facilities that generate residue requiring disposal.

(1) An applicant for a new or expanded solid waste processing facility that generates residue requiring disposal shall demonstrate that all requirements of this paragraph will be satisfied. On an annual basis, an owner or operator of a licensed solid waste processing facility that generates residue requiring disposal shall demonstrate compliance with all the requirements of this paragraph. The annual demonstration of compliance must be included as an element of the facility's annual report to the department submitted in conformance with the provisions of subsection 6-D, paragraph B and department rules.

(2) A solid waste processing facility that generates residue requiring disposal shall recycle or process into fuel for combustion all waste accepted at the facility to the maximum extent practicable, but in no case at a rate less than 50%. For purposes of this subsection, "recycle" includes, but is not limited to, reuse of waste as shaping, grading or alternative daily cover materials at landfills; aggregate material in construction; and boiler fuel substitutes.

(3) A solid waste processing facility subject to this paragraph shall demonstrate consistency with the recycling provisions of the state plan.

(4) The requirements of this paragraph do not apply to solid waste composting facilities; solid waste processing facilities whose primary purpose is volume reduction or other waste processing or treatment prior to disposal of the waste in a landfill or incineration facility; solid waste processing facilities that are licensed in accordance with permit-by-rule provisions of the department's rules; or solid waste processing facilities that are exempt from the requirements of the solid waste management rules related to processing facilities adopted by the board.

(5) If the department amends the rules relating to fuel quality for construction and demolition wood fuel and the amendment adversely affects the ability of a solid waste processing facility to meet the 50% standard in subparagraph (2), the department may not enforce the requirements of subparagraph (2) against that processing facility and the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report relating to the rule change. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation related to the report.

The department shall adopt rules to implement the provisions of this paragraph. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The department may not enforce the recycling requirements of

subparagraph (2) prior to the effective date of rules that define "to the maximum extent practicable."

Sec. 5. 38 MRSA §1310-R, sub-§2, ¶A, as amended by PL 1989, c. 585, Pt. E, §30 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §246, is further amended to read:

A. The department shall apply the provisions of section 1310-N, subsection 55-A, paragraph A, subparagraph (1) when relicensing any solid waste disposal facility, except that, to the extent that waste disposal contracts in effect on June 29, 1987, are inconsistent with section 1310-N, subsection 55-A, paragraph A, ~~in which cases~~subparagraph (1), those provisions apply at the expiration of the term of those contracts without consideration of any renewals or extensions of those contracts.

Sec. 6. 38 MRSA §1310-R, sub-§2, ¶C, as amended by PL 1989, c. 585, Pt. E, §30, is further amended to read:

C. The provisions of section 1310-N, subsection 55-A, paragraph ~~BA~~, subparagraph (2) do not apply to the relicensing of any solid waste disposal facility licensed prior to June 29, 1987.

Sec. 7. 38 MRSA §2101, sub-§1, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

1. Priorities. It is the policy of the State to plan for and implement an integrated approach to solid waste management for solid waste generated in this State and solid waste imported into this State, which ~~shall~~must 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~~that reduces the volume of waste needing land disposal, including incineration; and
- F. Land disposal of waste.

It is the policy of the State to use the order of priority in this subsection as a guiding principle in making decisions related to solid waste management.

Sec. 8. 38 MRSA §2124-A, as amended by PL 2007, c. 192, §5, is further amended to read:

§ 2124-A. Solid waste generation and disposal capacity report

By January 1, 2008 and annually thereafter, the office shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters, the

Governor and the department setting forth information on statewide generation of solid waste, statewide recycling rates and available disposal capacity for solid waste.

The report submitted under this section must include an analysis of how changes in available disposal capacity have affected or are likely to affect disposal prices. When the office determines that a decline in available landfill capacity has generated or has the potential to generate supracompetitive prices, the office shall include this finding in its report and shall include recommendations for legislative or regulatory changes as necessary.

Beginning on January 1, 2009 and every odd-numbered year thereafter, the report submitted under this section must include an analysis of how the rate of fill at each solid waste landfill has affected the expected lifespan of that solid waste landfill. The January 2009 report must also include an analysis of the solid waste disposal needs of the State as of January 1, 2009 for the next 3, 5 and 10 years.

Beginning on January 1, 2010 and every even-numbered year thereafter, the report submitted under this section must include an analysis of consolidation of ownership in the disposal, collection, recycling and hauling of solid waste.

The joint standing committee of the Legislature having jurisdiction over solid waste matters may report out legislation related to the report submitted pursuant to this section.

Sec. 9. Solid waste odor management report. The Department of Environmental Protection shall prepare a report on solid waste odor management. The report must include an examination of solid waste odor regulation from the point of disposition of the waste through disposal of the waste at a solid waste disposal facility, including odor regulation related to transportation of the waste. The report must also include the status of federal weight restrictions on Interstate 95. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 5, 2009.

Sec. 10. Duties and responsibilities for managing solid waste. By July 31, 2008, the Department of Environmental Protection and the Executive Department, State Planning Office, referred to in this section as "the agencies," shall develop a system by which solid waste management activities are performed by them. By August 30, 2008, the agencies shall implement elements of the system that do not require statutory changes. By January 5, 2009, the agencies shall submit a report on the system to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must identify any legislative changes that are necessary for the implementation of the system and must report on the elements of the system that have been implemented by the agencies. The report must also include an analysis of the agencies' respective ability to control the different and various waste streams flowing into state-owned landfills. The committee may report out legislation relating to the report to the First Regular Session of the 124th Legislature.

Sec. 11. Solid waste disposal facility recycling standards; report. By January 15, 2009, the Department of Environmental Protection shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report detailing a method for setting mandatory recycling standards for all solid waste disposal facilities.

APPENDIX B

Table: State Recycling Goals and Mandates

To view this table, go to:

www.nyc.gov/html/nycwasteless/downloads/pdf/pmrnyc06.app1.pdf