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An Act To Continue To Ensure the Long-term Capacity of Municipal Landfills

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

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

1-C. Bypass. "Bypass" means any solid waste that is destined for disposal, processing or beneficial use at a solid waste facility but that cannot be disposed of, processed or beneficially used at that facility because of the facility's malfunction, insufficient capacity, inability to process or burn, downtime or any other comparable reason.

Sec. 2. 38 MRSA §1303-C, sub-§6, as amended by PL 2005, c. 612, §2, is further amended to read:

6. Commercial solid waste disposal facility. "Commercial solid waste disposal facility" means a solid waste disposal facility except as follows:

~~A. Beginning January 1, 2007, a solid waste facility owned by a public waste disposal corporation under section 1304-B, subsection 5 as long as the public waste disposal corporation controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility;~~

~~A-2. A solid waste facility that is owned by a public waste disposal corporation under section 1304-B, subsection 5:~~

~~(1) As long as the public waste disposal corporation controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and~~

~~(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless the commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A;~~

~~B. Beginning January 1, 2007 a solid waste facility owned by a municipality under section 1305 as long as the municipality controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility;~~

~~B-2. A solid waste facility that is owned by a municipality under section 1305:~~

~~(1) As long as the municipality controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and~~

~~(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless:~~

~~(a) The commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A; and~~

(b) Acceptance of waste that is not generated within the State is approved by a majority of the voters of the municipality by referendum election;

~~C. Beginning January 1, 2007, a solid waste facility owned by a refuse disposal district under chapter 17 as long as the refuse disposal district controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility;~~

C-2. A solid waste facility that is owned by a refuse disposal district under chapter 17:

(1) As long as the refuse disposal district controls the decisions regarding the type and source of waste that is accepted, handled, treated and disposed of at the facility; and

(2) If the facility is a solid waste landfill, the facility accepts only waste that is generated within the State unless the commissioner finds that the acceptance of waste that is not generated within the State provides a substantial public benefit pursuant to section 1310-AA, subsection 1-A;

~~D. Beginning January 1, 2007, a solid waste facility owned and controlled by the office under chapter 24;~~

E. A solid waste facility owned and controlled by a single entity that generates at least 85% of the solid waste disposed of at the facility, except that the facility may accept from other sources, on a nonprofit basis, an amount of solid waste that is no more than 15% of all solid waste accepted on an annual basis. For purposes of this paragraph, "single entity" means an individual, partnership, corporation or limited liability company that is not engaged primarily in the business of treating or disposing of solid waste or special waste. This paragraph does not apply if an individual partner, shareholder, member or other ownership interest in the single entity disposes of waste in the solid waste facility. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph; or

F. A private corporation that accepts material-separated, refuse-derived fuel as a supplemental fuel and does not burn waste other than its own.

~~Until January 1, 2007, for~~For purposes of this subsection, "waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste whether generated within the State or outside of the State if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.

Sec. 3. 38 MRSA §1310-AA, as corrected by RR 1995, c. 1, §33, is amended to read:

§ 1310-AA. Public benefit determination

1. Application for public benefit determination. Prior to submitting an application under section 1310-N for a license for a new or expanded solid waste disposal facility, a person must apply to the commissioner for a determination of whether the proposed facility provides a substantial public benefit.

1-A. Public benefit determination for acceptance by publicly owned solid waste landfills of waste generated out of state. Prior to accepting waste that is not generated within the State, a solid waste facility that is subject to this subsection shall apply to the commissioner for a determination of whether the acceptance of the waste provides a substantial public benefit.

A. A facility is subject to this subsection if the facility is a solid waste landfill that is not a commercial solid waste disposal facility pursuant to:

- (1) Section 1303-C, subsection 6, paragraph A-2;
- (2) Section 1303-C, subsection 6, paragraph B-2; or
- (3) Section 1303-C, subsection 6, paragraph C-2.

B. A facility that is subject to this subsection may not accept waste that is not generated within the State unless the commissioner determines that the acceptance of the waste provides a substantial public benefit.

C. The commissioner shall make the determination of public benefit in accordance with subsections 2 and 3.

D. For purposes of this subsection, "waste that is generated within the State" includes residue and bypass generated by incineration, processing and recycling facilities within the State; waste whether generated within the State or outside of the State used for daily cover, frost protection or stability; and waste generated within 30 miles of the solid waste disposal facility.

2. Process. Determinations by the commissioner under this section are not subject to Title 5, chapter 375, subchapter IV4. The commissioner shall provide public notice of the filing of an application under this section and shall accept written public comment on the application for 20 days after the date of the notice. In making the determination of whether the facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit, the commissioner shall consider the state plan, written information submitted in support of the application and any other written information the commissioner considers relevant. The commissioner may hold a public meeting in the vicinity of the proposed facility under subsection 1 or the solid waste landfill under subsection 1-A to take public comments and shall consider those comments in making the determination. The commissioner shall issue a decision on the matter within 60 days of receipt of the application. The commissioner's decisions under this section may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision under this section.

3. Standards for determination. The commissioner shall find that the proposed facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility or the acceptance of waste that is not generated within the State:

- A. Meets immediate, short-term or long-term capacity needs of the State;
- B. Except for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, is consistent with the state waste management and recycling plan; ~~and~~
- C. Is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal; and
- D. For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility that provides a substantial public benefit and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted.

4. Application. This section does not apply to facilities described in section 1310-N, subsection 3-A, paragraph A or to facilities owned by the State.

Sec. 4. Legislative findings. Maine's municipalities have the obligation to provide for the disposal of the solid waste generated by their citizens and businesses. Public waste disposal corporations and refuse disposal districts are formed by municipalities to provide for the disposal of the solid waste generated within the geographical boundaries of the participating municipalities. Municipal and public regional landfills, however, are becoming increasingly limited in capacity and expensive to Maine's people. The creation of new municipal and public regional landfills is often prohibitively expensive. The Legislature, in exercising its powers over municipalities, public waste disposal corporations and refuse disposal districts as instrumentalities and creations of the State, seeks to maximize the use of these landfills for the benefit of the people of the State and to prevent their potential diversion to uses by others. This law will ensure that municipal and public regional landfills are used for these public purposes.

Sec. 5. Retroactivity. This Act applies retroactively to January 1, 2007.

Effective September 20, 2007