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GOVERNOR



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ACTING COMMISSIONER

**To:** Board of Environmental Protection  
**From:** Paula M. Clark, Director, Division of Material Management, BRWM  
**Date:** January 7, 2021  
**Subj:** 06-096 C.M.R. c. 400; Petition for Rulemaking; Adoption

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**Background**

On January 13, 2020, the Department of Environmental Protection received a Petition to Require Agency Rulemaking, submitted pursuant to 5 M.R.S. § 8055 and signed by 257 qualified State of Maine voters, thereby requiring the Department to initiate rulemaking and hold a public hearing. The petition requested specific amendments to 06-096 C.M.R. Chapter 400 (Maine Solid Waste Management Rules: General Provisions) to: “clarify requirements for Public Benefit Determinations relating to approval of waste facilities, by ensuring that the definition of ‘waste that is generated within the State’ accurately describes the sources of waste materials disposed in the State, and by requiring Public Benefit Determinations to include consideration of the impacts on health and welfare, environmental justice and equal protections for communities where waste facilities operate.”

On March 5, 2020, the Board of Environmental Protection voted to post the proposed changes to public hearing pursuant to 5 M.R.S. § 8055. Notice of rulemaking was posted on the Department of Environmental Protection website and comments were accepted beginning on April 9, 2020. A public hearing was held on September 17, 2020 via video conference as authorized by P.L. 2019 Chapter 617. The comment period was closed on September 28, 2020. During the comment period from April 9, 2020 to September 28, 2020, and including the public hearing, comments were received from a total of 206 parties.

**Rule Amendments Proposed through the Petition**

The petition proposes to include definitions of: (1) “waste that is generated within the State” (that would include only those waste materials with an original point of discard located within the State of Maine) (2) “environmental justice”, and (3) “equal protection”. The petition also proposes to include an additional standard in the Public Benefit Determination process for new and expanded solid waste disposal facilities that would address protection of the “health and welfare of local communities”, environmental justice and equal protection.

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**Department Recommendation**

Included in the packet, for your reference, is the background information memo from Paula Clark dated September 17, 2020, prepared for the Board and presented at the public hearing on the rulemaking petition. In part, the memo explains the history and recent legislative activity concerning the definition of “waste that is generated within the State”. The language proposed in the rulemaking petition regarding this definition is clearly inconsistent with the existing statute. For this reason, the Department recommends that the Board adopt the attached, proposed amendments to Chapter 400 which reflect existing statutory provisions. The Department also recommends adoption of the language of the statutory definition of “bypass” which was included in P.L. 2019 Chapter 291.

The Department further recommends adoption of the attached, proposed amendments to 06-096 C.M.R. Chapter 400 to include “environmental justice” as a consideration in the Public Benefit determination process. Although commenters on the petitioner’s proposal who opposed inclusion of the language in the rule argued that it was vague, and that the absence of a detailed regulatory standard could lead to inconsistency in the standard’s application, the Department agrees with supporters of the proposed language who pointed out that there are a number of other broad standards in the existing rule that are not accompanied by detailed regulatory provisions. The Department is not recommending separate inclusion of the concept of “equal protection” as proposed in the petition since it appears to be redundant in view of the broad definition of “environmental justice” that is proposed. Further, the Department is not recommending inclusion of protection of the “health and welfare of local communities” in the Public Benefit standard since this concept is already clearly incorporated into both statute and rule with respect to solid waste facilities. 06-096 C.M.R. c. 400(3)(D) states, in part, that: “The Department shall issue a license for a solid waste facility whenever it finds, based upon substantial evidence in the record, that the solid waste facility will not . . . constitute a hazard to health or welfare . . .”

Further, the Department agrees with commenters opposing inclusion of the new standard that “Maine’s environmental standards are rigorous, must be met by all solid waste facilities, and protect all citizens equally”. However, the Department finds that the specific inclusion of “environmental justice” in the rule appropriately highlights the importance of this principle and does not generally increase the regulatory burden of applicants. The Department also agrees with those commenting that environmental justice is a concept that should be considered in a broader context than just the Solid Waste Management Rules. The Department is committed to further evaluating this topic and beginning development of an agency-wide environmental justice policy.

Also included in the packet:

- Clean copy of the rule with the Department's recommended changes incorporated
- Copy of the rule with the recommended changes shown in legislative mark-up
- Basis statement and response to comments

**Requested Action**

The Department recommends that the Board adopt the amendments to 06-096 C.M.R. 400 as proposed by the Department.

**Estimated Time of Agenda Item**

1 hour

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