

Consistent Comments BEP Ch. 400

Dear Chair Draper and Members of the Board of Environmental Protection,

Thank you for your interesting questions and comments during the Public Hearing on Sept. 17, 2020. In reviewing that event I was struck by some paradoxical statements which I will share with you here. In the DEP comments on Page 095 of your packet it states:

*Earlier this year, the Maine Legislature passed LD 401 which, in part, revised the statutory definition of "waste that is generated within the State". The language proposed in the rulemaking petition with regard to this definition is not consistent with the new law.*

The next paragraph begins:

*The significance of classifying waste as "generated within the State" is that by law (38 M.R.S. 1310-N(11)) a solid waste disposal facility owned by the State may not be licensed to accept waste that is not generated in Maine.*

We need to consider whether LD 401 is consistent with the intent of the 1989 law quoted above. If "Consistency" is our guide and goal, then we should compare LD 401 as it is written with the Petitioners' proposed language and ask ourselves: Which is more Consistent with the landmark 1989 laws that were written in response to a building crisis of Maine becoming the dumping ground of New England? Clearly, the proposed language is more Consistent with that legislation that did away with any future Commercial landfills in Maine in order to circumvent restrictions of the US Commerce Clause by making Maine a "market participant" and thus able to restrict importations of waste.

Several of those testifying in opposition to the new language were trying to say that LD 401 was a creation of citizens as stakeholders. This was true of the 2019 version of LD 401, but the 2020 version had stripped it of language which included the exact proposed wording we are proposing now. There was no citizen involvement with 2020's LD 401. The version that passed was changed drastically at the last minute and developed by DEP, ReEnergy and Pierce Atwood, with no Public Hearing before being voted on in the ENR Committee.

There may also be antitrust and anti-competitive issues with LD 401 which gives ReEnergy a special status and rights under the Law. This playing field is not Level. I urge the attorney general's office to look into this matter and would appreciate the Board's discussion. This is relevant because there are two competing sets of language proposed for Ch. 400 rules and neither have been adapted/authorized by the BEP at this time.

You should also know that Casella was fined \$1 million by its home state of Vermont in 2011 for anticompetitive behavior.

In summary, if Consistency is our guiding goal, then we should be creating rules that are consistent with the intent of MRS 1310-N(11). Please compare the proposed language with that of LD 401.

Respectfully yours,

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