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STATE OF MAINE ONE HUNDRED AND THIRTIETH LEGISLATURE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

MEMORANDUM

TO: Members of the joint standing committee of the 131st Legislature having jurisdiction over environment and natural resources matters

FROM: Senator Stacy Brenner, Senate Chair
Representative Ralph Tucker, House Chair
Joint Standing Committee on Environment and Natural Resources
130th Legislature

DATE: November 10th, 2022

SUBJ: Information regarding 2022 interim meetings on management of construction and demolition debris

In October 2022, the Joint Standing Committee on Environment and Natural Resources (ENR) held two meetings to receive information on and to discuss matters related to the management in the State of construction and demolition debris (CDD). This memorandum outlines the information presented and discussion occurring at those meetings as well as the relevant legislative history preceding those meetings.

Relevant legislative history

During the 130th Legislature, the ENR Committee considered LD 1639, An Act To Protect the Health and Welfare of Maine Communities and Reduce Harmful Solid Waste¹ (Senator Anne Carney, primary sponsor). The bill was voted majority “ought to pass as amended” in ENR and ultimately enacted as Public Law 2021, Chapter 626. Among other things, that law amended the definition of “waste generated within the State” (38 MRSA §1303-C(40-A)), as used in the State’s waste management laws, to provide that:

¹ Additional information regarding LD 1639 is available at http://www.mainelegislature.org/legis/bills/display_ps.asp?id=1639&PID=1456&snum=130.

Beginning February 1, 2023...if the total weight of the residue generated in a calendar year by an incineration facility, recycling facility or solid waste processing facility that is disposed of or otherwise placed in a solid waste landfill in that calendar year exceeds the total weight of the solid waste initially generated within the State that was incinerated or processed by that facility in that calendar year, any such excess residue generated by that facility is not considered waste generated within the State.

During our consideration of LD 1639, we learned that sizeable quantities of CDD generated outside of Maine are imported into Maine and that some portion of that material is ultimately disposed of or otherwise placed in the State-owned Juniper Ridge landfill (JRL) in Old Town. The Committee learned that some of that out-of-state CDD is processed in Maine and the materials recovered through that processing are reused or recycled for a variety of purposes; however, some of that CDD either directly or as a result or byproduct of processing is accepted at JRL for operational or engineering purposes, such as for alternative daily cover (ADC), for landfill shaping and grading or, especially in the case of so-called oversized bulky waste (OBW), as a stabilizing or bulking agent for the disposal of wet wastes like sludge.

It is our understanding that the definitional change noted above, as well as other changes included in Public Law 2021, Chapter 626, will serve to limit disposal or placement of such material in JRL from facilities that accept CDD for processing that is generated outside of Maine. Recognizing this reality as well as the fact that the recycling rate for CDD in Maine is very low (estimated at 2.30% in the DEP's latest *Maine Solid Waste Generation And Disposal Capacity Report for Calendar Years 2018 & 2019*²), we requested and received approval to conduct a series of interim Committee meetings for the following purpose:

[T]o evaluate options and develop findings and recommendations, with input from interested parties, for requiring the recycling or beneficial use of construction and demolition debris initially generated in the State prior to the disposal of the debris in a landfill or to otherwise increase the amount of the debris that is recycled or beneficially used prior to disposal in a landfill to further promote compliance with the State's solid waste management hierarchy.

The Committee ultimately held two such meetings, on October 3rd and October 17th, 2022, which are described below.

² This report is available for download at <https://www.maine.gov/dep/publications/reports/index.html> (report dated 1/1/2021). The DEP's next solid waste generation and disposal capacity report for calendar years 2020 and 2021 should be available in January 2023.

October 3rd, 2022 meeting summary³

At the October 3rd meeting, the Committee received three presentations. Susanne Miller of the Department of Environmental Protection (DEP) began by providing the Committee with an overview of the law and regulations applicable to the management of CDD in Maine and reviewed the most recent data regarding CDD generated, processed and disposed of or otherwise managed in Maine. Ms. Miller noted that the DEP has estimated that in 2020, 645,530 tons of CDD were disposed of in Maine landfills; that number is estimated at 605,625 tons in 2021, with 497,036 of those tons of CDD disposed of at JRL. DEP's preliminary data for 2020 indicates that 259,000 tons of CDD were received by processing facilities in Maine, 245,066 of which were ultimately disposed of or otherwise placed in a landfill.

The Committee next heard from Greg Leahy of ReSource Waste Services and James Cote (appearing on behalf of ReSource), who provided an overview of the operations of the ReSource Lewiston facility. Mr. Leahy and Mr. Cote noted that ReSource Waste Services is the largest processor of CDD in New England and its Lewiston facility is the largest CDD processing facility in Maine, processing 179,000 tons of CDD in 2021.⁴ They also noted that the facility's new processing line, which cost upwards of \$2 million, is now fully operational, allowing for increased recovery of ferrous and non-ferrous metals, asphalt, brick, concrete, wood, plastic and cardboard. Mr. Leahy and Mr. Cote noted that materials recovered at the facility are used for a variety of purposes, including recovered wood as feedstock for medium density fiberboard manufacturing and as low-cost, high-BTU fuel for electricity generation; recovered shingles and other materials as a road base in landfills; recovered asphalt, brick and concrete as fill material for roadwork; fines from processing for ADC, shaping and grading in landfills; and recovered metals are sold in the open market. They concluded by generally describing approaches the State might implement to encourage increased processing of Maine-generated CDD, such as revising the State's waste handling fees to differentiate between the disposal of processed versus unprocessed CDD.⁵

The last presentation was from Sarah Nichols of the Natural Resources Council of Maine. Ms. Nichols provided the Committee with an overview of recent national trends in CDD generation and in CDD management practices implemented by various entities to reduce the amount of CDD generated, maximize the recovery and reuse of materials in the CDD waste stream and otherwise divert CDD from landfill disposal. She also identified and described a number of policy options to achieve those reuse, reduction and diversion goals that have been implemented by different jurisdictions.

³ Materials distributed at the October 3rd meeting are available at <https://legislature.maine.gov/enr-interim-october-3-2022-meeting>. That webpage also includes a hyperlink to the archived livestream of that Committee meeting. The following Committee members were present at the October 3rd meeting: Senators Brenner, Carney and Bennett; Representatives Tucker, Blume, Gramlich, Zeigler, Doudera, Bell, Hanley and Boyle.

⁴ As part of the prior presentation, Ms. Miller provided a spreadsheet setting out data regarding the material source and disposition of materials at the ReSource Lewiston facility (available at <https://legislature.maine.gov/doc/9023>). The amounts varied year to year and only ran through 2020, during which year the facility reported accepting 189,184 tons of CDD, 10% of which were generated in Maine. As indicated in this spreadsheet, in 2020, 98,451 tons of CDD fines/cover chips from the ReSource facility were used at landfills for ADC or other purposes at a landfill, while 83,236 tons of CDD residues from the facility were disposed of at a landfill.

⁵ In response to a member question, Mr. Cote clarified that ReSource was not at the time specifically endorsing any of the policy approaches described in the presentation but simply presenting them for informational and discussion purposes.

Following these presentations, Committee members discussed what information might be obtained to better frame the consideration of these matters for the next Legislature and settled on inviting a second panel of speakers with a variety of perspectives to present at the next meeting. Recognizing that the issues considered in these interim meetings are broad and complex and that the next Legislature is best situated to develop and evaluate solutions to those issues, Committee members agreed that the gathering of information and perspectives on this matter for presentation to the next ENR Committee would be an appropriate use of its limited time.

October 17th, 2022 meeting summary⁶

At the October 17th meeting, the Committee received four presentations. Neal Goldberg of the Maine Municipal Association (MMA) began by providing an overview of the municipal perspective on these matters. Mr. Goldberg noted a number of barriers to increasing the recycling of CDD, including a lack of available processing infrastructure for that purpose, transfer station capacity issues and municipal cost concerns. From MMA's perspective, addressing these matters from a local standpoint is preferable to implementation of any regional or statewide requirements or regulations. Mr. Goldberg also questioned whether disincentivizing demolition could encourage project development on virgin soil rather than through the use of blighted, abandoned or functionally obsolete properties, noting the potential impact of the recently enacted Maine Redevelopment Land Bank Authority.⁷

The Committee next heard from Matt Marks, speaking on behalf of AGC Maine. Mr. Marks described the various ways in which construction and demolition firms are already implementing certain measures to better reuse or recycle CDD, including in some instances through on-site reuse, which provides both material and transportation cost savings. He described the different options for project demolition/deconstruction (e.g., explosion, hand demolition and machine demolition) and how that choice can affect project costs, time frame, worker safety and material recovery rates. Mr. Marks noted that it is financially beneficial to contractors to recover and reuse or recycle materials from demolition/deconstruction projects and that much of that recovery or recycling is not tracked or factored into the State's CDD recycling rate.

For the third presentation, Brian Oliver of Casella Waste Systems provided the Committee with an overview of JRL's operations and described how CDD, materials recovered from CDD through processing and CDD processing byproducts are used at JRL.⁸ This includes so-called "fines" for ADC and landfill capping and grading, glass for pipe bedding and OBW for structural support and as a bulking agent for sludge. Mr.

⁶ Materials distributed at the October 17th meeting are available at <https://legislature.maine.gov/enr-interim-october-17-2022-meeting>. That webpage also includes a hyperlink to the archived livestream of that Committee meeting. The following Committee members were present at the October 17th meeting: Senators Brenner, Carney and Bennett; Representatives Blume, Gramlich, Zeigler, Doudera and Bell.

⁷ See Public Law 2021, Chapter 664, available at <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1259&item=3&snum=130>.

⁸ As Mr. Oliver noted, a subsidiary of Casella serves as the operator of the State-owned JRL under the terms of a 30-year contract with the State, executed in 2004.

Oliver noted that the beneficial reuse of these materials conserves natural resources by replacing sand, soil and stone that would otherwise be required for the landfill's operation. Data provided in this presentation indicated that over the period between 2017 and 2021, mixed CDD represented between 33% and 39% of the total waste stream accepted at JRL, CDD processing fines represented between 11% and 21% and OBW from CDD processing represented between 9% and 11%. Mr. Oliver additionally noted that, with the increasing amounts of sludge being accepted at JRL, more stabilization materials will be needed to manage that waste and more landfill space will be consumed as a result. Given that JRL's current permitted remaining capacity of 6-7 million cubic yards is estimated to be consumed within the next 6 years, Mr. Oliver stressed that policies that conserve landfill capacity and support the beneficial reuse of waste materials should be encouraged.

The final presentation was from Kevin Roche of ecomaine, a waste-to-energy facility located in Portland. Mr. Roche noted that a number of other New England states are quickly running out of landfill space and, as a result of the implementation of strategies in these states that encourage waste exports, are sending much of their waste either north to northern New England or west to states like Ohio. To better incentivize recycling, discourage the importation of waste into Maine and generally increase the diversion of waste from landfills, Mr. Roche argued that Maine's landfilling fees need to be increased. In Mr. Roche's view, much of those increased fees would ultimately be paid by the out-of-state actors generating waste that is landfilled in Maine, while Maine communities would benefit from the increased fee revenue.⁹

Following these presentations, the Committee members present requested that the Committee analyst prepare a memorandum to the incoming ENR Committee of the 131st Legislature outlining the information presented and discussion that occurred during these meetings. Although many of the presenters during these meetings described but did not specifically advocate for a number of policy options that other jurisdictions have implemented or are considering relating to the management of CDD, Committee members agreed that they were better positioned to provide to the next Legislature all of the information the Committee received but to leave to the next ENR Committee the consideration of any specific recommendations for legislative changes to address the management of CDD in Maine.

Thank you for taking the time to read this memorandum and we wish you the best of luck in the upcoming legislative session. Should you have any questions regarding these interim meetings or the information presented in this memorandum, please do not hesitate to consult our Committee analyst, Dan Tartakoff.

cc: Members, Joint Standing Committee on Environment and Natural Resources, 130th Legislature

⁹ Mr. Roche may have been referring here to the Maine Solid Waste Diversion Grant Program under Title 38, Section 2201-B of the Maine Revised Statutes, which "is established to provide grants to public and private entities to assist in the development, implementation or improvement of programs, projects, initiatives or activities designed to increase the diversion of solid waste from disposal in the State."