**07-105 STATE PLANNING OFFICE (obsolete; the rule chapter has been reassigned to*****19 - Department of Economic and Community Development****)*

**Chapter 450: SITING CRITERIA FOR SOLID WASTE DISPOSAL FACILITIES**

**SUMMARY**: This rule establishes siting criteria for solid waste landfills and incineration facilities.

**SECTION 1. PREAMBLE**

 This rule establishes criteria to guide the selection of sites for solid waste landfills and incineration facilities. By excluding from consideration land areas determined to be unsuited for waste disposal activities and by requiring the screening of non-excluded land areas for preferred attributes, the criteria provide a rational basis for identifying locations that are potentially suitable for such facilities and therefore deserving of further investigation. Our goal in adopting these criteria is to direct site screening activities to the investigation and selection of land areas that appear to be suitable and appropriate for these facilities.

 The declarations of policy set forth by the Maine Legislature in 38 M.R.S.A., sections 1302 and 2101, are hereby adopted as the policy basis for this rule. The 1989 Waste Management Law, 38 M.R.S.A., Section 2101 establishes a hierarchy of solid waste management techniques, with the highest priorities assigned to waste reduction, reuse and recycling. Incineration and land disposal also are identified as components of an integrated system of waste management, but are assigned a lower priority. This rule is not intended to supplant the hierarchy established under Section 2101 by creating a preference for land disposal, nor is it intended to preclude or discourage the development of new technologies that reduce, reuse, and recycle wastes presently subject to incineration and land disposal. We recognize that, in the future, it may be possible to utilize waste now disposed and that new methods and designs for disposing of waste may be developed. We also recognize that the development of sites located in accordance with this rule will proceed only as necessary to meet capacity needs identified in the Maine Waste Management and Recycling Plan (State Plan) as adopted and revised at least every two years under 38 M.R.S.A., section 2122.

 As required under 38 M.R.S.A., section 2153. the siting criteria are based on the following factors:

 A. A site may be located anywhere within the State and need not be in proximity to the site of waste generation; .

 A-1. Agency-owned sites for the disposal of special waste may not be located within a 5-mile radius of an existing commercial special waste landfill or a commercial incineration facility.

 B. To the extent possible, a site shell must be located in proximity to the transportation systems, including existing or potential railroad systems, that are used to convey waste to the site or to convey residuals and materials to be recycled from the site;

 C. The capacity or size of a site must be consistent with the projected demand as determined in the state plan;

 D. A site and its considered use must be consistent with and actively support, other waste management objectives, including waste reduction and recycling;

 E. The projected price for site development, construction and operation must be fair and reasonable;

 F. A site must meet preliminary environmental standards developed jointly by the Department of Environmental Protection ("DEP") and the Maine Land Use Planning Commission ("LUPC"), including ground water standards, geological standards, and standards to protect public drinking water supplies ; and

 **NOTE**. The preliminary environmental standards are attached in Appendix A, but are not part of the rule; they are included for informational purposes only. The criteria of this rule are based on the preliminary environmental standards, but do not incorporate the standards verbatim. Criteria based on the preliminary standards have been included in the rule to the extent amenable to consideration without duplicating the technical review role of the DEP and LUPC.

 G. Existing uses on adjacent properties, including public or private schools, may not be in significant conflict with or significantly jeopardized by the use of a site.

 Based on the above factors, we have adopted exclusion criteria and preference criteria. The exclusion criteria reflect minimum acceptable siting practice and are intended to be applied as minimum standards that must be met by all solid waste disposal facilities. The preference criteria are intended to direct site investigation activities away from areas that are marginally acceptable and to areas with attributes considered favorable to the siting of solid waste disposal facilities. The preference criteria are to be used to evaluate or compare non-excluded lands, but are not intended to be applied as minimum standards.

 We recognize that no site is likely to meet each of the preference criteria and that some of the preference criteria may be accorded more importance than others. As directed under section 2153. the siting criteria address several waste management factors (e.g. cost, compatibility with adjacent land uses, environmental standards) that bear on the site selection process. Accordingly, application of the criteria requires the weighing of the relative importance of sometimes conflicting environmental, technical performance, social and economic factors. This rule will, as a practical matter, lead to the selection of sites that reflect this balancing of environmental and socioeconomic factors.

 Because many of the criteria of this rule are based on existing environmental standards, sites selected using these criteria are presumed to have an increased likelihood of obtaining necessary regulatory permits and of being developed in a timely manner. However, compliance with the criteria does not guarantee that a site will meet regulatory standards. Application of the criteria is a preliminary process, providing only a rational basis for identifying sites that appear to be appropriate areas in which to conduct the intensive studies required for regulatory review. The final decision on environmental suitability of a proposed site rests with the BEP and other state or federal regulatory agencies with jurisdiction over solid waste disposal activities. Following selection of a site and before beginning construction, all applicable permits must be obtained from these agencies and from the host municipality to the extent required under municipal ordinances adopted in accordance with 38 M.R.S.A., section 1310-U. In particular, the BEP has adopted detailed Solid Waste Management Rules "designed to minimize pollution of the state's air, land and surface and ground water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies, and protect the public health and safety." All solid waste disposal facilities must be engineered, constructed, operated, and closed in accordance with these comprehensive rules.

 The Facility Siting Board recognizes that public involvement in the identification and selection of sites for solid waste disposal facilities will improve decision-making by increasing understanding of waste management problems, options, risks and opportunities. Therefore, it is the policy of the Facility Siting Board to promote public participation and information exchange in all proceedings under this rule.

 This rule does not impose a particular method of public involvement as no single approach to public involvement may be generally applicable. The particular circumstances of a given siting process should guide the selection appropriate mechanisms in addition to the public hearings required under 38 M.R.S.A. sections 2154.

**SECTION 2. DEFINITIONS**

 The following terms, as used in this Chapter, shall have the following meanings:

 A. **Agency**. "Agency" means the Department of Economic and Community Development.

 B. **Agricultural Waste**. "Agricultural waste" means wastes that result from the growing of vegetables, fruit, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay, and farm woodlot products including Christmas trees. The term includes waste pesticides when generated by a farmer in his or her own use, provided that he or she triple rinses each emptied pesticide container in accordance with DEP rules and disposes of the pesticide in a manner consistent with the disposal instructions on the pesticide label.

 C. **BEP**. "BEP" means the Maine Board of Environmental Protection.

 D. **Biomedical Waste**. "Biomedical waste", as defined in 38 M.R.S.A., section 1303-C, subsection 1-A, means waste that may contain human pathogens of sufficient virulence and in sufficient concentration that exposure to it by a susceptible human host could result in disease or that may contain cytotoxic chemicals used in medical treatment.

 **NOTE**. Under Maine law, biomedical waste is excluded from the definition of solid waste (see subsection WW of this section) and is regulated separately from solid waste. The handling, treatment and disposal of biomedical waste is governed by Chapter 900 of the DEP regulations.

 E. **Class I Wetland**. “Class I wetland" means a:

 1. **Coastal wetland**

 2. **Freshwater wetland** with one or more of the following characteristics:

 a. contains endangered or threatened plant species on the Official List of Endangered and Threatened Plants of the State of Maine, based on documentation of current or past observations of occurrence;

 b. contains a palustrine (freshwater wetland) natural community listed on the Maine Natural Community Classification and ranked S1 or S2 (20 or fewer documented occurrences in Maine); or

 c. contains significant wildlife habitat.

 F. **Class II Wetland**. "Class II wetland" means a freshwater wetland that does not contain any characteristics of a Class I wetland, but does contain one or more of the following characteristics:

 1. Is located within 250 feet of the normal high water line of a coastal wetland;

 2. Is located within 250 feet of the normal high water line, and within the same watershed, of any lake or pond classified as GPA under 38 M.R.S.A., §465-A;

 3. Is located within 250 feet of the normal high water line, and is contiguous to, a river, stream or brook, including any impoundments not classified as GPA:

 **NOTE**. More than one classification may apply to the same wetland, depending on the distance to a water body.

 4. Contains at least 20,000 square feet of aquatic vegetation emergent marsh vegetation or open water during most of the growing season in most years;

 5. Is a bog consisting of peatland dominated by ericaceous shrubs (heath family), sedges and sphagnum moss and usually having a saturated water regime, or

 6. Is within the 100-year floodplain of a river, stream or brook.

 G. **Class III Wetland**. "Class III wetland" means a freshwater wetland that does not have any of the characteristics of a Class I or Class II wetlands

 **NOTE**. Examples of typical Class III wetlands include wet meadows and wooded swamps that are not contiguous to any water bodies.

 H. **Coastal Wetlands**. "Coastal wetlands", as defined in 38 M.R.S.A., section 480-B(2), means all tidal and subtidal lands, including all areas below an identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

 I. **Commercial Solid Waste Disposal Facility**. "Commercial solid waste disposal facility" means a privately-owned solid waste disposal facility that accepts solid waste from another for consideration and is used for the incineration or landfilling of solid waste generated by persons who do not own or operate the facility. The term does not include a solid waste disposal facility owned, controlled, operated or used exclusively by:

 1. A public waste disposal corporation formed under 38 M.R.S.A., section 1304-B, subsection 5;

 2. A municipality acting under 38 M.R.S.A., section 1305;

 3. A refuse disposal district formed under the *Maine Refuse Disposal District Enabling Act*, 38 M.R.S.A., section 1701 et. *et seq*.;

 4. The Agency.

 5. The person or entity generating the solid waste disposed of at the facility, except that the facility may accept, on a nonprofit basis, no more than 15% of all solid waste accepted on an annual average that is not generated by the owner. A solid waste disposal facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by the operation of this paragraph; or

 6. A private corporation that accepts material-separated, refuse-derived fuel as a supplemental fuel and does not otherwise burn waste other than its own.

 J. **Community Water Supply**. “Community water supply” means a public drinking water supply that is operated by a water utility as defined in 35-A M.R.S.A., section 102, subsection 22, and that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

 K. **Construction and Demolition Debris**. "Construction and demolition debris", as defined in 38 M.R.S.A., Section 1303-C(8), means debris resulting from construction, remodeling, repair and demolition of structures. It excludes asbestos and other special wastes.

 L. **DEP**. "DEP" means the Maine Department of Environmental Protection.

 M. **Disposal**. "Disposal" means the discharge, deposit, dumping, incineration, spilling, leaking or placing of any solid waste, refuse-derived fuel or sludge into or on any land, air or water so that the solid waste or sludge or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters. The term "disposal" does not include "utilization" of solid waste as defined in this section and regulated under Chapters 408, 409 and 567 of the DEP regulations.

 N. **Exclusion Criteria** "Exclusion criteria" means those siting criteria that exclude land area from consideration as a site for a solid waste disposal facility.

 O. **Facility Site**. "Facility site" means any developed land area of a solid waste disposal facility, whether used for disposal or not, including roads, drainage ways, structures, parking lots, and handling sites.

 P. **Fault Area**. Fault area means an area of fractures along which rocks or soils on one side have been displaced with respect to the other side.

 Q. **Federal Park**. See "Park", this section.

 R. **Floodplain**. “Floodplain" means any lowland and relatively flat area adjoining inland and coastal waters, including flood prone areas of offshore islands, that is naturally subject to flooding at high water.

 1. **100-Year Floodplain**. Any floodplain that is inundated by a flood having a 1 percent or greater chance of recurrence in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average.

 2. **500-Year Floodplain**. Any floodplain that is inundated by a flood having a 0.2 percent or greater chance of recurrence in any year or a .flood of a magnitude equaled or exceeded once in 500 years on the average.

 S. **Fragile Mountain Area**. "Fragile mountain area", as defined in 38 M.R.S.A., section 480-B(3), means areas above 2700 feet in elevation from mean sea level.

 T. **Freshwater Wetlands**. "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas that are:

 1. inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and that under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and,

 2. not considered part of a great pond, coastal wetland, river, stream or brook.

 These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

 U. **Great Pond**. "Great pond" means any inland body of water that in a natural state has a surface area in excess of 10 acres and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres.

 V. **Handling Site**. "Handling site" means any land area, including structures contained within a facility site, that will be used to store, transfer, collect, separate, salvage, process, recycle, reduce, recover, incinerate, dispose of or treat handle solid waste.

 W. **Hazardous Waste**. “Hazardous waste", as defined in 38 M.R.S.A., section 1303-C, subsection 15, means a waste substance or material, in any physical state, designated as hazardous by the Board under 38 M.R.S.A, section 1319-0. It does not include waste resulting from normal household or agricultural activities.

 **NOTE**. Under Maine law. hazardous waste is excluded from the definition of solid waste (see subsection WW of this section) and are regulated separately from solid waste. The handling, treatment and disposal of hazardous waste is governed by Chapters 800 through 857 of the DEP regulations.

 X. **Incineration Facility**. "Incineration facility", as defined in 38 M.R.S.A., section 1303-C(16) means a facility where municipal solid waste or refuse-derived fuel is disposed of through combustion, including combustion for the generation of heat, steam or electricity.

 Y. **Inert Fill**. "Inert fill", as defined in 38 M.R.S.A., section 1303-C(17), means clean soil material, rocks, bricks, and cured concrete, that are not mixed with other waste, and that are not derived from an ore mining activity.

 Z. **Land Clearing Debris**. "Land clearing debris", as defined in 38 M.R.S.A., section 1303‑C(18), means solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil material and rocks.

 AA. **Landscape Refuse**. "Landscape refuse" means grass clippings, leaves, prunings and other similar debris generated from lawn care and gardening.

 BB. **Local Park**. See “Park". this section.

 CC. **Locally Designated Scenic Locations**. "Locally designated scenic locations" means any location that has been designated by the municipality for its scenic quality, that is open for public use and that:

 1. has fixed boundaries;

 2. is owned in fee by municipality, is accessible by virtue of a public easement, or is identified and described in a local comprehensive plan; and

 3. is regulated in a zoning or land use ordinance enacted by the municipality to protect the designated location.

 DD. **LUPC**. "LUPC" means the Maine Land Use Planning Commission.

 EE. **Material-Separated, Refuse-Derived Fuel**. "Material-separated, refuse-derived fuel", as defined in 38 M.R.S.A., section 1303-C, subsection 19-A means a binder-enhanced, pelletized, solid fuel product made from the combustible fraction of a municipal solid waste stream that has been processed to remove the recyclable material before combustion. The product may not contain more than 6% by weight of plastic, metal, glass or food waste. In addition. the production of material-separated, refuse derived fuel may not exceed 40% by weight of the total municipal solid waste stream from which it was derived.

 FF. **Municipal Solid Waste**. "Municipal solid waste" means solid waste emanating from domestic and normal commercial sources.

 GG. **Normal High Water Line**. “Normal high water line" means that line along the shore of great pond, river stream, or brook or other non-tidal body of water which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land.

 HH. **Outstanding River Segment**. "Outstanding river segment" means those rivers or river segments and designated tributaries, that because of their outstanding natural and recreational values were classified as "A" or "B" in the 1982 Maine Rivers Study, prepared by the Maine Department of Conservation in conjunction with the National Park Service.

 **NOTE**: Class "A" rivers include those rivers or river segments identified in the 1982 Maine Rivers Study, that possess six resource values with regional, statewide or greater than statewide significance in a specific resource category or that possess two or more resource values that are recognized to be some of the state's most significant in a given resource category. Included in this latter category are rivers providing important habitat for sea run salmon. Class "B" rivers include those rivers or river segments identified in the 1982 Maine Rivers Study that possess four or five resource values with regional, statewide or greater than statewide significance in a specific resource category or that possess one resource value that is recognized to be one of the state's most significant in a given resource category.

 II. **Park**

 1. **Park, Federal**. "Federal park” means a tract of land designated by a federal agency for use by the public for active or passive recreation including historic sites. Federal parks include tracts of land owned in fee, or lesser interest, by the National Park Service for use by the general public for active or passive recreation or for open space preservation, including tracts of land as yet undeveloped.

 2. **Park, Local**. "Local park” means a tract of land that is:

 a. designated preserved in perpetuity by a municipality for use by the public for active or passive recreation including historic sites; and that:

 b. has fixed boundaries; and

 c. is owned in fee by the municipality or is accessible by virtue of a public easement.

 3. **Park, State**. "State park” means a tract of land designated by a state agency for use by the public for active or passive recreation including historic sites. State parks include tracts of land owned in fee, or lesser interest, by the state Bureau of Parks and Recreation for use by the general public for active or passive recreation or for open space preservation, including tracts of land as yet undeveloped, but excluding boat facilities developed by the Bureau (or with Bureau assistance) outside of state parks.

 The term "park" does not include federal, state or local roadside rest areas or information centers,

 JJ. **Preference Criteria**. "Preference criteria” means those siting criteria that give preference to land areas possessing attributes favorable to the siting of a solid waste disposal facility. Preference criteria are used to evaluate the suitability of land area that is not eliminated from consideration under the exclusion criteria.

 KK. **Primary Viewing Locations**. “Primary viewing locations” means parks; the Appalachian Trail; the ocean; coastal islands; the shores of the ocean and coastal islands open to the public; great ponds; the shores of great ponds and great pond islands open to the public; outstanding river segments; those highway stretches, including roadside rest areas, designated by the Maine Department of Transportation as a scenic highway; locally designated scenic locations; and the interstate highway system including roadside rest areas.

 LL. **Private Drinking Water Supply**. "Private drinking water supply" means any well, spring or surface water intake that is used to supply water for human or domestic animal consumption at least 30 days out of the year and that is not a public drinking water supply.

 MM. **Private Preserve**. "Private preserve" means lands subject to a conservation easement as defined in 33 M.R.S.A., section 476, or lands held in fee for the express purpose of its conservation, historic preservation and/or recreation.

 NN. **Public Drinking Water Supply**. "Public drinking water supply" means any well, spring or surface water intake used to furnish water for human consumption, if such system has at least 15 service connections, regularly serves an average of 25 individuals daily at least 30 days out of the year, or supplies bottled water for sale,

 OO. **Recycling**. "Recycling" as defined in 38 M.R.S.A., section 11303-C(22) means the collection, separation, recovery and sale or reuse of materials that would otherwise be disposed of or processed as waste or the mechanized separation and treatment of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity.

 PP. **Refuse Derived Fuel**. "Refuse derived fuel" as defined in M.R.S.A., section T303-C(23), means municipal solid waste that has been processed prior to combustion to increase the heat input value of the waste.

 QQ. **Research Lands**. "Research lands” means those lands held in fee by an established college or university that have been and continue to be used for test plot research by the college or university.

 RR. **River, Stream, or Brook**. "River, stream or brook", as defined in 38 M.R.S.A., section 480-B(9), means a channel between defined banks including the floodway and associated flood plain wetlands where the channel is created by the action of surface water and characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of top soil containing water-borne deposits on exposed soil, parent material or bedrock. This term includes any “intermittent river, stream or brook” and any “perennial river, stream or brook”.

 1. **Intermittent River, Stream or Brook**. "Intermittent river, stream or brook" means a river, stream or brook that does not flow in all 12 months of the year.

 2. **Perennial River, Stream or Brook**. "Perennial river, stream or brook" means a river, stream or brook that generally carries a flow of water all year round.

 SS. **Sand and Gravel Deposit**. "Sand and gravel deposit" means a surficial geological formation such as an esker, outwash plain, glaciomarine delta, kame, stratified moraine or other stratified deposits commonly consisting of sand and/or gravel.

 TT. **Septage**. "Septage" as defined in 38 M.R.S.A., section 1303-C(27), means waste, refuse, effluent, sludge and other materials from septic tanks, cesspools or any other similar facilities.

 UU. **Significant Sand and Gravel Aquifer**. Significant sand and gravel aquifer", as defined in 38 M.R.S.A., section 1310-N(2-A)(A), means a porous formation of ice-contact and glacial outwash sand and gravel that contains significant recoverable quantities of water which are likely to provide drinking water supplies.

 VV. **Significant Wildlife Habitat**. "Significant wildlife habitat" means any of the following areas, whether or not mapped; habitat for species appearing on the official state or federal lists of endangered or threatened species where there has been evidence of the occurrence of the species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; high and moderate value waterfowl and wading bird habitat, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; and shorebird nesting, feeding and staging areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife.

 WW. **Solid Waste**. "Solid waste", means useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including, but not limited to, rubbish, garbage, refuse-derived fuel, scrap materials junk, refuse, inert fill material, landscape refuse, municipal solid waste and special waste, but does not include agricultural wastes returned to the soil as fertilizers, hazardous waste, biomedical waste or septage. The fact that a solid waste or constituent of the waste may have value or other use or may be sold or exchanged does not exclude it from this definition.

 XX. **Solid Waste Boundary**. "Solid waste boundary” means the outermost limit of the solid waste (projected on a horizontal plane) as it would exist when the solid waste disposal facility reaches its permitted capacity.

 **NOTE**: The area encompassed by the solid waste boundary is commonly called the "landfill footprint".

 YY. **Solid Waste Disposal Facility**. "Solid waste disposal facility", means any land area, structure, location, equipment, or combination of them used for the incineration or landfilling of solid waste, except that the following facilities are not solid waste disposal facilities:

 1. **Generator-owned Combustion Facilities**. Any land area, structure, location, equipment, or combination of them that employs controlled combustion to dispose of waste generated exclusively by a commercial institutional, or industrial establishment that owns the facility;

 2. **Kilns and Boilers**. Lime kilns, wood chip, bark and hogged fuel boilers; Kraft recovery boilers and sulfite process recovery boilers, that burn solid waste generated exclusively at the facility;

 3. **Burning of Material-separated, Refuse-derived Fuel**. Any facility that burns material-separated. refuse-derived fuel.

 4. **Burning of Yard Waste by Homeowners**. A land area or structure used by its residential owner or lessee solely to burn leaves, brush, deadwood, and tree cuttings accrued from normal maintenance of their residential property, when such burning is permitted under 38 M.R.S.A., section 599, subsection 3;

 5. **Burning of Trash by Homeowners**. A land area or structure used by its residential owner or lessee solely to burn highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes, when such burning is permitted under 38 M.R.S.A., section 599, subsection 3;

 6. **Transfer Stations**. Any facility constructed and managed for the storage or processing and placement of solid waste in large containers or vehicles for movement to another waste facility;

 7. **Recycling Facilities, Composting Facilities, Other Waste Processing Facilities and Landspreading Sites**. Any recycling facility composting facility, landspreading site or other processing facility or utilization facility as defined and regulated by DEP under Chapters 567, 408 and 409 of its regulations; or

 8. **Burning of Paper and Cardboard**. Until June 30. 1993, an industrial boiler that burns mixed paper, corrugated cardboard or office paper to generate heat, steam or electricity if the conditions set forth in 38 M.R.S.A .. section 1303-C, subsection 31, paragraphs (1) through (4) are met.

 ZZ. **Solid Waste Landfill**. "Solid waste landfill", as defined means a waste disposal facility for the disposal of solid waste on or in land. This term does not include landspreading sites used in programs approved by the Department.

 AAA. Special Waste. "Special waste”, as defined in 38 M.R.S.A., section 1303-C(34), means any solid waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

 1. Oil, coal, wood and multi-fuel boiler and incinerator ash;

 2. Industrial and industrial process waste;

 3. Waste water treatment plant sludge, paper mill sludge and other sludge waste;

 4. Debris and residuals from nonhazardous chemical spills and cleanup of those spills;

 5. Contaminated soils and dredge spoils;

 6. Asbestos and asbestos-containing waste;

 7. Sand blast grit and non-liquid paint waste;

 8. High and low pH waste;

 9. Spent filter media and residue; and

 10. Other waste designated by the board (BEP), by rule.

 BBB. **State Park**. See "Park", this section.

 CCC. **State Plan**. "State plan" means the State Waste Management and Recycling Plan adopted by the Agency pursuant to Title 38, chapter 24, subchapter 11.

 DDD. **Utilization**. "Utilization" means the controlled land application of materials (including but not limited to pulp and paper mill wastewater treatment plant sludge, food and fiber processing wastes.. municipal wastewater sludge, vegetable and fish processing residuals, and ash from wood boilers) at a rate commensurate with the nutritional needs of the crop to be grown and the assimilative capacity of the soil, usually requiring harvesting of the crop to compensate for the added nutrients. Some utilization programs may also have the improvement of soil conditions as a primary goal.

 EEE. **Waste Facility Boundary**. "Waste facility boundary” means the outermost limit of the solid waste disposal facility, whether used for disposal or not. It includes the area encompassed by solid waste boundary plus all associated structures, storage areas, equipment or land area used to handle solid waste. The access road is not included within the waste facility boundary.

 FFF. **Wetland**. See definitions for Class I Wetland, Class II Wetland, Class III Wetland, Coastal Wetlands and Freshwater Wetlands.

 GGG. **Wildlife Management Area**. "Wildlife management area", as defined in 12 M.R.S.A., section 7001-A(44), means any tract of land or body of water owned or leased by the Department of Inland Fisheries and Wildlife (IFW), for the purposes of wildlife management as defined in subsection 43 or created by an Act of the Legislature with the landowner's permission, and subject to the IFW) commissioner's authority under 12 M.R.S.A., section 7653.

 HHH. **Wood Wastes**. "Wood wastes", as defined in 38 M.R.S.A., section 1303-C(46), means brush, stumps, lumber, bark, woodchips, shavings, slabs, edgings, slash and sawdust, which are not mixed with other waste.

**SECTION 3. APPLICABILITY**

 A. **Agency Owned and operated Facilities**. The Facility Siting Board is responsible for making all final decisions on the choice of specific sites for solid waste disposal facilities owned, operated or controlled by the Agency. Prior to submitting a specific site to the DEP for review, the Facility Siting Board must find that the site meets the criteria set forth in this chapter.

 B. **Non-Agency Facilities**. Prior to obtaining approval from the BEP, any municipality, regional association or other entity choosing to develop a new or expanded solid waste disposal facility must demonstrate to the Agency that, among other things, the proposed facility meets the criteria set forth in this chapter. The procedure for obtaining Agency review and approval is set forth in chapter 410 of its regulations.

 C. **Exempt Facilities**

 1. **Previously-approved Facilities**. Solid waste disposal facilities approved by the BEP or the Agency prior to the effective date of this chapter.

 2. **Certain Expansions**. An expansion of a commercial solid waste disposal facility or a solid waste disposal facility owned by a municipality or a regional association or a sanitary district created under 38 M.R.S.A., section 1061 et. seq. or by special act of the Legislature, if the facility was licensed and in existence as of October 1, 1989, and at the time of application for the expansion.

 3. **Inert Fill, Construction Debris, Land Clearing Debris and Wood Wastes**. Solid waste disposal facilities that accept only inert fill, construction and demolition debris, land clearing debris and wood wastes provided the landfill footprint encompasses less than 6 acres,

 **NOTE**. In determining whether the landfill footprint encompasses less than 6 acres, the Agency may combine non-contiguous land areas if the development and operation of the non-contiguous land areas exhibits characteristics of a unified approach. method or effect.

 4. **Generator-owned Facilities**. Solid waste disposal facilities used exclusively for the disposal of waste generated by the owner of the facility except that the facility may accept on a nonprofit basis, no .more than 15% of all solid waste accepted on an annual average which is not generated by the owner. Notwithstanding this section a solid waste disposal facility receiving ash resulting from the combustion of municipal solid waste or fuel derived from municipal solid waste is not exempt unless a completed application for the facility has been accepted by the Department prior to July 1, 1989.

 5. **Facilities Exempt from Regulation by the DEP**. Any solid waste disposal facility that is exempt from regulation by the DEP under its Solid Waste Management Rules, Chapters 400 through 409.

**SECTION 4. SITING CRITERIA FOR ALL SOLID WASTE DISPOSAL FACILTIES**

 The criteria set forth in this section apply to the siting of incineration facilities and solid waste landfills.

 A. **Exclusion Criteria**

 1. **Groundwater Protection**

 Exclude the waste facility boundary from areas that overlie a significant sand and gravel aquifer areas identified as sand and gravel deposits, and areas zoned Aquifer Protection Subdistricts (P-AR) by LUPC.

 2. **Surface Water Protection**

 a. Exclude the waste facility boundary from areas within 300 feet of the normal high water line of a great pond and from areas zoned Great Pond Protection Subdistrict (P-GP) by LUPC.

 b. Exclude the solid waste boundary of a landfill and the handling site of an incineration facility from areas within:

 i. the watershed of a rivers. stream or brook classified AA under 38 M.R.S.A, sections 467 or 468;

 ii. 300 feet of the normal high water line of a river, stream or brook classified A or SA under 38 M.R.S.A., sections 467, 468 and 469, and

 iii. 100 feet of the normal high water line of all other perennial rivers, streams or brooks.

 c. Exclude the solid waste boundary from areas zoned Shoreland Protection Subdistrict 1 (P-SL1) by LUPC.

 d. Exclude the waste facility boundary from areas within 300 feet of a Class I wetland and from areas zoned Wetland Protection Subdistrict (P-WL) by LUPC.

 e. Exclude the handling site from the 100-year floodplain.

 3. **Protection of Community Water Supplies**

 Exclude the waste facility boundary from areas within 1000 feet of community water supply.

 4. **Geology**

 a. Exclude the waste facility site from areas zoned Soils and Geology Protection Subdistricts (P-SG) by LUPC.

 b. Exclude the landfill handling site from areas that overlie a mapped or obvious unstable area where mass movement of earth materials such as landslides, rockfalls, mudslides, slumps, earth flows, subsidence or debris flows have occurred during Holocene time.

 5. **Protection of Wildlife**

 a. Exclude the facility site from wildlife management areas owned and administered by the Maine Department of Inland Fisheries and Wildlife.

 b. Exclude the facility site from state or federally designated wildlife sanctuaries, refuges or preserves.

 c. Exclude the facility site from areas of known significant wildlife habitat as determined by the Maine Department of Inland Fisheries and Wildlife, or the Maine Department of Marine Resources, whether and from fragile mountain areas, critical areas identified by the State Planning Office and any area zoned as a Fish and Wildlife Protection Subdistrict (P-FW), Mountain Area Protection Subdistrict (P-MA), or Unusual Area Protection Subdistrict, (P-UA) by LUPC.

 6. **Protection of Parks and Other Natural Areas**

 a. Exclude the facility site from areas within 1000 feet of the boundaries of state parks including Baxter State Park and the Allagash Wilderness Waterway, federal parks including the Appalachian Trail, and local parks and public lands acquired with Land for Maine's Future Funds.

 b. Exclude the facility site from areas within 1000 feet of outstanding river segments and any river segment within an area zoned Recreation Protection Subdistrict (P-RR) or Resource Plan Protection Subdistrict; (P-RP) by LUPC.

 c. Exclude the facility site from areas within:

 i. 1320 feet (1/4 mile) of the normal high water line of a Management Class 1, 2 or 4 lake identified by LUPC; and

 ii. 2640 feet (1/2 mile) of the normal high water line of a Management Class 6 identified by LUPC.

 d. Exclude the facility site from forest and wilderness lands owned and administered by the federal government.

 e. Exclude the facility site from public reserved lands managed by the Maine Department of Conservation, Bureau of Public Lands, under 12 M.R.S.A., section 585.

 f. Exclude the facility site from private preserves held by a land trust or other private, non-profit organization qualifying for charitable tax-exempt status with the Internal Revenue Service.

 7. **Protection of Archaeological and Historical Resources**. Exclude the facility site from:

 a. archaeological and historic sites, properties or districts listed in the National Register of Historic Places or deemed eligible by the Maine Historic Preservation Commission for listing in the National Register or on the Maine Historic Resource Inventory;

 b. other areas that are established by qualified testimony as being of historical significance;

 c. lands zoned Unusual Area Protection Subdistrict (P-UA) by LUPC.

 8. **Other**

 For Agency-owned facilities used for the landfilling or incineration of special waste, exclude the facility site from areas within 5 miles of a commercial solid waste disposal facility that is an incineration facility or that is a landfill approved for the disposal of special waste.

 B. **Preference Criteria**

 1. **Groundwater Protection**

 Give preference to areas where the waste facility boundary can be located greater than 300 feet from a significant sand and gravel aquifers and other sand and gravel deposits.

 2. **Surface Water Protection**

 a. Give preference to areas where the waste facility site can be located greater than 1000 feet from the normal high water line of a Great Pond.

 b. When within the watershed of a river, stream or brook classified as Glass A, or SA under 38 M.R.S.A., sections 467, 468 and 469, give preference to areas where the solid waste boundary of a landfill or handling site of an incineration facility can be located greater than 1000 feet from the normal high water line of the a Class A or SA surface water. Within all other non-excluded watersheds, give preference to areas where the solid waste boundary of a landfill footprint or the handling site of an incineration facility can be located greater than 300 feet from the normal high water line of perennial rivers, streams or brooks.

 c. Give preference to areas where the waste facility boundary can be located without requiring the diversion, channelization or piping of an intermittent river. stream or brook.

 d. Give preference to areas where the solid waste boundary of a landfill or handling site of an incineration facility can be located greater than 100 feet from the seasonal high water mark of an intermittent river, stream or brook.

 e. Give preference to areas where the waste facility boundary can be located greater than 1000 feet from a Class I wetland.

 f. Give preference to areas sites where the waste facility boundary can be located greater than 1000 feet from areas zoned Wetlands Protection Subdistrict (P-WL) by LUPC.

 g. Give preference to areas sites that minimize the need to fill or otherwise alter Class II and Class III wetlands.

 **NOTE**. The DEP regulations governing landfills create a preference for relatively impermeable soils and therefore lead to sites that are likely at support wetlands. The wetland protection regulations administered by the EPA and U. S. Army Corps of Engineers create a preference for sites where no wetland disturbance or filling would occur.

 h. Give preference to areas where the handling site can be located beyond the 500 year floodplain.

 3. **Geology**

 a. Give preference to areas where the waste facility boundary can be located greater than 200 feet from a fault area.

 b. Give preference to areas where the solid waste boundary of a landfill or facility site of an incineration facility encompass land having an existing average slope of 8 percent or less.

 4. **Protection of Wildlife**

 a. Give preference to areas where the facility site can be located greater than 1000 feet from wildlife management areas owned and administered by the Maine Department of Inland Fisheries and Wildlife.

 b. Give preference to areas where the facility site can be located greater than 1000 feet from state or federally designated wildlife sanctuaries, refuges or preserves.

 c. Give preference to areas where the facility site can be located greater than 300 feet from areas of known significant wildlife habitat as determined by the Maine Department of Inland Fisheries and Wildlife or the Maine Department of Marine Resources, and 300 feet from fragile mountain areas, critical areas identified by the State Planning Office and areas zoned as a Fish and Wildlife Protection Subdistrict (P-FW), Mountain Area Protection Subdistrict (P-MA), or Unusual Area Protection Subdistrict, (P-UA) by LUPC.

 5. **Protection of Parks and Other Natural Areas**

 a. Give preference to areas where the facility site can be located greater than 2,640 feet (1/2 mile) from the boundaries of state parks including Baxter State Park and the Allagash Wilderness Waterway, federal parks including the Appalachian Trail, and local parks and public lands acquired with Land for Maine's Future Funds.

 b. Give preference to areas where the waste facility boundary site will not lie closer than 2640 feet (1/2 mile) from the normal high water line of a Management Class 1, 2, or 4 lake identified by LUPC.

 c. Give reference to areas where the facility site can be located greater than 1000 feet from forest and wilderness lands owned and administered by the Federal Government.

 d. Give preference to sites where the facility site can be located greater than 1000 feet from public reserved lands managed by the Maine Department of Conservation, Bureau of Public Lands, under 12 M.R.S.A., section 585.

 e. Give preference to areas where the facility site can be located greater than 1000 feet from private preserve lands held by a land trust or other private, nonprofit organization qualifying for charitable tax-exempt status with the Internal Revenue Service.

 f. Give preference to areas where the solid waste disposal facility can be developed so that it is not visible from primary viewing locations as defined in section 2 or so that its visibility from these locations is minimized.

 6. **Protection of Archaeological and Historical Resources**

 Give preference to areas where the facility site can be located greater than 300 feet from:

 a. archaeological and historic sites, properties or districts listed in the National Register of Historic Places or deemed eligible by the Maine Historic Preservation Commission for listing in the National Register and/or on the Maine Historic Resource Inventory; and

 b. other areas that are established by qualified testimony as being of historical significance.

 7. **Land Use**

 a. Give preference to areas where the facility site will not be located on research lands owned by an established college or university.

 b. Give preference to sites where the facility can be developed so that it will not conflict significantly with or jeopardize existing adjacent land uses, including public and private schools and multiple drinking water supplies. In applying this criterion, consideration should be given to the ability to minimize land use conflicts through the provision of buffer strips, landscaping and visual screening.

 8. **Transportation**

 Give preference to areas located in proximity to the public road systems and existing or potential railroad systems necessary to safely and efficiently move solid waste from the point of generation to the solid waste disposal facility. Site screening and selection should account for the need to transport waste to and reusable and recyclable materials from the site. Sites should be selected so as to minimize or eliminate adverse traffic impacts on residential, commercial and institutional land uses and on transportation systems associated with the movement of wastes and other materials.

 **NOTE**. In applying this criterion, it is not the intent of the Facility Siting Board to undertake the traffic impact analysis required for DEP review of solid waste disposal facilities.

 9. **Site Size**

 Give preference to areas that are likely to accommodate a facility of sufficient size to meet capacity need for solid waste disposal facilities as identified in the State Plan. The capacity or size of the solid waste disposal facility to be sited must be consistent with the capacity need projected for the geographic region to be served by the facility. Capacity is a function of both the amount of waste disposed, the period of time that the need to dispose of the waste is manifest, rates of change in the production of waste and the creation of a reserve capacity to accommodate probable contingencies. When applying this criterion, the need for adequate buffer zones between the facility and adjacent properties, as well as the need for support facilities including access roads and on-site leachate treatment if necessary, shall be considered.

 10. **Consistency with Other Waste Management Objectives**

 Give preference to areas that will be consistent with and actively support other waste management objectives, including reuse, recycling, composting and processing that reduces the volume of waste. Site screening and selection must account for the need to integrate the proposed disposal facilities into the overall management of solid waste in the facility's service area and the achievement of the state's solid waste recycling goals. Solid waste disposal facilities should, whenever appropriate, be located to accommodate waste reuse and processing, including recycling and composting at the same location, and also should be located to facilitate recovery of the landfilled waste in the event that such recovery becomes technically and economically feasible.

 11. **Cost**

 Give preference to areas sites that will result in a reasonable price for site development, construction and operation. Site development, including site screening and selection, host community benefits, planning, engineering, construction and operating costs for solid waste disposal facilities landfills will be passed along to users in the form of disposal fees. Disposal fees should be within the range of similar fees charged within the state at sites owned, operated or controlled by municipalities, disposal districts, the Agency and existing commercial facilities.

**SECTION 5. ADDITIONAL SITING CRITERIA FOR LANDFILLS ONLY**

 A. **Exclusion Criteria**

 1. **Surface Water Protection**

 Exclude from consideration those sites that require the filling of combined total of more than 10 acres of Class 11 wetlands.

 B. **Preference Criteria**

 1. **Groundwater Protection**

 a. Give preference to areas that, based on preliminary investigation appear to be groundwater discharge zones.

 b. Give preference to areas where the solid waste boundary can be located in glaciomarine and/or glaciolacustrine clay-silt soils (such as Buxton) or fine grained glacial tills (such as Marlow).

 2. **Protection of Drinking Water Supplies**

 Give preference to areas where the solid waste boundary can be located greater than 1000 feet from wells, springs, or surface water intakes used for public or private water supply and in existence when the site is first identified for investigation.

 3. **Geology**

 a. For landfills designed to accept only construction and demolition debris, give preference to areas where the solid waste boundary will encompass soils with a natural depth of greater than 10 feet to bedrock. For all other landfills, give preference to areas where the solid waste boundary will encompass soils with a natural soil depth of greater than 15 feet to bedrock.

 **NOTE**. The Facility Siting Board recognizes that accurate Information, on soil depth is not widely available in that soils generally have not been mapped below a depth of 5 feet. Usually natural soil depth can be ascertained only by conducting on-site investigations. In applying this criterion, it is not our intent to require soil depth determinations over a broad geographic region or area.. However, soil depth is an important factor in determining site suitability. Accordingly, borings or other techniques for determining bedrock depth usually will be required on a specific site prior to its submittal for consideration by the Facility Siting Board under 38 M.R.S.A., §2154, or the Agency under 38 M.R.S.A., §2157.

 b. Give preference to areas where the solid waste boundary can be located in soils that contain less than 15 percent by volume of cobbles, stones and boulders.

 4. **Land Use**

 When putrescible waste is to be disposed, give preference to areas where the landfill handling site can be located more than 10.000 feet from any FAA licensed airport runway used by turbojet aircraft, or more than 5000 feet of any runway used only by pistontype aircraft.

 **NOTE**. "Putrescible waste" is organic waste that produces foul odors when decomposing.

**SECTION 6. ADDITIONAL SITING CRITERIA FOR INCINERATORS ONLY**

 A. **Exclusion Criteria**

 1. **Surface Water Protection**

 Exclude from consideration areas that require the filling of a combined total of more than 5 acres of Class II and Class III wetlands.

 2. **Protection of Parks and Other Natural Areas**

 Exclude the incineration facility from areas within 10 kilometers of a Class I area as identified in Chapter 114, section I(C) of the DEP's regulations.

 **NOTE**. The Class I areas that could affect facility siting in Maine are: Acadia National Park, Moosehorn National Wildlife Refuge., the Roosevelt Campobello International Park located in New Brunswick, Canada, and the Presidential Range Dry River and Great Gulf Wilderness of the White Mountain National Forest.

 3. **Land Use**

 a. Exclude the incineration facility from areas where it would interfere with established flight paths.

 b. Exclude the incineration facility from areas that are within the solid waste boundary of an active or closed solid waste landfill.

 B. **Preference Criteria**

 *[RESERVED]*

 **NOTE**. There are no preference criteria specifically applicable incineration facilities only. The preference criteria for incineration facilities are limited to those set forth in section 4, subsection B.

STATUTORY AUTHORITY: 38 M.R.S.A., section 2153, subsectio 6 1.

EFFECTIVE DATE:

 September 14, 1992

EFFECTIVE DATE (ELECTRONIC CONVERSION):

 May 22, 1996

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 15, 2025

**APPENDIX I**

**PRELIMINARY ENVIRONMENTAL STANDARDS**

(**NOTE**: This Appendix is included for informational

purposes only. It is not part of the rule.]

John R. McKernan, Jr. C. Edwin Meadows, Jr.

Governor Commissioner

DEPARTMENT OF CONSERVATION

Telephone (207) 289-2631 RECEIVED

Toll Free Within Maine 1-800-452-8711

April 4, 1990

Mr. Kenneth C. Young, Jr., Director

Office of Siting

Maine Waste Management Agency

Augusta, Maine 04333

Subject: Preliminary Environmental Standards

Dear Mr. Young:

38 MRSA subsection 2153 requires the Maine Land Use Planning Commission and the Department of Environmental Protection to jointly develop preliminary environmental standards to be incorporated into the Siting Board's rules regarding solid waste facilities. The attached document is submitted to you pursuant to 38 MRSA subsection 2153.

You will note that they are presented as Parts I and II. While divided into two parts to facilitate development of the preliminary environmental standards, they represent a single submission, having interrelated components, and should be viewed in that context when your agency incorporates them into final rules.

It should be emphasized that this submission represents the joint "preliminary environmental criteria" for use by the Agency in the preparation of siting criteria to locate appropriate areas for further consideration as landfill and incinerator sites. The "Preliminary Environmental Standards” are not to be construed as to be more than a general guide to sites that have a higher probability of gaining approval from the Commission and Department.

If you have any questions or would like further information, please do not hesitate to call.

Sincerely,

David E. Boulter, Executive Director

Maine Land Use Regulation Commission

Paula M. Clark, Director

Bureau of Solid Waste Management

Department of Environmental Protection

**PRELIMINARY ENVIRONMENTAL STANDARDS**

**I. PRELIMINARY ENVIRONMENTAL STANDARDS BASED ON LUPC RULES**

 The Land Use Regulation Commission preliminary environmental standards for "Exclusionary Criteria" for both landfill handling areas and incinerators include all lands that are zoned as Protection Land Use Subdistricts or identified by the Commission as meeting the standards and criteria for such subdistricts within LUPC jurisdiction as defined in Chapter 10 of the Commission's Rules and Regulations, including:

 A. Aquifer Protection Subdistrict (P-AR)

 B. Flood Prone Area Protection Subdistrict (P-FP)

 C. Fish and Wildlife Protection Subdistrict (P-FW)

 D. Great Pond Protection Subdistrict (P-GP)

 E. Mountain Area Protection Subdistrict (P-MA)

 F. Resource Plan Protection Subdistrict (P-RP)

 G. Recreation Protection Subdistrict (P-RR)

 H. Soils and Geology Protection Subdistrict (P-SG)

 I. Shoreland Protection Subdistrict (P-SL)

 J. Unusual Area Protection Subdistrict (P-UA)

 K. Wetland Protection Subdistrict (P-WL)

 L. Special River Transition Protection Subdistrict (P-RT)

 In addition to Protection subdistricts, the following exclusionary criteria shall apply:

 1. The landfill handling area or incinerator shall be excluded from areas that lie closer than 1320 feet (1/4 mile) to lakes classified as Management Class 1, 2 or 4 by the commission or lakes identified by the Commission that meet the standards for Management Class I or 2 but are not so classified because they are in the ownership or control of a state or federal agency.

 2. The landfill handling area or incinerator shall be excluded from areas that lie closer than 2640 feet (1/2 mile) to lakes classified as Management Class 6 by the Commission or lakes identified by the Commission that meet the standards for management class 6 but are not so classified because they are in the ownership or control of a state or federal agency.

 3. The landfill handling area or incinerator shall be excluded from property owned as a nature sanctuary, refuge, preserve, park, designated wilderness area, or public reserved lands under the statutes or regulations administered by the Department of Inland Fisheries and Wildlife, Bureau of Parks and Recreation, Bureau of Public Lands, Department of Marine Resources, U.S. Fish and Wildlife, National Park Service, or U.S. Department of Interior, or any critical area under statutes or regulations administered by the State Planning Office.

 Within LUPC jurisdiction preference shall be given to sites where the solid waste handling area or incinerator can be located, screened or buffered as to minimize the adverse impact on surrounding areas and uses, and can be located in proximity to existing transportation, sewage treatment and/or utility. corridors. It is implicit that the greater the distance from an adjacent use that may be adversely impacted is preferable, as well as the closer the distance to existing transportation, sewage treatment and/or utility corridors is preferable.

 Preference shall be given to sites where:

 1. The landfill handling area or incinerator can be located more than 300 feet from a significant sand and gravel aquifer or outside the sand and gravel aquifer recharge zone - the greater the distance in excess of 300 feet, the greater the preference.

 2. The landfill handling area or incinerator can be located more than 1000 feet from a great pond, more than 1320 feet from a Management Class 1, 2 or 4 lake, or more than 2640 feet from a Management Class 6 lake - the greater the distance in excess of 1000 feet from a great pond, in excess of 1320 feet from a Management Class 1, 2, or 4 lake (including lakes identified as meeting Management Class 1 or 2 by the Commission but not so classified because they are in the ownership or control of a state or federal agency), or in excess of 2640 feet from a Management Class 6 lake, the greater the preference.

 3. The landfill handling area or incinerator can be located more than 1000 feet from significant river segments, areas zoned (P-RT) Special River Transition Protection Subdistrict, and/or areas zoned (P-RR) Recreation Protection Subdistrict - the greater the distance in excess of 1000 feet, the greater the preference.

 4. The landfill handling area or incinerator can be located more than 25 feet beyond the boundary of mapped and unmapped (P-SL2) Shoreland Protection Subdistricts - the greater the distance in excess of 25 feet, the greater the preference.

 5. The landfill handling area of incinerator can be located more than 1000 feet beyond the boundary of area zoned (P-UA) Unusual Area Protection Subdistrict - the greater the distance in excess of 1000 feet, the greater the preference.

 6. The landfill handling area or incinerator can be located outside of the primary viewing areas of recognized trails, state or federal parks, scenic highways, highway scenic turnouts or viewing points.

 7. The landfill handling area or incinerator can be located within five miles of a state aid road or other equivalent publicly owned road.

 8. The landfill handling area of incinerator can be located more than 500 feet from areas zoned (P-FW) Fish and Wildlife Protection Subdistrict or (P-MA) Mountain Area Protection Subdistrict - the greater the distance in excess of 500, the greater the preference.

 9. An adequate buffer can be kept between the landfill handling area or incinerator and any Protection Subdistrict zoned by the Commission.

**II. PRELIMINARY ENVIRONMENTAL STANDARDS BASED ON DEP SOLID WASTE MANAGEMENT RULES**

 1. **Environmental Siting Standards for which No Variance Can Be Granted**

 A. No solid waste disposal facility shall overlie a significant sand and gravel aquifer as that term is defined in 38 MRSA, section 1310-N(2-A)(A);

 B. No proposed facility shall pose an unreasonable threat to the quality of a significant sand and gravel aquifer which it does not overlie; and

 C. No proposed facility shall pose an unreasonable threat to the quality of an underlying fractured bedrock aquifer as that term is defined in 38 MRSA, section 1310-N(2-A) (B)

 2. **Siting Standards for which a Variance May Be Possible**

 The following are considered to be significant minimum environmental standards for the location of a solid waste landfill. The inability of a proposed site to satisfy these conditions could significantly affect whether the site could receive environmental approval. However, a variance to any of these provisions may be requested. Whether a variance could be granted would depend upon whether clear and convincing evidence is presented that the facility's location, design, or construction would be distinctive in some way that provides for compliance with the intent of the State's laws and rules.

 A. **Ground Water Protection**

 1. No solid waste disposal facility shall overlie a sand or gravel deposit.

 2. The solid waste boundary shall not lie closer than 1000 feet to any wells or springs used for public or private water supply at the time the application is filed with the Department.

 B. **Floodplains**

 A landfill shall not be located on a 100-year floodplain.

 C. Buffer Strips

 A landfill facility boundary shall not lie closer than 1000 feet to a residence at the time the application is filed with the Department.

 D. **Endangered Species**

 1. A landfill or its projected operation shall not cause or contribute to the taking of any endangered or threatened species of plants, fish or wildlife; and

 2. A landfill or its operation shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17.

 E. **Natural Areas**

 1. A landfill shall not be located in, on, or over a coastal wetland, a coastal sand dune system, a great pond, a fragile mountain area, or a significant wildlife habitat as identified by the Maine Department of Inland Fisheries and Wildlife; and

 2. A landfill shall not be located on land adjacent to any coastal wetland or great pond so that material or soil may be washed into them.

 F. **Distance from Airports**

 A solid waste handling site where putrescible waste is to be disposed shall not be located within 10,000 feet of any airport runway used by turbojet aircraft, or within 5,000 feet of any runway used only by pistontype aircraft. (This setback does not pertain to the disposal of non-putrescible wastes such as completely combusted incinerator ash.)

 G. **Areas Impossible to Monitor or Remediate**

 A landfill shall not be located at the highest point of land in a ground water recharge area or in any other area where adequate environmental monitoring or site remediation could be conducted.

 3. **Discussion of Other Environmental Siting Issues**

 The following is a summation of a number of additional environmental subjects that could affect the siting of a secure landfill. We hope that this discussion will be useful to the Facility Siting Board as it considers other landfill siting criteria.

 A. **Soils**

 The following soil series can have characteristics and depth of separation above bedrock to be potentially suitable for development of a secure solid waste landfill. The soil series are arranged in 2 categories. The soils in the first category are low permeability soils that are considered potentially most desirable for the siting of a secure landfill. The second category of soils are low to moderately -permeable soils that are considered moderately desirable for the siting of a secure landfill. There are some potential limitations in each soil series category. While the low hydraulic conductivity of the first category is very desirable for the protection of ground water, it often means that these soils are associated with wetlands. Associated considerations for soils in the second category are the depth to, and the potential travel time to any underlying fractured bedrock aquifer. An additional caution is that soil series classifications are only based on the upper 60 inches of soil materials and have limited usefulness beyond any very preliminary site screening.

 1. **Low permeability soils derived from deep glaciomarine clay**

 - Buxton, Scantic, Boothbay, and Biddeford

 2. **Low to moderately permeable soils-derived from deep silty glacial till**

 - Peru, Perham, Bangor, Paxton, and Marlow

 B. **Soil Depth To Bedrock**

 Except in areas of ground water discharge, it is recommended that the site soils have sufficient depth to allow solid waste to be placed a minimum of 15 feet above bedrock.

 C. **Slope**

 If other site and soil characteristics are similar, a steep slope can present greater design and construction difficulties and greater development costs than a less steep slope. A slope of 8 percent or less is potentially most desirable while a slope of 15 percent or greater is often considered to present significant obstacles.

 D. **Unstable Areas**

 Some of the soils that are acceptable for development of a landfill may be somewhat unstable. It is therefore particularly important that all areas be rejected that have been previously subject to mass movement of earth materials such as landslides, slumps, earth flows, subsidence or debris flows.

 E. **Freshwater Wetlands**

 Many of the soil series that are most appropriate for the development of a secure landfill are associated with freshwater wetlands since water does not drain quickly through the soil. The issue of freshwater wetland protection is likely to complicate the landfill siting process.

 Whether the alteration of, or development adjacent to, a freshwater wetland may be permissible will be dependent upon many factors. Unfortunately, this is not a subject where clear regulatory precedent or full public agreement has been reached.

 To a large degree, whether a particular wetland or portion of a wetland might be acceptable for development of a solid waste landfill will depend upon an assessment of the environmental importance of the wetland in question and whether mitigation of the landfill's development is necessary or possible. The Bureau of Solid Waste Management has proposed to the Board of Environmental Protection that landfill development be allowed consideration in Class II and III wetlands, as defined under the Department's draft wetland regulations (Public hearing was held on January 18). The following is currently our best estimate of those freshwater wetlands that are most likely to present the most severe siting problems:

 - wetlands that have been identified as providing significant wildlife or botanical habitat;

 - wetlands that have traditionally been associated with high wildlife or fisheries productivity or importance;

 - unique wetlands for a particular region of the state;

 - wetlands associated with or adjacent to state or federal parks, preserves, or wildlife areas; and

 - wetlands associated with an outstanding river segment or Class AA, SA, A or GPA surface waters.

 Development on or near freshwater wetlands are also regulated by the U.S. Environmental Protection Agency and the U.S. Army Corp. of Engineers.

 F. **Surface Waters**

 The potential location of a landfill near classified surface water can be dependent in part upon the classification, size, and character of the surface water. State law prohibits the direct discharge of any pollutant into Class AA, SA, and GPA waters. This may ,significantly restrict landfill siting and design options near these bodies of water. While a setback of 300 feet from classified waters is generally advised, a setback of 1,000 feet or more may serve as a useful initial siting restriction for class AA, SA, GPA, and A waters.