Joint Standing Committee on Natural Resources
May 13, 2010
Meeting Summary

Convened 9:00 a.m., Room 214, Cross Office Building, Augusta

Present:	Absent:
Sen. Seth Goodall, Senate Chair	Sen. Deborah Simpson
Sen. Doug Smith	Rep. Jane Eberle
Rep. Bob Duchesne, House Chair	Rep. Bernard Ayotte
Rep. John Martin	Rep. Peter Edgecomb
Rep. Brian Bolduc	
Rep. Melissa Walsh Innes	
Rep. Joan Welsh	
Rep. Jim Hamper	
Rep. Jane Knapp	

Committee Chair Senator Seth Goodall convened the second 2010 interim meeting of the Joint Standing Committee on Natural Resources and asked the members to introduce themselves. Senator Goodall then directed the Committee through the agenda. Committee Chair Representative Bob Duchesne provided his insight into the purposes of the Committee's interim meetings.

The Commerce Clause and Solid Waste Management

Jerry Reid, Assistant Attorney General briefed the Committee concerning the limitations that the Commerce Clause of the United States Constitution places on the ability of states to regulate the flow of solid waste. Supreme Court cases in this area often sharply divide the Court. Therefore, it can be difficult to predict with confidence how various legislative proposals might fare under judicial review. Mr. Reid submitted a memo that attempts to identify and explain certain guideposts that are helpful to bear in mind during the drafting and consideration of this type of legislation. First, the Commerce Clause prevents states from banning the importation of solid waste. If the court concludes a law's discriminatory treatment is motivated by simple economic protectionism, it will almost certainly be found unconstitutional. A law discriminating on its face against out-of-state interests will be upheld against a Commerce Clause challenge only upon a showing that it is the only means to advance a legitimate local purpose. Second, states have discretion to control the flow of solid waste when they are acting as "market participants" rather than regulators. Under this exception to the general rule, the State may limit the waste it accepts for disposal at the facility based on type, volume, place of origin or other characteristic in the same way that any private, commercial operator of a landfill is entitled to make such business decisions. A copy of Mr. Reid's memo is attached.

Historical Perspectives on Solid Waste Management in Maine

Sherry Huber, Former Director of the Waste Management Agency presented information on the Waste Management Agency years (1989 to 1995). Ms. Huber noted that the role of the WMA

was not regulatory. The agency had 3 responsibilities which were encompassed in the Office of Planning, the Office of Recycling and the Office of Siting. The agency prepared several waste management plans and encouraged regional systems. The agency was funded by a dedicated revenue stream. The agency took as its chief mandate from the Legislature to find a location for a state-owned landfill. The agency first looked all over the State and was met with strong opposition. The agency studied about 10 different sites, but soil scientists found evidence that none of the sites were viable. The agency then asked paper companies if they had available land. Lincoln Pulp & Paper had available the Carpenter Ridge land. After DEP studies, it was concluded that the site and soils were okay for a landfill. The State purchased the site from Lincoln Pulp & Paper and the site was permitted by DEP in 1995. The WMA never reached the point of developing a vision for how Carpenter Ridge would be operated.

Paula Clark of the Department of Environmental Protection presented a timeline of significant events (to present day). The timeline began with the period of 1965 - 1970 which included the passage of the Federal Solid Waste Act, the responsibility for solid waste matters being given to the Maine Department of Health and Welfare, field surveys to determine existing conditions, and the submittal of a "Solid Waste Management/Plan" to the USEPA. Other highlights include:

- 1973 - 106th Legislature passed the "Maine Solid Waste Management Act."
- 1976 - First Maine Solid Waste Management Regulations were adopted by BEP and a State Solid Waste Advisory Committee was appointed by DEP Commissioner to develop recommendations for a state solid waste strategy.
- 1977 - Advisory Committee issued "Solid Waste: New Directions for Maine." Also, 454 open dumps were identified in Maine.
- 1979 - A State Solid Waste Management Plan was adopted by BEP with the primary focus on basic public health and environmental issues.
- 1981 - PL 1981, chapter 528 was enacted which authorized a general fund bond issue to assist municipalities with resource recovery of solid waste.
- 1985 - 301 open dumps/landfills appear on DEP's "Solid Waste Disposal Facility Enforcement Priority List."
- 1986 - Amid growing concern about proposed new landfills in southern Maine and the importation of waste, the Legislature considered a moratorium on waste importation and disposal and a legislative study was undertaken pursuant to P&SL 1985, chapter 137.
- 1987 - Joint Standing Committee on Energy and Natural Resources issued "Study of Solid Waste Management and Disposal Policy in Maine." The resulting law (PL 1987, chapter 517) included provisions addressing: special waste, solid waste transportation, technical assistance to municipalities, municipal landfill closure program, recycling and source reduction, solid waste facility siting requirements (including commercial landfill licensing moratorium), and solid waste disposal capacity needs analysis.
- 1987 - MERC waste-to-energy facility in Biddeford began operating.
- 1988 - PL 1987, chapter 126 authorized $5 million bond issue for municipal landfill closure program. Also, PERC in Orrington and Regional Waste Systems in Portland waste-to-energy facilities began operating.
- 1989 - PL 1989, chapter 585 was enacted which provided for: the Maine Waste Management Agency (MWMA), statutory solid waste management hierarchy, the Waste Management Advisory Council, state solid waste and recycling plan, disposal capacity analysis, recycling goal, facility siting board, state owned disposal facilities, Maine Solid Waste Management Fund, and a ban on new commercial disposal facilities.

- 1992 - The Legislature extended the deadline for cessation of use of unlicensed landfills; 260 landfills received notice. Also, Mid-Maine Waste Action Corp. waste-to-energy facility in Auburn began operating.
- 1995 - MWMA abolished; statutory responsibilities transferred to SPO and DEP or were eliminated. Also, Carpenter Ridge landfill offered to State by Lincoln Pulp and Paper and license issued to SPO.
- 1998 - Pine Tree Landfill in Hampden licensed by DEP for expansion.
- 2001 - Crossroads Landfill in Norridgewock licensed by DEP for expansion.
- 2002 - University of Maine and the Attorney General's Office presented "An Analysis of Competition in Collection and Disposal of Solid Waste in Maine."
- 2003-2004 - Resolves 2003, chapter 93 authorized the State purchase of the West Old Town Landfill from Fort James Operating Company (State issued RFP for operation, Casella Waste Systems selected, State and Casella entered into operating services agreement). Amended license for the West Old Town Landfill issued by DEP to SPO in April 2004.
- 2005 - City of Lewiston proposed 30 year contract with Casella Waste Systems for operation of its landfill; Attorney General's Office determined the proposal to be inconsistent with the statutory ban on new commercial landfills.
- 2006 - Growing concern regarding the importation, disposal and management of construction and demolition debris. PL 2005, chapter 617 limited the amount of CDD wood derived fuel burned and required report on use of CDD wood for fuel and CDD processing. Sale of Fort James mill in Old Town to Red Shield. Agreement among Pine Tree Landfill in Hampden, DEP and the Town of Hampden to cease waste acceptance by 12/21/09.
- 2007 - Report of the Blue Ribbon Commission on Solid Waste Management. PL 2007, chapter 406 provided additional protections to communities that host a solid waste disposal facility (such as defining "host community" and establishing a dispute resolution process). PL 2007, chapter 414 defined "waste generated within the State" and specified that facilities owned by the State may not be licensed to accept waste not generated within the State. PL 2007, chapter 338 revised the definition of "commercial solid waste disposal facility" and required public benefit determination for publicly-owned (excluding state-owned) solid waste landfills to accept waste generated out of state.
- 2008 - PL 2007, chapter 583 required solid waste processing facilities that generate residue requiring disposal to recycle all waste accepted to the maximum extent practicable, but in no case at a rate less than 50%. It also modified the content and submission schedule of the Solid Waste Generation and Disposal Capacity Report by SPO.
- 2009 - Updated Maine Solid Waste Management and Recycling Plan was submitted by SPO. Old Town Fuel and Fiber acquired Red Shield facility in Old Town. PL 2009, chapter 412 required a report from SPO concerning issues related to the operation and management of the state-owned Juniper Ridge Landfill. CDD processing facility in Westbrook licensed by DEP. PL 2009, chapter 348 required state-owned solid waste disposal facilities to demonstrate a public benefit. Initial task force recommendations made concerning the future operation of the MERC facility in Biddeford. Casella/SPO submitted application for determination of public benefit for the expansion of the state-owned Juniper Ridge Landfill (DEP issued draft denial and application was withdrawn). Pine Tree Landfill in Hampden ceased accepting waste on 12/31/09.
- 2010 - Updated Waste Generation and Capacity Report was submitted by SPO.

A copy of Ms. Clark's PowerPoint presentation is attached.

How Waste Moves in New England and Maine

Jennifer Griffith from The Northeast Waste Management Officials' Association (NEWMOA) provided an overview of NEWMOA's solid waste activities and data on the interstate flow of solid waste with an emphasis on Maine. NEWMOA is a nonpartisan, non-profit interstate association of the solid waste, hazardous waste, waste site cleanup and pollution prevention programs in CT, ME, MA, NH, NJ, RI and VT.

NEWMOA's solid waste activities include information sharing, MSW disposal interstate flow reports and CDD management reports. Report topics include state solid waste program funding and staffing, fees states charge solid waste and tip fees at disposal facilities. An e-mail survey of MSW disposal tip fees indicates that approximate prices by state are:

CT: $57-70 per ton at WTE, $68 at 1 LF
ME: $70 & $100 at 2 WTEs, $86 at 1 LF
MA: $74 average (from municipalities)
NH: $77 average
NY: $27 - $72, $50 average (from facilities)
RI: $32 residential/$46 commercial
VT: $90 MSW and $80 CDD

Ms. Griffith noted that data on MSW interstate flow from the import state is often not the same as data from the export state due to several reasons including direct haul issues and variations in disposal facilities. NEWMOA interstate flow analysis observations regarding MSW disposal include the following: MSW management is regional; most MSW management activities are private sector; facilities in all NEWMOA states import and/or export to facilities in other NEWMOA states for disposal; CT, MA, NJ and NY also utilize facilities outside the NEWMOA-region; and ME sends some MSW to Canada.

All NEWMOA states export MSW to other states. The percentage of MSW disposed that was exported in 2008 was:

CT: 10.3%
ME: 7.1%
MA: 17.5%
NH: 9.1%
NJ: 45.4%
NY: 42.4%
RI: 8.4%
VT: 23.9%

All NEWMOA states (except RI & VT) import MSW from other states. For 2008, the percentage of MSW disposed in a state that was imported was:

CT: 3.3%
ME: 23.8%
MA: 3.4%
NH: 38.3%
NJ: 15.7%
NY: 11.1%

RI: 0%
VT: 0%

Rhode Island has a central landfill that is owned and operated by RI Resource Recovery Corporation, a quasi-governmental entity that is prohibited by the Legislature from accepting out-of-state wastes. The facility is currently under new management, the effect of which is not reflected in the data. Vermont has relatively high tipping fees and solid waste disposed is taxed at $6 ton; the tax applies to waste sent from Vermont for out-of-state disposal. Also, the community of origin must have the same services as Vermont requires, such as source separation, recycling, and household hazardous waste requirements. In addition, all facilities must be named in the solid waste district's plan. Connecticut has 20 year contracts with resource recovery facilities that are expiring soon. The facilities are at capacity with the member cities and towns. Also, Connecticut has a tax on disposal.

The majority of MSW generated in a state that is disposed, is managed in-state (i.e. in 2008, facilities in MA disposed over 4.8 million tons or 82.5% of MA-generated MSW and facilities in ME disposed over 755,000 tons or 92.9% of ME-generated MSW). States that exported significantly also received MSW in 2008 (MA: over 170,000 tons; NJ: over 680,000 tons; NY over 1.06 million tons). States that imported significantly also exported MSW in 2008 (ME: over 45,000 tons; NH: over 77,000 tons). Overall, disposal destinations do not vary significantly over time and imports to and exports from individual states can vary significantly year-to-year.

Factors influencing disposal location include: tipping fee and transportation costs combined, regulatory burden of disposal facility, long-term contracts, and the relationship between the hauler company and the disposal facility company.

Ms. Griffith's handout contains a graph of per-capita disposal in the NEWMOA states in 2006 and 2008. Observations from the data indicate that the quantity disposed in a state per-capita in 2008 was highest in NH, lowest in NJ, NY & VT and higher in MA than ME. Per-capita disposal decreased in all states, except VT, between 2006 and 2008. There is a significant variation in per-capita disposal between the states in 2008.

NEWMOA's C&D debris management analysis focused on C&D debris from building projects; road and bridge project debris was excluded. C&D debris management observations include: C&D debris management is regional; most C&D debris management activities are private sector; facilities in all NEWMOA states import and/or export to facilities in other NEWMOA states; CT, MA, NJ and NY also utilize facilities outside the NEWMOA-region. In 2006, most states disposed the majority of C&D debris in-state, except that facilities in CT and MA sent more out of state than in-state.

NEWMOA reports that in 2006 the 450,849 tons of C&D waste generated in Maine and disposed was disposed as follows:

In Maine - 430,682 tons
In NH - 7,070 tons
In non-NEWMOA states/provinces - 13,097 tons.

In 2006, the 687,634 tons of C&D waste that was disposed in Maine originated in:

CT - 17 tons
ME - 430,682 tons

MA - 220,600 tons
NH - 36,076 tons
NY - 197 tons
RI - 62 tons.

In 2006, the origin of C&D waste inputs at Maine processors was:

ME - 130,429 tons
MA - 44,203 tons
NH - 9,288 tons
NY - 33 tons.

Ms. Griffith provided a copy of her presentation which is attached.

Scheduling

The Joint Standing Committee on Natural Resources scheduled its next meeting for May 26, 2010 starting at 9:00 a.m.