

Comments submitted by Kat Taylor in regard to:

Chapter 400: Maine Solid Waste Management Rules

(Online testimony recordings:

<https://dontwasteme.wordpress.com/2020/09/17/maine-bep-hears-from-landfill-reform-advocates-and-anti-reform-advocates/>)

Friday, September 11, 2020

Dear Chair Draper and the Board of Environmental Protection:

My name is Kat Taylor and I am a resident and landowner in Argyle Township, Maine. My properties are roughly 5-6.5 miles north on Southgate Road from the Juniper Ridge Landfill (JRL), owned by the State of Maine and operated by Casella Waste Systems.

I am writing to support the recent citizen initiative to revise definitions in **Chapter 400: Maine Solid Waste Management Rules**, of what is "Maine generated waste" and to add provisions that protect those who are impacted by waste processing.

The rule change would:

- 1) Clarify the definition of Maine generated waste in order to control the disposal of out-of-state waste in Maine's publicly-owned landfills, and*
- 2) Provide standing, justice, and equal protection to people in communities who are directly impacted by the State's landfill licensing and permitting decisions.*

Today's hearing is a result of LD401's passage last March and a citizen's petition to further clarify the definitions surrounding Municipal Solid Waste (MSW) and how it is processed in Maine.

However I do so with the caveat that even if these rules are changed, it will do little to stop out of state trash from entering the state of Maine and commercial waste management facilities sending that MSW directly to landfills without processing due to the ambiguous definitions of "Recycled" and "Bypass".

Every time I drive to the end of Southgate Road I see the abomination that is the Juniper Ridge Landfill (JRL).

For seventeen years I have been against the JRL since its inception, fought against its expansions and against an attempt by the Municipal Review Committee (MRC) to surreptitiously put a landfill in Argyle.

Argyle was successful in thwarting MRC's attempts that had the potential to catastrophically affect our community. I supported **LD 401(HP 310) "An Act To Preserve State Landfill Capacity and Promote Recycling"** because it is common knowledge around here that Casella's JRL flagrantly violates the state hierarchy of waste management and fast tracks out of state waste directly to the landfill through loopholes in the system.

Argyle had to fight tooth and nail to keep MRC from building a landfill in the Alton Bog, a primordial pure water source and home to an abundance of wildlife. Not to mention it drains directly into the Penobscot River through Argyle. We wrote letters to the Army Corps of Engineers, the Environmental Protection Agency, our elected officials and still the project went forward.

The devil is in the details and it took an exercise in semantics with people actually addressing four poster boards exhibited on 4 easels listing among other things the state waste hierarchy that tipped the public determination in our favor.

I also agree with Senator Carson when he points out in the citizen's petition the use of a double negative:

*"The petition calls on the Department to modify Section 5, Part E, Standards for Public benefit determination, clarifying that in order for the Department to determine Public benefit necessary for licensing and expansions, it must be demonstrated that: The facility operation **is not inconsistent** with protecting the health and welfare of local communities and **is not inconsistent** with ensuring equal protection and environmental justice for communities where the waste facility is proposed or operating.*

The wordage would be clearer if posed in the positive: "...operation **is consistent**..."

The use of a double negative was one of the issues I pointed out to the Department of Environmental Protection at the last public hearing for a dump in Argyle, ultimately proving to the DEP that there was no public need for another landfill.

Don't underestimate the importance of how rules are worded.

Mark St Germaine testifying against the Chapter 400 rule change mentions the ideas of social and environmental justice as being vague and open to interpretation. He is correct. But that is why we are having this rule making session, to nail down definitions that follow the spirit of the law. In addition, ambiguous or not, people should have the right to sue a facility that skirts the requirements or does not follow the letter of the law if that behavior detrimentally impacts them in any way whatsoever. That is what is called Justice, environmental or otherwise.

The discussion today is not one that has solid answers but invites the BEP to take into consideration the testimony of interested parties and apply their input to the rules. Otherwise, we would not need a BEP or judges or legislators if we relied solely on the will of a majority vote to enact policy. The rule of law is fluid and must be flexible to allow some leeway in decisions. One size does not fit all.

When asked about daily cover alternatives Mr. St Germaine goes on to say that "**...things that sound good sometimes don't always work.**" There is some truth to that. Like **No Sort Recycling, closing local dumps, having large landfills as for-profit enterprises, privatization of essential services, incineration of waste to energy, and importing out of state waste to increase cheap power supplies that don't benefit the people of Maine.**

These all sounded like good ideas at first, but have proven not to be because we cannot keep **propping up failing systems because they simply do not work. It's time to admit defeat and move towards better solutions, sometimes that means going backwards.**

If we do not give locals, like Argyle, say over public determination of waste facilities, then the for-profit enterprises that make so much money handling MSW will be back again and again determined to put profits over people. If we don't give citizens the legal leverage to sue waste management facilities they will continue to violate the state's waste hierarchy to their advantage.

**Casella worked for 30 years to obtain JRL.
They will never give up as long as MSW makes them money.**

Unless we hammer down definitions making it harder for MSW facilities to avoid state MSW compliance, we will be back here again and again costing taxpayers more and more money.

Companies like Casella haven bottomless resources to avoid compliance.

Sevee & Maher Engineers, Inc., Rayback, Brian (Pierce Atwood) and the like, say in their testimony that the current rules cover Environmental Justice and local participation already.

But we've recently seen such twisting of the rules in the Pebble mine fiasco in Alaska where investors and officials colluded to deceive the public about the actual environmental impact of the mining operation. The level of corruption extended to the Army Corps of Engineers and municipal officials in charge of permits.

<https://www.cnn.com/2020/09/25/politics/alaska-pebble-mine-executives-legislators/index.html>

Sarah Lakeman, *Natural Resources Council of Maine's Sustainable Maine's* project director, writes in her LD 401 testimony:

"...for instance, in 2013, 88% of the material accepted at the ReEnergy facility in Lewiston was delivered from out-of-state, and after some processing at the facility, ReEnergy then sent 97% of their material to JRL.

Then, because of this nonsensical definition of in-state waste, NEWSME is able to "verify" that no out-of-state waste entered the land fill in their annual report. "We believe that this statute should be amended to define in-state waste as waste originally generated within the state only, regardless of what the final disposition of the waste may be."

We need stronger controls and oversight to bring companies like Casella to heel and LD 401 was a good start towards that goal. That is why I supported its passage, or a modified version since it is weak on certain definitions such as "Maine generated MSW" and "Bypass". Both terms allow for flexible interpretation and cause loopholes permitting behavior that is not in the spirit of the law.

If you ask sensible people if it is sensible to allow facilities to "bypass" processing at an MSW facility because of:

"...malfunction, insufficient capacity, inability of the facility to process or burn, down-time, or any other reason."

They would most like say "No". And yet:

**(Department of Environmental Protection Maine Solid Waste Management Rules
CHAPTER 400
GENERAL PROVISIONS
Last Revised: April 6, 2015**

1. Definitions: V. Bypass. "Bypass" means any solid waste that is destined for disposal, processing, or beneficial use at a solid waste facility, but which cannot be disposed, processed, or beneficially used at that facility because of **malfunction, insufficient capacity, inability of the facility to process or burn, down-time, or any other reason.** PG3)

The Department/Board of Environmental Protection (DEP/BEP) needs to come up with a rule that addresses the issue of **Bypass**. If a facility cannot accept MSW, **"for any (other) reason"**, then steps need to be implemented for the entity dropping off the trash to go further, such as going to another facility, or the PERC plant or any other facility licensed for processing MSW.

Simply going to a landfill is the last recourse as is laid out in **Maine's Hierarchy of Waste Management.**

In regards to defining what is "Maine trash":

It astonishes me that we have to keep revisiting this. If you ask any rational person what the definition of "Maine trash" is they would say "trash *originating* in Maine". Or "*Waste materials for*

which the original point of discard is located within the state of Maine". But one could make the argument that if a container of trash is dropped off within Maine's borders, then it is "discarded" within the state.

Perhaps we should modify it to "...trash comprising of materials **originally purchased and discarded within the state of Maine.**"

This would make it more difficult to pass off out of state trash as originating in Maine and easier to verify if evidence could be found in the trash itself showing out of state purchase.

Recently the Metropolitan Transportation Authority board **officially had to ban pooping on subways.** (<https://nypost.com/2020/09/22/mta-board-to-officially-ban-pooing-in-subways-buses/>)

*"MTA rules are periodically **tweaked to enhance clarity**, and that's the case with the addition of more descriptive language," MTA spokesman Tim Minton said in a statement.*

So Waste Management Rules apparently need "**tweaking to enhance clarity**" so the facilities pooping on Maine will know officially that importing out of state trash, or building giant landfills in Maine, or refusing to take into consideration the will of the people to first, "do no harm" is wrong.

If you ask sensible people if keeping trash out of the water supply, or from leaching into the ground, and if it's a good thing to protect the health and safety of Maine's citizens, they would say "Of course".

If you ask sensible people if the licensing of new MSW processing plants should be determined by the impact it will have on the people and wildlife living close by, and if those same people should have a role in the decision making, they would most likely say, "Absolutely".

Defining what constitutes "Maine generated MSW" is essential but in no way should it be the endgame. All redefining may do is create more work for the state of Maine in policing MSW coming into the state and raising taxes to pay for such an effort.

But the devil is in the details. Of such things employment for lawyers is created.

Both Ed Spencer and Hillary Lister provide extensive history of landfill legislation in their comments. They have been staunch opponents against MSW facilities which violate the state MSW hierarchy and have spent countless hours preparing documentation supporting this cause. I hope the BEP will take the time to review their testimony and give it the full attention it deserves.

Hillary's testimony mentions the Commerce Clause:

*"The 1978 Supreme Court ruling of Philadelphia v. New Jersey determined that States violate the **Interstate Commerce Clause** if they enact laws that discriminate against interstate commerce **for purposes of protecting in-state business interests against out-of-state businesses.***

The primary reason the State took ownership of Juniper Ridge Landfill (JRL) in 2004 was to ensure the State would maintain the legal authority to prevent the Publicly-owned landfill from being filled with waste imported from out of state.

Casella representative Toni King wrote in testimony from the **2019 public hearing on LD 401:**

"c. Because other landfills cannot be prohibited from taking out of state waste due to the US Constitution's commerce clause, they would likely be the recipient of

ReEnergy's fines, likely at a higher cost to ReEnergy than its current contract with JRL, and those costs would be passed on to consumers."

Higher rates were also an argument made by MRC regarding putting a landfill in Argyle. They said the *Penobscot Energy Recovery Company* plant (PERC) would shut down or raise tipping fees once their contract with *Emera* expired and it's still chugging along.

In fact, following the abrupt closure, again, in late May 2020 of PERC's competitor — the new *Coastal Resources of Maine* plant in Hampden, that's partly owned by the company Fiberight, the PERC plant has recently been receiving MSW from 100 surrounding Maine communities that used to be their customers and are managed by MRC who are currently looking for investors to reopen the Hampden plant ...again.

<https://observer-me.com/2020/07/24/news/more-trash-probably-wont-be-a-money-maker-for-orrington-incinerator/>

So for me, the ultimate solution is to **ban all out of state trash from coming into Maine.**

If we do not ban all out of state trash, then we will be back here again and again as lawyers for Casella and the like will always find a way to slip through the net.

Nailing down the definition of Maine Generated Waste, adding Environmental Justice and Equal Protection clauses will give Maine the leverage it needs to adopt a full ban **and I think there is legal precedent for a full ban.**

Ed Spencer, who lives in the shadow of JRL, and is a long time opponent of JRL, sent me an email last year containing a 2010 memo from Jerry Reid containing a reference to the case of my father, Robert J. Taylor, founder of "*Taylor's Bait*", who was caught bringing golden shiners into Maine in the mid eighties. He was arrested for smuggling.

Dad challenged the State of Maine, citing the Commerce Clause, for the potentially **unconstitutional ban of importing baitfish into the state.** Dad won his case in Maine courts but *Inland Fisheries and Wildlife* took the case to the US Supreme Court where he lost.

One paragraph by the US Supreme Court findings stood out in my mind as applicable to the battle against importation of municipal solid waste; simply replace *baitfish* with *MSW*. (*Maine v. Taylor*, 477 U.S. v3.pdf. pg 10): (*emphasis is mine. I submitted the SCOTUS transcript in my testimony for LD401 and have attached it at the end of this document*)

*"Moreover, we agree with the District Court that **Maine has a legitimate interest in guarding against imperfectly understood environmental risks, despite the possibility that they may ultimately prove to be negligible.** "[T]he constitutional principles underlying **the commerce clause cannot be read as requiring the State of Maine to sit idly by and wait until potentially irreversible environmental damage has occurred** or until the scientific community agrees on what disease organisms are or are[is or is] not dangerous before it acts to avoid such consequences." 585 F. Supp., at 397."*

*"The Commerce Clause significantly limits the ability of States and localities to regulate or otherwise burden the flow of interstate commerce, **but it does not elevate free trade above all other values.** As long as a State does not needlessly obstruct interstate trade or attempt to "place itself in a position of economic isolation," *Baldwin v. G. A. F. Seelig, Inc.*, 294 U.S. 511,527 (1935), **it retains broad regulatory authority to protect the health and safety of its citizens and the integrity of its natural resources.***

The evidence in this case amply supports the District Court's findings that Maine's ban on the importation of live baitfish serves legitimate local purposes that could not adequately be served by available nondiscriminatory alternatives.

It seems to me, and many others, that landfills in general constitute '**potentially irreversible environmental damage**' (that is why they are banned in the first place) and the unfettered importing of out of state waste exacerbates this possibility. And there are no "**imperfectly understood environmental risks**" since, as we all know... landfills leak.

I may be just a simple country girl, untrained in the machinations of the law, but it seems to me that my father's case, *Maine v. Taylor*, may set a precedent for the State of Maine to impose a full ban, or **at least impose a temporary moratorium** to give time to evaluate whether a ban is warranted, on importation of all waste from other states for all landfills **without violating the Interstate Commerce Clause**.

According to the decision of the US Supreme Court in *Maine v. Taylor*, Maine has the right to inspect importation of (baitfish/MSW) to determine if it could *potentially* harm our wildlife and ecosystems. "**Maine could inspect every truck that brings in (Bait/MSW) to the state of Maine but no methods currently exist to practically do so and Maine is under no obligation to develop such methods.**"

"More importantly, we agree with the District Court that the "abstract possibility," id., at 398, of developing acceptable testing procedures, particularly when there is no assurance as to their effectiveness, does not make those procedures an "[a]vailabl[e] . . . nondiscriminatory alternativ[e]," Hunt, 432 U.S., at 353 , for purpose of the Commerce Clause. A State must make reasonable efforts to avoid restraining the free flow of commerce across its borders, but it is not required to develop new and unproven means of protection at an uncertain cost."

However, waste management businesses are welcome to develop their own methods of inspection that the state may adopt if they prove effective.

Therefore, a total ban on a product (*Bait /MSW*) can be enforced without violating the Commerce Clause since **we have no way of knowing that such importation will not harm our fragile ecosystem and be detrimental to our citizens and wildlife.**
(How's that for a double negative Senator Carson?)

A full ban does not violate the Commerce Clause. **It is not protecting state businesses over out of state businesses** as stated in Hillary's testimony; **it is banning it for all.**
(The full text of *Maine v. Taylor* is at the end of this document)

Once a full ban is enacted, then importation of MSW into Maine becomes a crime; it could be defined as 'smuggling' as is the case of *Maine v. Taylor*.

Maine could then confiscate trucks, arrest drivers, return the MSW to the point of origin at the cost of the violators and sue the businesses and municipalities responsible for breaking this law. Revenue from these fines and lawsuits could be used for subsidizing recycling efforts to include items not now covered, like plastic bags and Styrofoam, and keep plants like PERC viable through subsidies thus driving down the cost of handling MSW.

Instead of policing MSW operations, which is a revenue drain, a full ban would be a revenue generator.

Maine could create a general fund with these revenues offering grant money to non-profits like Don't Waste ME, Post-Landfill Action Network (PLAN), Maine Resource Recovery

Association (MRRA) and bright entrepreneurs, who come up with ideas on how to safely dispose of residues from energy reclamation plants and materials that cannot be repurposed, recycled or reduced.

Citizen driven initiatives would alleviate the burden of making the state of Maine responsible for tracking and enforcing the waste hierarchy. In effect, this would deputize citizens to assist in surveillance of waste management.

This would also make waste management a 'service' instead of a 'for-profit enterprise'. The ban would discourage companies, like Casella, from using Maine as their dumping ground if they can no longer make a profit.

The passage of LD 401 did, as some argued, eliminate the need for some ReEnergy facilities, among others, simply **because Maine does not create enough waste to keep them viable; so they should be phased out.** (*Several ReEnergy plants up north have been shuttered* <https://bangordailynews.com/2019/03/21/news/reenergy-planning-to-tear-down-fort-fairfield-plant/>).

In my **LD 401 comments** I point out that Edward A. Barrett, City Administrator and Denis D'Auteuil, Deputy City Administrator of Lewiston cite reasons why the ReEnergy facility there should be kept open, such as, **starting in 2010, accepting demolition from 70 “dangerous and abandoned structures” which ReEnergy accepted for free** (ReEnergy opened in 2013, so for 3 years where did the debris go?).

They mention the revenue generated by ReEnergy in leases and taxes but admit “...**At one point, for example, the City provided ReEnergy lease and other concessions to help keep the facility open.**” So if ReEnergy is not charging Lewiston, and the city is giving them free lease and other concessions, where is the revenue coming from to make ReEnergy viable? It appears that Lewiston wants to keep ReEnergy as its own private dumping facility to offset expenses.

If the only solution for keeping ReEnergy open is to import out of state garbage, then they have reached the end of their efficacy. **The loss of a few jobs (45 in Lewiston, 30 of which are temporary employees from Complete Labor & Staffing {see Wesley Groom’s LD 401 comments})** is acceptable and we can count our continuing efforts to adhere to Maine’s hierarchy of waste management a success. And given the track record of the Lewiston ReEnergy facility of loading up JRL with unprocessed MSW/CDD its closure would be a step in the right direction.

Sevee & Maher Engineers, Inc., Rayback, Brian (Pierce Atwood) and the like claim that out of state MSW is needed to keep facilities viable and virgin topsoil will be needed if CDD used for daily cover is eliminated. Why is this a binary choice? It seems to me that we have plenty of cover materials in our forest areas along roads. Many trees are dead or dying due to insects, drought and storm damage. These forest areas could be parked out and the wood chipped employing dislocated MSW truck drivers to deliver wood chips to landfills as daily cover. I’m sure we can come up with alternatives if we put our minds to it. This would not be necessary if waste management systems were not so large.

At the same time Sevee & Maher Engineers imply the need for more licensing for future MSW facilities. And again use the threat of higher prices in veiled attempt in what is essentially extortion.

So which is it? They can’t get enough Maine trash to stay in business, or they get too much trash from away so more facilities need to be licensed?

As Bob Duchesne pointed out in the hearing during, among others, Paula Clark's comments, the waste to energy plants have proven insufficient in providing enough electricity to justify their existence. **This is one of those ideas that seemed like a good one at first, but the implementation, due to contaminated materials, falls short of its goal.**

The waste from incineration is toxic and unsuitable for landfill. And the "too big to Fail" landfills are a ticking time bombs that will eventually create catastrophic consequences for our environment.

As Kirstie Pecci from the *Conservation Law Foundation* points out in her testimony, the imported Construction Demolition Debris (CDD) is toxic and due to sorting at the site, it is the dregs of that debris being shipped to Maine. The best way for Maine to limit the amount of CDD is to raise the standards for disposal. If we make it more difficult/less profitable to import improperly unsorted CDD then that may help mitigate the current flood we see posing as daily cover. Ms. Pecci sites Vermont as having such high standards that no one is willing to ship CDD there. This is a workaround limiting the import of waste without violating the Commerce Clause.

We do not seek to restrict trade, but neither can we support an outdated mode of operation that requires subsidizing from the government or the importation of out of state trash, to stay afloat.

Waste management facilities are welcome to change their business model to adapt to changing policies regarding waste disposal. But it simply is not fair to make Mainers keep supporting facilities that are not viable unless they keep taking advantage of subsidies or loopholes in the system; it is not fair to make Maine enable other states (which have already banned landfills seemingly without violating the Commerce Clause) to avoid their MSW situations by passing the buck to Maine, and certainly not at the cost of our health and the health of our state.

After all, what is our ultimate goal here? To subsidize these facilities so they can keep going? Or let them phase out or adapt as we move towards more sustainable waste management solutions that protect our people, environment and economy?

If we paid our firefighters only by how many fires they put out, we would soon see fires being set by firefighters. If waste management facilities can only stay in business by accepting more and more MSW/CDD then we are only encouraging them to break the state waste hierarchy to survive.

The time has come to revisit policies that sounded like a good idea at the time but have proven to be bad ideas, like burning trash for energy and closing local dumps; like establishing oversight committees that never attend critical meetings.

However, LD 401/Chapter 400 redefinitions, and even a full ban, are only stopgap measures. We need to get control of unnecessary waste in our society and current solutions do not address the issue that we simply have too much trash and we need to control it at its source: the manufacturers.

This April the Maine Legislature passed a bill that begins to cover these issues:
H.P. 1041 - L.D. 1431 - Resolve, To Support Municipal Recycling Programs
https://legislature.maine.gov/legis/bills/bills_129th/chapters/RESOLVE42.asp

"Sec. 1. Development of product stewardship law for packaging. Resolved: That the Department of Environmental Protection shall develop legislation establishing an extended producer responsibility law for packaging in the State. The proposed legislation must, to the greatest extent practicable, adhere to the product stewardship framework law established in the Maine Revised Statutes, Title 38, chapter 18 ..."

Barry Staples mentions in his testimony that there is plenty of land available in Maine to open up yet more landfills. This comment sent a chill down my spine as I envisioned a chain of JRL's lined up along I95. Maybe Mr. Staples wouldn't mind having a landfill in his town. He would then make more money since the delivery distance would be less.

Mr. Staples and others might benefit from looking at a map of Maine with its "millions of empty acres". I'm not an engineer but even I learned in high school that water seeks the point of least resistance. Maine is covered with thousands of alluvial and permanent streams, rivers, lakes, and snow runoff all heading towards the ocean. I challenge him to find one spot in Maine that would not be affected through the water table by toxic dumps.

The BEP might consider adding to its rules a distance guideline so new facilities could not even apply for licensing within a certain radial distance to existing waste management facilities. This could serve as a quantifiable measurement for Social Justice and Public Determination by simply asking the citizens to vote on new facilities located outside the radius.

If a majority vote is not given, then the Public will have spoken. After all, we are a democratic society for the most part and if the will of the people via their votes is good enough to elect our legislature, then it should be good enough to determine the location of a business.

So I encourage the BEP to consider a rule such as a radial distance from a proposed location and let the citizens of that area determine its licensing.

The Land Use Planning Commission (LUPC) could help determine such a distance since it determines other high impact use permits within the Unorganized Territories. While you are at it, ask them why Argyle, along with Lexington Township, was exempt from the recent Adjacency Rule change.

Both of these townships rose up and united against the LUPC's rezoning attempt and were successful in avoiding what we deemed the harmful action of changing the 1 'road mile' rule to the new Adjacency Rule of 7x2 'as the crow flies' miles. This change would have put Argyle within zoning distance of JRL.

It is important to remember that the Adjacency Rule states "New businesses have to be within (X) miles of **compatible**" businesses. I would argue that multiple landfills within either adjacency rule do not meet the requirement of "compatible".

But there is another solution that fits with Mr. Staples' suggestion:

Reopen local dumps.

The major problem we face in current waste management is that active landfills are simply too big, making it nearly impossible to regulate and making it easier for operators to smuggle in inappropriate content for high profits. Add to that the volume of materials deposited under the guise of daily cover or recycled materials and you have a recipe for toxic vapors and runoff.

A lot of the discussion today has been around the use of CDD or "fines" or tarps and the like as daily cover. If we didn't have such huge landfills to begin with, daily cover would not be an issue. Smaller local facilities could employ local drivers, use local materials that would be appropriate and would allow tighter scrutiny. And even if some non-recyclable materials sneak in the effect would not be nearly as harmful as a large landfill weighing hundreds of thousands of tons.

Just about every town has the right to establish a local dump, or has a defunct dump that is unsuitable for development. **Useful materials are being disposed of in landfills simply**

because there is no expedient method on a large scale to reuse, repurpose or recycle. Charge by the bag instead of raising taxes for curbside pickup so those who are abiding by the waste management hierarchy are not penalized for those who don't.

Portland charges per bag and it has gone a long way to reducing MSW and making people aware of the need for recycling.

<https://time.com/5790656/fixing-recycling-in-america/>

Bring back the local dumps but redesigned for present day methods of waste management. There are towns in Maine who take the initiative to successfully manage their own trash. Using these as models, we can implement solutions that are site specific, giving communities control of their waste management and allowing them to reap the benefits both financial and environmental.

An additional benefit is that people will see how much trash is being deposited in their area which may encourage them to curtail their consumerist behavior and get behind legislation focused on limiting MSW like **H.P. 1041 - L.D. 1431**.

The world has reached a point of critical mass in how we manage MSW from disposable, single-use products and there is a desperate need to educate consumers on the impacts of throwing things 'away'.

There no longer is an 'away'.

My father's mother, Nana, always used to say to me
"Make It Do
Make It last
Use It up
Do without"

I am a child of Depression Era parents who were children of Depression Era parents. We were raised to not waste anything. Today I throw 'away' a kitchen garbage can of trash a month, longer in the winter when I can put it in the garage to freeze. It mainly consists of things I can't recycle like plastic bags. I cook from scratch, ask the butcher at the IGA to put my meat in bags which I use to portion it out and freeze. I raise chickens for eggs that get my scraps and a garden where I put their manure for fertilizer for tomatoes and cukes which I refuse to buy.

I recycle my metal, glass and paper. I have a pizza box from last winter that I'm waiting for cold weather to start my woodstove with. I am tired of having to pay for thoughtless behavior on the part of people who simply don't think that behavior impacts everyone.

The rampant consumerism of our society has reached a point of critical mass. It makes me sad to listen to opposing testifiers at this hearing who are scrambling for reasons to continue the work they do. It makes me sad because I hear the fatigue in their voices. I hear the fear of losing their jobs. I hear the guilt of having to justify an existence that relies on corrupt practices that injures the very land they claim to love.

After high school I lived on the west coast between California and Washington State where I saw first hand what destruction "progress" does. Where money is the scale against which all values are weighed.

I came home to Maine to escape that progress only to find it knocking at my door. JRL and its minions have held sway for too long.

I asked Paula Clark when did it become legal for trash to be imported into Maine?

Here is her reply (red emphasis is mine):

When did it become legal for trash to be imported into Maine? Was there a specific time when facilities were licensed? Or, like most things, it falls under the "that's the way we've always done it" category? ***There was not a date or a specific action taken to make it "legal for trash to be imported into Maine". In part in response to concerns about potential proposals for new landfills in Maine for the acceptance of out-of-state waste, the Maine Legislature passed a comprehensive solid waste management law in the late 1980s.***

In part, this law included the concepts of public benefit determinations and state owned disposal facilities. Although historically waste import/export had been considered in the context of the Interstate Commerce Clause (precluding the prohibition of such import/export), the State, as a "market participant" (i.e. owner of a landfill) would be able to choose whether or not to accept out-of-state wastes, just as other landfill owners do. Waste disposal facilities were first licensed in the early 1980s under the first solid waste rules. These rules were first revised in 1989 and have been updated on numerous occasions since then.

So once again we are presented with the Commerce Clause. Landfills in Maine work under **an assumption that it is legal** when the SCOTUS determination in *Maine v. Taylor* states that the Commerce Clause

"...does not elevate free trade above all other values."

And

"...the commerce clause cannot be read as requiring the State of Maine to sit idly by and wait until potentially irreversible environmental damage has occurred."

The State of Maine can enact an embargo on out of state waste importation **now** until adequate testing is created determining the trash entering into the state is of use generating power or is clean of toxins to be used in landfills.

And

"...it retains broad regulatory authority to protect the health and safety of its citizens and the integrity of its natural resources."

"The evidence in this case amply supports the District Court's findings that Maine's ban on the importation of live baitfish serves legitimate local purposes that could not adequately be served by available nondiscriminatory alternatives."

And

"More importantly, we agree with the District Court that the "abstract possibility," id., at 398, of developing acceptable testing procedures, particularly when there is no assurance as to their effectiveness, does not make those procedures an "[a]vailabl[e] . . . nondiscriminatory alternativ[e]," Hunt, 432 U.S., at 353 , for purpose of the Commerce Clause.

A State must make reasonable efforts to avoid restraining the free flow of commerce across its borders, but it is not required to develop new and unproven means of protection at an uncertain cost."

So fight loopholes with loopholes. Until waste facilities come up with a form of testing the safety and usefulness of MSW/CDD imported into the state, the BEP can change the rules to prohibit "untested" MSW/CDD from crossing state borders.

The BEP should take a page from Vermont's book and make the rules for importing waste into the state of Maine so restrictive that it becomes unprofitable. Importing waste rules should have at least the same strength as those on the importing of baitfish.

In closing I would like to finish the saga of *Maine v Taylor*. For those who think eliminating out of state trash imports will ruin their business such as Mr. Charles Eaton and Mr. Barry Staples; my father went on to build the largest wholesale bait business in Maine. He was the only bait dealer who successfully bred golden shiners in captivity. So far from ruining his business, the banning of importing baitfish actually spurred him to do something no one else had done.

But *Taylor's Bait* did more than sell worms and crawlers. We sold to mom & pop stores all across the state from Sebago Lake to Caribou, from Machias to Rangeley. The stores that carried our bait would tell us that before they started carrying our bait they would be lucky to have a customer on the weekends before 8 am. And then just to buy creamer for their coffee and cigarettes.

Once the 3 foot blaze orange signs went up they would have customers waiting at 6am to buy their bait, beer, food, gas and other essentials. While living on the west coast I would ask people who said they'd been to Maine if they had seen our signs; they all said 'yes'. Now that's brand recognition.

Mainers are very creative when challenged. I'm sure something will fill the void left by the loss of vast amounts of garbage imported into our beautiful state. Something that won't contaminate our land, our water, our people, our souls. Something we can be proud of, like we were of *Taylor's Bait*.

I hope that this information will prove useful in your future deliberations on defining what is out of state trash, giving local communities the power to control or phase out inefficient waste facilities and hopefully lead to banning all trash brought into the state of Maine.

Respectfully,
Kat Taylor
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