

07 EXECUTIVE DEPARTMENT

105 STATE PLANNING OFFICE

Chapter 480: Requirements for the State Planning Office to Accept Public Comment before amending a Solid Waste Disposal Facility Operating Agreement

SUMMARY: This rule requires the State Planning Office to accept public comments when certain changes are proposed to an operating services agreement between the office and its contracted operator of a state-owned solid waste disposal facility. The rule lays out the requirements for a public hearing. The rule is initiated at the direction of a citizen's petition.

SECTION 1. GENERAL PROVISIONS

1. Preamble

Whereas: The Office is authorized to plan for and recommend development of facilities sufficient to meet the disposal needs of municipal solid waste generated within Maine (38 MRSA §2156-A). Through Resolves 2003, Chapter 93 the Maine Legislature directed the Office to acquire, own, and cause to be operated an existing landfill located in the City of Old Town. In addition, the Office was directed to establish the terms and conditions of, and execute and deliver, in the name of and on behalf of the State, all contracts the office determines necessary or appropriate to effect the operation of the disposal facility and to undertake all actions necessary to fully perform all obligations established under the contracts. Notwithstanding the provisions of Title 38 and Resolve 93 and other future legislative action, the State retains the rights and prerogatives of the Executive Branch in establishing or amending these agreements or contracts.

Whereas: The solid waste disposal facility acquired by the Office is operated by and through permits and licenses granted by the Maine Department of Environmental Protection. These permits and licenses are granted in accordance and upon compliance with the Department's rules and standards for such facilities. These requirements may not be altered or modified by an operating services agreement in place between the Office and its contractor.

Therefore: Notwithstanding the above, and in accordance with the Administrative Procedures Act, the Office shall accept public comments on proposed changes to operating services agreements as described in this Chapter.

2. Purpose

The purpose of this Chapter is to require the State Planning Office to hold a hearing to accept public comments when certain changes are proposed to an operating services agreement between the Office and its contracted operator of a state-owned solid waste disposal facility. The rule lays out the requirements for a public hearing.

3. Definitions

- A. Department. “Department” means the Maine Department of Environmental Protection.
- B. Director. “Director” means the Director of the Maine State Planning Office.
- C. Office. “Office” means the Maine State Planning Office.
- D. Operating Service Agreement. “Operating Services Agreement” means an agreement or contract that establishes the terms and conditions of the operation of a solid waste disposal facility.
- E. Solid Waste Disposal Facility. “Solid Waste Disposal Facility” has the meaning provided in Chapter 400, Maine Department of Environmental Protection’s solid waste rules, Section 1 (Jjj).

SECTION 2. PUBLIC HEARING REQUIREMENTS

1. Hearing Required

The State Planning Office shall hold a public hearing when it determines that proposed changes to an operating services agreement or contract with its operator of a state-owned solid waste disposal facility may cause:

- A. increases in the annual amount of waste being sent to the facility;
- B. changes in the sources of wastes entering the facility to occur in such a way to increase the importation of waste; or
- C. changes to a facility’s operation to occur in such a way as to impact traffic, odor, noise, or public safety in the abutting communities.

2. Public Notice Required

The State Planning shall provide reasonable public notice in accordance with 5 MRSA §8053.

3. Costs Borne by Solid Waste Management Fund

The costs to conduct the public hearing will be borne by the Maine Solid Waste Management Fund. Implementation of this rule is contingent on funds being available in the Maine Solid Waste Management Fund. If funds are not available, as determined by the Director, to conduct a public hearing in accordance with this Chapter, the Office will provide public notice to interested parties via e-mail and accept written public comments for 30 days. The Office shall maintain an interested parties mail list of people wishing to receive this notice.

SECTION 3. CONSIDERATION OF PUBLIC COMMENTS

1. Consistency with State Laws and Policies

The State Planning Office shall consider whether changes to an operating services agreement are consistent with the following statutes and policies:

- A. state's waste management hierarchy in 38 MRSA §2101;
- B. state's recycling goal in 38 MRSA §2132;
- C. state waste management and recycling plan (State Planning Office, 1998); and
- D. siting criteria for state-owned solid waste disposal facilities in 38 MRSA §2153.

2. Decision and Timeframes

The State Planning Office shall complete its review within 45 calendar days from the closing date for public comments. The Office shall respond to comments in writing and make those responses publicly available.

3. Emergency

If the Office determines a threat to public health or safety from a delay in amending the operating services agreement due to the provisions of this Chapter, it may waive the provisions of this Chapter. If an emergency event occurs where the Office waives the provisions of this Chapter, the Office will publish notice within 20 days from the date of the amendment. Notice shall be published in the state's newspaper of record and shall include the nature of the emergency and a description of the amendment.

STATUTORY AUTHORITY: 5 MRSA §3305-A (3)

EFFECTIVE DATE: May 9, 2009