

RECEIVED
MAINE D.E.P.

2020 JUL 17 PM 2:19

July 14, 2020

Mr. Mark Draper, Chair
Board of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Subject: Comments on January 13, 2020 Petition to Require Rulemaking Update
to Chapter 400, Public Benefit Determination Requirements

Dear Mr. Draper:

We are writing to urge the Board of Environmental Protection (BEP) to reject the citizen petition submitted on January 13, 2020 by Hillary Lister proposing changes to Chapter 400, Maine Solid Waste Management Rule's Public Benefit Determination (PBD) requirements.

The proposed petition conflicts with existing statute, it has an impact on solid waste facilities across the state, eliminates a beneficial reuse material, and raises concerns that are already addressed in the existing Maine Department of Environmental Protection (MEDEP or Department) Solid Waste Rules (Rules). The points that we suggest the BEP address during the public hearing process and in follow-up deliberations are outlined below.

CONFLICTS WITH EXISTING STATUTE

The proposed Rule change would change the definition of waste generated within the State causing the Rules to be in conflict with the definition provided in Maine Revised Statutes, Title 38, Section 1310-N.11. The definition of in-state-waste was recently discussed and addressed during the 129th legislative session to clarify that residue from Maine's incinerators and processing facilities is Maine waste, regardless of the raw material's point of origin. The final rule will be revised under 38 MRSA 1303-C section 40-A.

IMPACT ON SOLID WASTE FACILITIES STATE-WIDE

The proposed rule would have an economic and operational impact on multiple recycling, waste processing, and waste-to-energy facilities in Maine, as multiple facilities take some amount of out-of-state waste¹ since operations require more waste than what is generated in Maine to be efficient. Limiting the operations and available options for residual management may have the unintended consequence of more waste being landfilled because there are no other options for handling these wastes at facilities which are higher on the State Solid Waste Hierarchy.

¹ Maine DEP 2019 Municipal Solid Waste Generation & Disposal Capacity Report for Calendar Year 2017, January 2019.

ELIMINATION OF A BENEFICIAL USE MATERIAL

Based on our experience as Engineering Professionals, fines from waste processing facilities can be used as alternative daily landfill cover material, and in most cases is the preferred material for this use. If alternative daily cover material (such as these fines) is not available, virgin soil will be used as cover material. The same cover thickness is required regardless of the type of material used for daily cover therefore, the same landfill capacity is consumed by either cover material. However, with the use of waste fines as daily cover material a waste product is being beneficially reused consistent with the intent of the State Solid Waste Hierarchy. Use of virgin soil as cover soil utilizes a natural resource that is better served for other types of infrastructure projects.

ENVIRONMENTAL JUSTICE

The petition proposes to add a definition of Environmental Justice to the Chapter 400 definitions that include the following statement:

“Environmental justice shall include the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of waste management laws, regulations, and licensing decisions.”

The Environmental Protection Agency (U.S.EPA) website defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice occurs when everyone has the same degree of protection from environmental and health hazards and has equal access to the decision-making process. Fair treatment means that no group of people bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies (U.S.EPA 2015).

The existing PBD, and solid waste permitting processes already includes provisions to notify the public and allow the public to provide comment or become an intervenor. Currently facility abutters and the municipal offices of municipalities in which the facility is located (or proposed to be located) are notified within five days prior to submitting a PBD application. The notice must also be published once in a newspaper circulated in the area where the project is located, and the MEDEP post this information on their public website. The Rules require the Commissioner to accept written public comment during the course of processing an application and also requires that a public meeting be held in the vicinity of the proposed facility to hear public comments. The Commissioner must consider and address these comments when making the PBD determination.

In the case of landfill facilities, the existing Rules already contain provisions to equally protect people that could potentially be impacted by the landfill siting and operations. These include standards for landfill siting and design as well as evaluation of potential impacts to site environs if there were failures of the landfill systems. The Rules also require facilities to have approved monitoring programs to detect changes in groundwater, surface water, and air quality. This protects people and the environment surrounding the landfill and these requirements are approved by the Department before a license is issued to a facility.

The existing Rules were written to involve the public, protect the environment and allow waste processing facilities to access the raw materials needed for operations to support the State Solid Waste Hierarchy. The Rules, and the Department's enforcement, already provide the protections which appear to be the basis for the proposed changes to the Rules. For the reasons noted above SME recommends the Board reject the citizen petition proposing changes to Chapter 400, Maine Solid Waste Management Rule's Public Benefit Determination requirements.

Sincerely,

SEVEE & MAHER ENGINEERS, INC.



Brian Pierce, P.E.
Principal/Chief Engineer



Rhonda N. Forrester, P.E.
Project Manager

cc: Toni King, NEWSME
Wayne Boyd, NEWSME
Brian Oliver, NEWSME
Brian Rayback, Pierce Atwood