



**Testimony of Mark St. Germain to the Board of Environmental Protection
September 17, 2020**

Thank you for the opportunity to provide comments regarding the citizen petition to amend Chapter 400 of the Maine Solid Waste Management Regulations.

My name is Mark St. Germain. I am the President of St. Germain, an environmental consulting and engineering firm based in Westbrook, Maine. We design and permit waste recycling facilities, and provide programs to recycling and disposal facilities that help them maintain compliance with their operating licenses and environmental regulations. For 28 years our firm has worked with communities and companies to manage their solid and hazardous wastes in a manner that is protective of the environment, in accordance with Maine's solid waste hierarchy, and is physically and economically achievable.

We are submitting these comments to oppose the citizen petition to initiate rulemaking that would amend Chapter 400 of the Maine Solid Waste Management Regulations. The reason for our opposition is because:

- 1) the proposed language adds ambiguity when determining that a waste disposal facility is not a public benefit,
- 2) the proposed language offers vague definitions of "equal protection" and "environmental justice" criteria leaving implementation of the rule wide open for interpretation, and
- 3) it is an attempt to circumvent the extensive review process in the last legislative session regarding the very same issue.

In short, what the petition suggests is just not good policy.

Ambiguity of the Scope

Rulemaking by its very meaning is intended to define and clarify the requirements needed to comply with legislation. The proposed petition language does not define or bring clarity to the regulations as they regard the determination of public benefit. The terms "equal protection" and "environmental justice" have been added to describe how waste handling facilities are to be sited and operated.

Frankly, who wouldn't support equal protection and environmental justice? These ideas have always been important and should continue to be considered during public input components of the permitting process.

The question today is, how does one regulate with any level of consistency to these proposed terms that are, by definition, vague. Adding ambiguous language to a regulation leads to inconsistent implementation of the rule and is contrary to the intent of the rulemaking process.

Vague Terminology

The rulemaking petition proposes to revise the standard for determining the public benefit of certain solid waste use activities by adding definitions for "equal protection" and "environmental justice" into regulation. These definitions are vague and not consistent with the well-defined nature of definitions normally required in regulations.

They include undefined terms like "environmental pollution," "meaningful involvement," "unfair burden," and "environmental hazards." Environmental pollution and environmental hazards are so far-reaching that the DEP has pages upon pages of regulations attempting to define and regulate them across air, water and soil mediums. These terms should not be left open for interpretation, nor buried under definitions of "equal protection" and "environmental justice" in one chapter of Maine's solid waste regulations.

"Meaningful involvement" and "unfair burden" are again left to interpretation. Does meaningful involvement mean that any person or persons should be on the permit writing team? Is a burden unfair if a person or persons

disagrees with the facility owner, operator or the DEP about how to best manage waste recycling and/or disposal at a particular facility? Does it matter where the objectors live or if they have any technical knowledge of the science and engineering behind the waste management activity?

Ask anyone attending this meeting today what these terms mean and you will likely get different answers for each term from each attendee. Interpretation of the language in the petition will be impossible to implement consistently.

Existing and Well Vetted Process

Chapter 400, as it currently stands, has gone through an intensive vetting process to ensure that anyone with an opinion on the regulation has the ability to provide input. There are opportunities for submittal of comments, public hearings, and reviews of multiple drafts at both the BEP and legislative levels.

Earlier in this legislative session, the public benefit of Maine's recycling and disposal laws was reviewed by the Energy and Natural Resources (ENR) committee, the body that was elected to review and modify the laws of the State of Maine. As part of the review process, there was extensive input from regulators, industry, municipalities, special interest groups, and the general public. Testimony confirmed the reality that tweaks to Maine's waste management infrastructure affect us all.

Regulatory uncertainty and attempts to address one group's ideas over another's can have real consequences – cause facilities to close, blowout municipal budgets, and raise disposal fees – which affects the pockets of every Mainer, and therefore, detrimentally effect Maine's environment and its economy. In the end, the ENR committee voted unanimously to enact PL-619 - An act to preserve the State Landfill Capacity and Promote Recycling.”

Were there people representing all parties that were not entirely happy with the legislative outcome? Of course. But PL-619 preserves and promotes Maine's Solid Waste Management Hierarchy. It was well-vetted and approved by our legislative body representing all corners of the state.

The citizen's petition suggests additional change to Maine's solid waste management policy. The language in the petition is ambiguous and does not promote Maine's solid waste management hierarchy. We respectfully urge you to oppose this petition to amend Chapter 400.