

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Stimulate Demand for Renewable Resources

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §3210, sub-§2, ¶B-3, as enacted by PL 2009, c. 542, §3, is amended to read:

B-3. "Renewable capacity resource" means a source of electrical generation:

(1) Whose total power production capacity does not exceed 100 megawatts and relies on one or more of the following:

(a) Fuel cells;

(b) Tidal power;

(c) Solar arrays and installations;

(d) Geothermal installations;

(e) Hydroelectric generators that meet all state and federal fish passage requirements applicable to the generator; or

(f) Biomass generators that are fueled by wood or wood waste, landfill gas or anaerobic digestion of agricultural products, by-products or wastes; or

(g) Waste energy resources; or

(2) That relies on wind power installations.

Sec. 2. 35-A MRSA §3210, sub-§2, ¶D is enacted to read:

D. "Waste energy resource" means a source of electrical generation, which may include pyrolytic waste systems:

(1) That is fueled by municipal solid waste in conjunction with recycling;

(2) Whose total power production capacity does not exceed 35 megawatts;

(3) That is licensed to comply with the air emission requirement levels for resource recovery

facilities established pursuant to Title 38, section 585, including, but not limited to, standards for mercury established pursuant to Title 38, section 585-B, subsection 5;

(4) That complies with all applicable licensing requirements for solid waste facilities as established pursuant to Title 38, section 1310-N; and

(5) Whose residuals are transported to a landfill that is licensed to meet at least the performance standards and siting criteria established by rules adopted pursuant to Title 38, section 1304, subsection 1-B, including, but not limited to, standards prohibiting contamination of groundwater outside the solid waste boundary of landfills.

Sec. 3. 35-A MRS §3210, sub-§3-B is enacted to read:

3-B. Portfolio requirements; waste energy resources. Portfolio requirements for waste energy resources are governed by this subsection.

A. Beginning July 1, 2012, as a condition of licensing pursuant to section 3203, a competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that no less than 3.5% of its portfolio of supply sources for retail electricity sales in this State is accounted for by waste energy resources. Waste energy resources used to satisfy the requirements of this paragraph may not be used to satisfy the requirements of subsection 3.

B. Retail electricity sales pursuant to a supply contract or standard-offer service arrangement executed by a competitive electricity provider that is in effect on the effective date of this subsection are exempt from the requirements of this subsection until the end date of the current term of the supply contract or standard-offer service arrangement.

The commission shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 35-A MRS §3210, sub-§10 is enacted to read:

10. Alternative compliance payment; portfolio requirements for waste energy resources. The commission shall allow competitive electricity providers to satisfy the portfolio requirements for waste energy resources under subsection 3-B through an alternative compliance payment mechanism in accordance with this subsection.

A. The commission shall set the alternative compliance payment rate by rule and shall publish the alternative compliance payment rate by January 31st of each year. In setting the rate, the commission shall take into account prevailing market prices, standard-offer service prices for electricity and reliance on alternative compliance payments to meet the requirements of subsection 3-B.

B. The commission shall collect alternative compliance payments made by competitive electricity providers and shall deposit all funds collected under this paragraph in the Renewable Resource Fund established under section 10121, subsection 2 to be used to fund research, development and demonstration projects relating to renewable energy technologies.

The commission shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

Current law establishes as a policy of the State the encouragement of the generation of electricity from renewable and efficient resources by requiring that each competitive electricity provider in this State demonstrate that no less than 30% of its portfolio of supply sources for retail electricity sales in this State is accounted for by eligible resources. This bill implements that policy by stimulating demand for electricity from generators fueled by municipal solid waste in conjunction with recycling.

This bill amends the law in the following ways.

1. It amends the definition of "renewable capacity resource" to add waste energy resources.
2. It defines "waste energy resource" as a source of electrical generation that is fueled by municipal solid waste in conjunction with recycling and whose total power capacity does not exceed 35 megawatts. In addition, the waste energy resource would have to meet Maine's air emissions standards for resource recovery facilities and licensing standards for solid waste facilities and ensure that residuals from the waste energy resource are disposed of at a landfill meeting Maine's licensing standards.
3. It establishes a 3.5% portfolio requirement for electricity from waste energy resources.
4. It allows competitive electricity providers to meet the portfolio requirements for waste energy resources through the use of renewable energy credits or an alternative compliance payment to be set by the Public Utilities Commission.



Owner Communities

Bridgton
Cape Elizabeth
Casco
Cumberland
Falmouth
Freeport
Gorham
Gray
Harrison
Hollis
Limington
Lyman
North Yarmouth
Ogunquit
Portland
Pownal
Scarborough
South Portland
Waterboro
Windham
Yarmouth

Associate Members

Baldwin
Hiram
Naples
Parsonsfield
Porter
Saco
Standish

Recycling Members

Andover
Cornish
Harpwell
Livermore Falls
Manchester
Monmouth
Old Orchard Beach
Poland
Readfield
Sanford
Wayne

Testimony of Kevin Roche, General Manager of ecomaine

before the

Joint Standing Committee on Energy, Utilities and Technology

Regarding LD 425, An Act to Stimulate Demand for Renewable Resources

March 2, 2011

Senator Thibodeau, Representative Fitts, members of the Joint Standing Committee on Energy, Utilities and Technology, my name is Kevin Roche. I serve as the General Manager of **ecomaine**.

Intro to Waste-to-Energy

ecomaine, the former Regional Waste Systems, is located in Portland and handles municipal solid waste and/or recycling services for 40 Maine communities. Our operation includes a mass burn facility that turns solid waste into renewable electricity. Maine has four waste to energy facilities and each of them support the legislation before you. The four facilities serve over 950,000 citizens and provide over 70 MWs in nameplate capacity. Together they generate 475,000 megawatt hours of power a year.

One of the reasons for this proposal is the conflict between Maine's policies for handling solid waste and the existing renewable portfolio standard (RPS). Maine policy requires an integrated approach to solid waste management based on the following order of priority: reduce, reuse, recycle, compost, waste to energy, and landfilling. Thus, waste to energy is deemed a superior method of waste management over landfilling of raw waste. In contrast, Maine's RPS provides class I incentives to landfill gas, effectively elevating landfilling above waste to energy, which is classified as class II.

LD 425 seeks to address that disparity.

Last year, this Committee recognized that conflict and asked, through LD 1720, for the Governor's Office of Energy Independence and Security to look into it. The Office has prepared a report, which will be available shortly, recommending the creation of a new REC for waste to energy facilities, and LD 425 is consistent with this recommendation.

We expect the report from the OEIS to be available in the near future. We respectfully request that this Committee hold off on scheduling the work session on LD 425 until the report is available.

Conclusion

Eligibility of WTE for new renewable energy credits will encourage generation of electricity from renewable sources while diversifying electricity production. It will also provide benefits to those Maine communities, with over 950,000 residents, who rely on WTE facilities for municipal solid waste disposal.

I'm asking for your support on LD425. Thank you and I would be glad to take any questions.

Memorandum

To: Stakeholders in Waste-To-Energy Facilities

From: Maine's Waste to Energy Working Group represented by:
Kevin Roche, ecomaine
Joe Kazar, MMWAC
Ken Robbins, MERC
Greg Louder, Municipal Review Committee for PERC

Date: January 13, 2011

Re: Proposed Legislation on Waste-to-Energy

We represent Maine's four Waste-to-Energy (WTE) facilities. We are requesting that you support our legislative initiative to provide Renewable Energy Certificates (RECs) for WTE facilities.

Background

Our four WTE facilities provide solid waste disposal for nearly 300 Maine communities, representing over 800,000 residents. We handle over 800,000 tons of municipal solid waste annually. Our facilities use that solid waste supply to annually generate nearly 400,000 megawatt hours of reliable, renewable power to meet Maine's energy needs. Proceeds from the sale of energy defray our operating costs and reduce the tipping fees we must charge for disposal of municipal waste.

State Policy

Current state policy on solid waste management and renewable energy are in conflict. Maine's Solid Waste Management Hierarchy establishes WTE as the preferable means to dispose of that solid waste which cannot be recycled. WTE is preferred over landfilling raw waste because it reduces the volume of solid waste by 90%, produces more energy from a given amount of waste than landfill gas, and its ash is more stable than raw waste, reducing the potential long term environmental risk. WTE also results in a net decrease in greenhouse gases for every ton of solid waste processed, even if the landfill collects the gas for electricity production.

The gas emitted from raw landfills is often collected for use as fuel to produce electricity. For already existing landfills, this is a productive use of what would otherwise be a waste product.

However, Maine's current energy policy treats landfill gas more favorably than WTE. Landfill gas is eligible for Class I Renewable Energy Certificates (RECs), but WTE is not.

We are proposing a new policy that resolves this conflict by improving the treatment of WTE by creating a separate renewable energy classification for WTE, while not interfering with the existing RECs for other energy producers.

Benefits of WTE

Waste to Energy provides a variety of benefits to Maine:

1. WTE safely disposes of solid waste.
2. WTE provides clean, renewable and reliable energy.
3. Each ton of municipal solid waste processed by WTE facilities offsets the need for an equivalent of 2 barrels of foreign oil or half a ton of coal.
4. WTE results in a net decrease in greenhouse gases for every ton of solid waste processed.
5. WTE reduces landfill volumes by 90% and reduces potential damage from leachate.
6. WTE recovers 10 times the energy from 1 ton of waste compared to the energy produced from a gas recovery system in a landfill.
7. WTE facilities annually spend \$15 million in wages and payroll taxes for their 220 full-time staff. They pay \$21 million annually to local businesses for maintenance and operating expenses.
8. Revenues generated from the sale of WTE energy reduce municipal tipping fees and the related burden on the property tax.

Our Proposal

We propose to create a new Renewable Energy Certificate (REC) for Waste to Energy.

Establishing a new certificate for WTE has already been done in Massachusetts. Doing the same in Maine will equalize the treatment of WTE and landfill gas in Maine's energy policy. This is a reasonable and achievable solution to the mismatch between solid waste and energy policy.

We propose to create a WTE certificate valued at \$20 to \$30 a megawatt hour. That will produce up to \$12 million annually for WTE facilities. The cost to residents will only be a \$1-1.50 a month increase in their electric bills.

Benefits to Municipalities

The creation of a Waste to Energy Renewable Energy Certificate will provide direct benefits to the nearly 300 communities and the over 800,000 residents we serve.

1. The REC revenues will reduce the demand on municipal tipping fees, thereby reducing the amount municipalities would otherwise pay for waste disposal. The certificate will be equivalent to several dollars a ton for solid waste.
2. Reduced demand on tipping fees could equate to reduced demand on the property tax.
3. Municipalities with ownership stakes in WTE facilities will derive direct benefits from revenues flowing to those facilities.
4. Encouraging WTE will help insure a safe, reliable means of disposal for municipal solid waste well into the future.

Request

We are requesting that you help support our proposal to create a new class for Waste to Energy within the Renewable Portfolio Standards of the State of Maine. Securing your support now and throughout the legislative process will be extremely beneficial.

This proposal is in the best interests of our facilities and Maine municipalities. We look forward to working with you to see it enacted.

We appreciate your consideration of our proposal and are available at your convenience to discuss this matter in more detail.



Owner Communities

Bridgton
Cape Elizabeth
Casco
Cumberland
Falmouth
Freeport
Gorham
Gray
Harrison
Hollis
Limington
Lyman
North Yarmouth
Ogunquit
Portland
Pownal
Scarborough
South Portland
Waterboro
Windham
Yarmouth

Associate Members

Baldwin
Hiram
Naples
Parsonsfield
Porter
Saco
Standish

Contract Members

Andover
Cornish
Eliot
Greenland, NH
Harpwell
Jay
Livermore Falls
Manchester
Monmouth
Newington, NH
North Haven
Old Orchard Beach
Poland
Readfield
Sanford
Wayne

January 6, 2012

Representative Denise Patricia Harlow
Joint Standing Committee on
Environment and Natural Resources
36 Broadway
Portland, Maine 04103

Re: LD 879, An Act to Ensure Adequate Landfill Capacity in the State for Solid Waste

Dear Representative Harlow:

Next week, your Committee will take up a number of carry over bills, including LD 879 *An Act to Ensure Adequate Landfill Capacity in the State for Solid Waste*. As you may recall, last year I testified neither for, nor against, LD 879. I want to take this opportunity to reiterate my thoughts on this legislation.

I am the General Manager for **ecomaine**, a municipally owned organization with facilities located in and around the Greater Portland region. **ecomaine** owns and operates a waste-to-energy plant, an ash landfill, and a single-sort recycling facility. We serve 44 communities in York, Cumberland, Franklin, and Kennebec Counties.

My concerns about LD 879 are related to its impact on the state's solid waste policy. We should focus on three objectives:

1. Limit the amount of solid waste produced in Maine by adhering to the solid waste hierarchy established in Title 38, Section 2101, which calls for reducing, reusing, and recycling waste. After those priorities, the hierarchy calls for composting, waste-to-energy, and then finally the least favorable alternative, landfilling.
2. Limit the landfilling of raw waste, which is really a waste storage strategy, by making it a less attractive alternative.
3. Limit the importation of out of state waste by (again) making it a less attractive option.

LD 879 is not consistent with our waste hierarchy because it continues to make landfilling an easy way out in managing our trash. We strongly encourage the

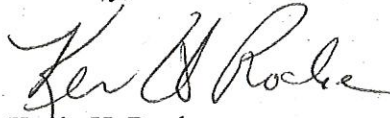
Committee to take other steps to incentivize the waste hierarchy, encourage recycling, composting, and waste-to-energy, and avoid the landfilling of raw municipal solid waste and the importation of out of state waste.

These actions should include increasing the disposal fee for municipal solid waste sent to landfills as raw waste (similar to LD 278, An Act to Stabilize Solid Waste Management Funding). If we're going to continue to store waste in landfills in the State of Maine, generators should pay extra for it. Landfilling raw unprocessed waste shouldn't be the cheapest option because, in the long run, most of the waste won't ever disappear and those communities with landfills will be stuck with them forever, deferring many of the costs to future generations. A landfilling fee would encourage compliance with the solid waste hierarchy by incentivizing recycling, composting, and waste-to-energy over landfilling. The revenues could be used to expand efforts to reduce the amount of waste needed to be landfilled.

LD 879 should be considered in a comprehensive and thoughtful manner that encourages sound solid waste management strategies.

Please contact me at 207-773-1738 if you have any questions. Thank you for your consideration.

Sincerely,



Kevin H. Roche
General Manager

KHR/lct

cc: Carlisle McLean, Governor's Office, 1 State House Station, Augusta,
Maine 04333

Ken Fletcher, Office of Energy Independence and Security, 62 State House
Station, Augusta, Maine 04333

Commissioner Patricia Aho, Maine Department of Environmental
Protection, 17 State House Station, Augusta, Maine 04333

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An Act To Ensure Adequate Landfill Capacity in the State for Solid Waste

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1310-X, sub-§3, as amended by PL 1995, c. 68, §1 and c. 465, Pt. A, §21 and affected by Pt. C, §2, is further amended to read:

3. Expansion of facilities. The department may license an expansion of a commercial solid waste disposal or biomedical waste disposal or treatment facility after September 30, 1989 if:

A. The department has previously licensed the facility prior to October 6, 1989;

B. The department determines that the proposed expansion is contiguous with the existing facility and is ~~located on property owned on December 31, 1989 by the licensee or by a corporation or other business entity under common ownership or control with the licensee; and:~~

(1) Is located on property owned on December 31, 1989 by the licensee or by a corporation or other business entity under common ownership or control with the licensee; or

(2) For a commercial solid waste disposal facility that is a commercial landfill facility that is not under order or agreement to close, is located on property owned by the licensee; and

C. For a commercial solid waste disposal facility the commissioner or the department determines as provided in section 1310-N, subsection 3-A that the facility provides a substantial public benefit.

The department may not process or act upon any application or license an expansion of a commercial landfill facility pursuant to this subsection: before March 1, 2011; until the applicant demonstrates to the department that it is in full compliance with the host community agreement pursuant to section 1310-N, subsection 9, if any, on the existing facility; and until a host community agreement amendment is executed to account for the proposed expansion.

An expanded facility may not receive a property tax exemption on real or personal property.

SUMMARY

This bill amends the law regarding expansion of commercial solid waste disposal facilities and biomedical waste disposal or treatment facilities by authorizing a commercial landfill facility that is not under an order or agreement to close to expand if the proposed expansion is contiguous with the existing facility and is located on property owned by the person holding the commercial solid waste disposal facility license. It clarifies that an expanded facility may not receive a property tax exemption on real or personal property, and it provides that the department may not process or act upon any application until certain conditions are met.



January 13, 2012

Owner Communities

- Bridgton
- Cape Elizabeth
- Casco
- Cumberland
- Falmouth
- Freeport
- Gorham
- Gray
- Harrison
- Hollis
- Limington
- Lyman
- North Yarmouth
- Ogunquit
- Portland
- Pownal
- Scarborough
- South Portland
- Waterboro
- Windham
- Yarmouth

Ron Dyer, Bureau Director
Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, Maine 04333

Dear Ron:

ecomaine has reviewed the recent report *Implementing Product Stewardship in Maine* to the Joint Standing Committee on Environment and Natural Resources. And in response to the request, that the Department is seeking public input to send to the Legislature for the second annual report on how product stewardship programs are being implemented in the Maine, we offer the attached comments.

Thank you for the opportunity for **ecomaine** to share comments on this report.

Associate Members

- Baldwin
- Hiram
- Naples
- Parsonfield
- Porter
- Saco
- Standish

Recycling Members

- Andover
- Cornish
- Harpwell
- Livemore Falls
- Manchester
- Monmouth
- Old Orchard Beach
- Poland
- Readfield
- Sanford
- Wayne

Very truly yours,

Anne K. Hewes, Ph.D.
Environmental Manager

✓ Enclosure

cc: Kevin Roche, General Manager
Mark Maritato, Environmental Specialist

Implementing Product Stewardship in Maine

By MDEP

2012 Report to the Joint Standing Committee on Environment and Natural Resources

Comments *from ecomaine*

13 January 2012

ecomaine provides municipal solid waste services to over 40 communities in York, Cumberland, Franklin and Kennebec Counties. **ecomaine's** services entail three different facilities: waste-to-energy (WTE) plant (turning municipal solid waste into renewable energy), single-sort recycling facility (the only single-stream plant in the State of Maine) and a 250 acre ash landfill (where stabilized, resource scavenged ash residue, is safely secured). **ecomaine** serves over 250,000 citizens which represent the most densely populated fraction of Maine's population.

ecomaine supports responsible disposal of products that contain heavy metals and toxic constituents (ie: items containing Hg, Cd, Pb, etc) and requests that these items do not enter the waste stream; however, **ecomaine** operations are a mirror of the behavior of residents and must contend with the waste submitted for disposal. **ecomaine** is heavily invested in reuse and recycle options from metals recovery from our ash residue to regenerating paper, plastic and cardboard from the recycling center. The State of Maine's waste hierarchy is embraced by **ecomaine** activities and is a priority for our business operations.

The communities that comprise **ecomaine** and its board of director members are concerned about their surrounding ecology and aware of consumer waste issues. As a final destination for municipal solid waste for the largest population in the State of Maine, **ecomaine** supports the responsible collection, transportation, reuse, recycling and disposal of waste. **ecomaine** does not advocate for just one avenue to achieve these ends. **ecomaine** recognizes that several avenues are available, for example: manufacturer contribution for Product Stewardship Programs, mail-back programs, financial incentive programs, drop-off location programs, town collection events, and curbside collection, to name a few. And as a non-profit, we support programs that would translate into reduced financial burden to the local governments and taxpayers that support **ecomaine**.

POSITION

Product Stewardship or extended producer responsibility (EPR) programs are one avenue toward removing unwanted pollutants from the environment and some programs are more effective than others in keeping toxins out of the waste stream. In regard to Maine's EPR programs, **ecomaine** feels the thermostat recycling program is more effective in capturing mercury due to the amount contained in a thermostat switch ampoule (~5 grams) combined with the \$5 incentive for technicians who can drop off the item at a supply store. As opposed to limitations with the CFL recycling program which require consumers to recycle individual bulbs which contain 100-fold

less mercury (~5 mg) than thermostats. On a mercury mass removal basis, it takes approximately 100 CFL bulbs to equal the Hg in a single thermostat. The disposal option and the inconvenience of requiring citizens to drive to drop-off locations likely results in the majority of CFLs cast in the waste stream as opposed to being recycled. **ecomaine** would like to see more education and outreach to increase the effectiveness of this mercury removal program to prompt a resident to think and recycle CFLs before disposing of them in their waste.

ANALYSIS

The Report released by MDEP critiques five extended producer responsibility (EPR) laws:

- 38MRSA§1672 mercury containing lights
- 38MRSA§1665-A mercury auto switches
- 38MRSA§1665-B mercury containing thermostats
- 38MRSA§1610 heavy metal containing electronic waste
- 38MRSA§2165 heavy metal containing batteries

Each section of the MDEP report offered a review of the EPR program objective, waste diversion and improvements to the manufacturer process. Collection data were summarized in Tables and a summary of the costs were added in a final program analysis section with recommendations.

COMMENTS:

Consistency – it would be beneficial to know the amount of Hg per device and how the Dept performed their calculations for each EPR product. Then these data could be provided in each Table for ease of comparison. On average, we thought a thermostat contains 5 grams of Hg per unit and a recalculation of the mercury amount collected in Table 3, seems to be higher: 398 lbs –vs- 264 lbs [total therms = 36,161 * 5 g/unit = 180,805 g * .0022 = 398 lbs Hg collected]

Benefits - What is missing from the report is whether or not the programs are working and how the total amount of metal recovered and removed from the environment benefits the health and environment of Maine and its citizens. In addition, a life cycle analysis (LCA) should be included. As part of the analysis, LCA will estimate the cumulative environmental impacts resulting from all stages in a product's life cycle. Beyond the dollars expended and number of products counted, LCA provides a comprehensive picture of the true environmental trade-offs associated with the EPR programs. Items missing from Table 6 on page 21 include: energy and materials consumption, air and water emissions, the amount of hazardous substances in the products, worker and consumer exposure and reuse, recycling and waste disposal.

Managing EPR - 38MRSA section 1665-B does not clearly identify responsibility for managing the Hg Thermostat recycling program but the report does give a lot of information on this program and Thermostat Recycling Corporation (TRC). It would be helpful for a balanced critique to have the same level of input from NEMA and Efficiency Maine for mercury containing lights; Alliance for mercury auto switches; unnamed eWaste recyclers of heavy metal containing electronic waste; and the unnamed firms that handle heavy metal containing batteries.

Literature cited – References for Joint Standing Committee reports, SPO reports, MDEP reports, US EPA web-site, NEMA press release, and IMERC fact sheet were cited; however, “industry-submitted memos” were not cited in the footnotes. Since, the report stated that it used these data in its analyses (pg 3 & 22), the public may benefit from reviewing this literature.

Amendments EPR – the legislations have been amended often to infuse more education and outreach of the programs to encourage participation. **ecomaine** views publicity of these programs as helpful in achieving the original goal of collecting and removing heavy metal containing items from the environment. The task of education by responsible parties is time consuming and may not be captured in the Department’s cost analysis.

Fraud - The issue of “fraud” raised in the thermostat recycling section seemed to beg additional information of the Dept’s critique. The original source of the collected items matters very little when the over-arching focus of EPR is to assure that Hg, Cd, Pb are not introduced to the waste stream. There is little validity in the suggestion that “fraud” occurs when we are all winners if the mercury, cadmium and lead are captured and removed from the environment.

Table 5 – The implication is that there is a discrepancy between what a municipality will report and what the manufacturers report. The SPO report would only reflect that material collected by the municipalities. Due to budgetary restraints many communities have stopped collections and may not know all the material collected. More information to the reference of “flat screen TVs” on pg 16 could be expanded.

Successful EPR - Unclear why “auto switch” rule is deemed a success when Table 2 claims in 8 yrs only 51,000 collected or 112 lbs of mercury. Yet, Table 3 states that 264 lbs Hg [*ecomaine recalculated: 398 lbs*] from thermostat recycling program over 10 year period. A distinction between the programs appears to be that Hg Thermostat program stipulated in the Legislative Document (LD) a projected number of thermostats to be collected over the two implementation Phases. These projected numbers have been compared to actual collected items evidently as a basis for a recommendation to cancel (sunset) the program. Perhaps a better matrix to determine the success of an EPR program should consider the amount of heavy metal collected and the projected associated environmental and health benefits.

CONCLUSION

In conclusion, **ecomaine** supports the objectives of removing mercury, cadmium and lead from the waste stream. The analysis performed in the Department’s report is a good start in understanding program performance. We believe there needs to be a better understanding of what will happen if these programs are eliminated. There is room for improvement; however, we need to fully understand the unintended consequences that may arise if any changes are made. We also feel that education is key and needs greater attention and investment. The overarching goal should be to reduce toxic chemicals from the environment – and that means not allowing them to remain in the waste stream.

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An Act To Promote the Proper Disposal of Used Medical Sharps

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1319-O, sub-§3, ¶F is enacted to read:

F. A generator of sharps is not required to dispose of them by shredding. As used in this paragraph, "sharps" has the same meaning as in paragraph E.

Sec. 2. 38 MRSA §1611 is enacted to read:

§ 1611. Medical sharps

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Manufacturer" means a person or entity that:

(1) Has a physical presence in the United States and causes a medical sharp to be manufactured or has legal ownership of the brand, brand name or cobrand under which a medical sharp is sold;

(2) Imports a medical sharp branded or manufactured by a person or entity that has no physical presence in the United States; or

(3) Sells at wholesale a medical sharp and does not have legal ownership of the brand or brand name, but elects to fulfill the manufacturer's responsibilities for that medical sharp.

"Manufacturer" does not include a compounding pharmacy or pharmacist who compounds a prescribed drug for an individual and uses a medical sharp as a delivery system or a retailer that puts its store label on a medical sharp unless the retailer imports the medical sharp directly from a person that has no physical presence in the United States.

B. "Medical sharp" means a hypodermic needle, pen needle, intravenous needle, lancet and other device that is used to penetrate the skin for the delivery of medications.

C. "Program" means a stewardship program established by a manufacturer or in conjunction with other manufacturers pursuant to this section for the collection, handling, transportation, treatment and disposal of unwanted medical sharps.

D. "Program plan" means a plan developed by a manufacturer to operate a program.

E. "Residential source" includes single-family and multifamily residences and other locations where unwanted medical sharps are generated outside of the health care setting. "Residential

source" does not include a hospital, clinic or pharmacy or a business such as a physician's or veterinary office or any other location identified by the department that may generate unwanted medical sharps in the course of its business.

F. "Sharps collection center" means a site that provides medical sharps users with secure collection containers and accepts unwanted medical sharps from a residential source for proper disposal.

G. "Sharps collection container" means a container specifically designed for holding unwanted medical sharps that meets the requirements of the federal Occupational Safety and Health Administration and the federal Department of Transportation and is marked with the international biohazard symbol.

H. "Stewardship organization" means a corporation, nonprofit organization or other legal entity created or contracted by a manufacturer or group of manufacturers to implement a program.

I. "Unwanted medical sharp" means a medical sharp that its user no longer wants or that has been abandoned or discarded or is intended to be discarded by the user.

J. "Wholesaler" means a person or entity that buys a medical sharp for resale and distribution to a person or entity other than a consumer but that does not have legal ownership of the brand or brand name.

2. Disposal ban. After July 1, 2013, a person may not knowingly place a medical sharp in the solid waste for disposal in a solid waste disposal facility as defined in section 1303-C, subsection 30.

3. Manufacturer responsibility. A manufacturer shall participate in a program, individually or in conjunction with other manufacturers, for the collection, handling, transportation, treatment and disposal of unwanted medical sharps. A manufacturer that operates a program independently or that participates in a program with other manufacturers shall ensure that the program operates in compliance with the provisions of this section, in accordance with the approval issued by the department under subsection 6 and in compliance with all applicable state and federal law, rules and regulations.

A. By July 1, 2012, a manufacturer shall submit to the department a program plan individually or in conjunction with other manufacturers through a stewardship organization.

B. Before initiating sales of medical sharps in the State after July 1, 2012, a manufacturer shall submit a program plan or join a program approved under subsection 6.

C. A manufacturer or stewardship organization whose program plan has been approved under subsection 6 shall begin operating the program within 90 days of obtaining approval from the department or by January 1, 2013, whichever is sooner.

D. At least every 4 years, a manufacturer or stewardship organization must update its program plan and submit the updated plan to the department for review and approval.

E. For each program plan submitted under paragraph A and annual report submitted under

subsection 8, a manufacturer or stewardship organization shall pay the department a processing fee as follows:

- (1) A fee of \$1,000 for each manufacturer represented in a program plan and report; or
- (2) A fee of \$10,000 for a program plan and report submitted on behalf of 10 or more manufacturers.

Processing fees collected by the department pursuant to this paragraph must be deposited in the Maine Environmental Protection Fund established in section 351.

F. A manufacturer or stewardship organization shall pay all the administrative and operational costs associated with implementation of a program, including the cost of the collection, transportation, management and disposal of the unwanted medical sharps and the related packaging. Sharps collection containers must be considered part of program costs and must be supplied on an ongoing basis and free of charge to sharps collection centers.

G. A manufacturer or stewardship organization may not charge a fee at the time of collection for the management of unwanted medical sharps.

4. Program requirements. A program must:

A. Provide for collection of unwanted medical sharps generated by residential sources. The collection system must be convenient and adequate to serve the needs of residents in both urban and rural areas;

B. Establish sharps collection centers in the following types of locations that volunteer to participate and agree to follow state guidelines and rules for sharps management: medical facilities such as hospitals and community clinics, pharmacies, locations that provide public transportation, public parks and municipal facilities such as fire or police stations;

C. Provide for transporting, handling, treatment and disposal of unwanted medical sharps from all manufacturers;

D. Provide for management of medical sharps as biomedical waste at a licensed biomedical waste disposal or treatment facility;

E. Include a public education and communications strategy that includes educational and outreach information and materials provided at no cost to consumers, pharmacies, health care facilities and other interested parties. The public education and communications strategy must:

- (1) Promote the use of the program and the proper disposal of unwanted medical sharps so that collection options are widely understood by consumers, pharmacists, retailers of medical sharps and health care practitioners, including doctors and other prescribers; and
- (2) Provide a toll-free telephone number and publicly accessible website where information regarding collection options and locations is made available; and

F. Identify performance standards that include the number of collection locations and the amount by weight of unwanted medical sharps collected and describe target goals for each component of the program under this subsection over the life of the program.

5. Plan requirements. A program plan submitted to the department under subsection 3 must:

A. List all manufacturers participating in the program and the manufacturers' contact information;

B. List the biomedical waste disposal or treatment facilities and transporters, and their contact information, to be used to collect and destroy the unwanted medical sharps;

C. Describe how the unwanted medical sharps are tracked from collection to final disposal and the policies and procedures to be followed to ensure that safety and security are maintained;

D. Describe the financing mechanism for the program and delineate any activities necessary to implement the program that are not funded by the program and identify who will be responsible for those costs. If the manufacturer is financing the program through payment to a stewardship organization, any assessment imposed by the manufacturer through its sales chain must reflect the manufacturer's actual program costs and must not be described at wholesale or retail as a tax or government-imposed fee. Any information provided to the consumer about the assessment must clearly state that it is imposed by the manufacturer and may not identify the assessment as, or imply that the assessment is, a tax or government-imposed fee or mandate; and

E. Include a description of how the program will meet the requirements under subsection 4.

6. Program review and approval. The department shall review each program plan submitted pursuant to subsection 3 in consultation with the Department of Health and Human Services.

A. If the department is satisfied that a program plan is complete and that a program complies with the requirements of this section, the department shall issue an approval or an approval with conditions.

B. If a program is rejected, the department shall provide the applicant with the reasons for rejecting the program in writing.

C. The department shall provide expedited review and approval for a program plan submitted by a manufacturer or a stewardship organization if it has entered into a contractual agreement with a statewide hospital association for dissemination of sharps collection containers and the collection and disposal of medical sharps from residential sources using the infrastructure of a statewide hospital association.

D. The decision of the department under this subsection is a final decision and may be appealed to the board pursuant to section 341-D, subsection 4.

7. Program modification. Except as provided in this subsection, a program must be operated in compliance with the approval issued by the department under subsection 6.

A. A manufacturer or stewardship organization may make substantive changes to the manner in which a program is operated only upon submission of a written application for modification to and issuance of written notice of approval by the department. The manufacturer or stewardship organization operating a program may request a substantive change to the previously approved program plan at any time.

B. An additional manufacturer may join a stewardship organization and participate in its program if the manufacturer or stewardship organization operating the program provides the department with an updated manufacturer participant list within 15 days after the additional manufacturer begins participation in the program.

C. If a manufacturer withdraws from a program operated by a stewardship organization or discontinues a program operated independently, the manufacturer shall provide notice to the department within 15 days prior to taking action and a statement explaining the manufacturer's plans for complying with this section.

8. Program reports. A manufacturer or stewardship organization shall provide program reports as follows.

A. By February 1, 2014, and annually thereafter, the manufacturer or stewardship organization shall submit to the department 2 copies of a written annual report in a format prescribed by the department and covering the previous calendar year. The program report must include:

(1) A list of manufacturers participating in the program and their contact information;

(2) A list of the biomedical waste disposal or treatment facilities used, the location of those facilities and the weight of unwanted medical sharps treated at each facility;

(3) Documentation verifying collection and disposal of the unwanted medical sharps;

(4) A statement of whether policies and procedures for transporting and disposing of unwanted medical sharps, as established in the program plan, were followed and a description of noncompliance with those policies and procedures, if any;

(5) A statement of whether any safety or security problems occurred during collection, handling, transportation, treatment or disposal of unwanted medical sharps and, if so, what changes are proposed for policies, procedures or tracking mechanisms to improve safety and security in the future;

(6) A description of the public education effort and communications strategy required under subsection 4, paragraph E;

(7) A list of active sharps collection centers and locations; and

(8) Any other information that the department or the Department of Health and Human Services may reasonably require.

B. By August 1, 2014, and annually thereafter, the manufacturer or stewardship organization shall submit to the department a midyear data report of the amount, by weight, of unwanted medical sharps collected during the 6-month period covering January to June.

9. Enforcement. If the department determines that a program is not being managed in accordance with this section or other applicable state rules or if the department determines that there is an imminent danger to the public or the environment:

A. The department may amend the approval of the program by clarifying terms or conditions to ensure full implementation of the program or suspend or cancel the approval of the program. Except as provided in paragraph B, at least 15 days prior to amending, suspending or canceling an approval, the department shall inform the manufacturer or stewardship organization of the action and provide the manufacturer or stewardship organization an opportunity to respond; and

B. If the department determines that it is necessary in order to protect the public or the environment from imminent danger, the department may immediately amend, suspend or cancel the approval of a program without giving the manufacturer or stewardship organization an opportunity to be heard, but shall provide an opportunity to be heard through proceedings consistent with Title 5, chapter 375, subchapter 4 within 15 days after the date on which the department takes action.

10. Penalties. After January 1, 2013, a manufacturer that is not in compliance with this section is subject to civil penalties under section 349. By June 1, 2013, the department shall list on its publicly accessible website manufacturers that are participating in approved programs and manufacturers that have been identified as being not in compliance with this section. All penalties collected for violations of this section must be deposited into the Maine Environmental Protection Fund established in section 351.

11. Wholesaler responsibility. By February 1, 2013, and annually thereafter, a wholesaler of medical sharps sold in the State shall report to the department the name and contact information for each manufacturer whose medical sharps the wholesaler sold or distributed within the State during the previous calendar year. Information reported under this subsection is confidential and may not be disclosed by the department except that the department may share that information with the Department of Health and Human Services.

12. Pharmacy responsibility. A pharmacy licensed to operate in the State under Title 32, chapter 117 shall make available to its customers the educational information and materials provided free of charge by the Department of Health and Human Services, the manufacturers or the stewardship programs.

13. Voluntary participation. A hospital, medical clinic, pharmacy, public transportation location, public park, municipal facility or other approved site may volunteer to be a sharps collection center at any time. Volunteer sites must agree to abide by collection procedures issued by the department as well as state rules applicable to medical sharps management. If the location is a hospital or medical facility, it must keep medical sharps accepted from residential sources separate from those generated in the course of business. Sharps collection centers must be provided with free

sharps collection containers and written information to give to medical sharps users.

14. Anticompetitive conduct. A stewardship organization that manages a program pursuant to this section is immune from state laws relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade and commerce for the limited purpose of establishing and operating a program for residential sources. The activities of the organization that comply with the provisions of this section may not be considered to be in restraint of trade, a conspiracy or a combination thereof or any other unlawful activity in violation of any provision of Title 10.

15. Rules. The department may establish rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill requires a manufacturer of medical sharps to participate in a program, individually or in conjunction with other manufacturers, for the collection, handling, transportation, treatment and disposal of unwanted medical sharps. It also provides that an entity that uses medical sharps is not required to dispose of them by shredding.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Stabilize Solid Waste Management Funding

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRS §2201, as amended by PL 2005, c. 618, §21, is further amended to read:

§ 2201. Maine Solid Waste Management Fund established

The Maine Solid Waste Management Fund, referred to in this section as the "fund," is established as a nonlapsing fund to support programs administered by the State Planning Office and the Department of Environmental Protection. The fund must be segregated into 23 subsidiary accounts. The first subsidiary account, called operations, receives all fees established and received under article 1. The 2nd subsidiary account, called administration, receives all fees established under this article and under Title 36, chapter 719, all funds recovered by the department as reimbursement for departmental expenses incurred to abate imminent threats to public health, safety and welfare posed by the illegal disposal of solid waste and all unclaimed deposits returned to the State under Title 32, chapter 28.

Money in the fund not currently needed to meet the obligations of the office first and 2nd subsidiary accounts must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund into the 3rd subsidiary account called reserve.

Funds related to administration may be expended only in accordance with allocations approved by the Legislature for administrative expenses directly related to the office's and the department's programs, including actions by the department necessary to abate threats to public health, safety and welfare posed by the disposal of solid waste. Funds related to operations may be expended only in accordance with allocations approved by the Legislature and solely for the development and operation of publicly owned facilities owned or approved by the office and for the repayment of any obligations of the office incurred under article 3. These allocations must be based on estimates of the actual costs necessary for the office and the department to administer their programs, to provide financial assistance to regional associations and to provide other financial assistance necessary to accomplish the purposes of this chapter. Funds in the reserve may be expended only in accordance with allocations approved by the Legislature for acquiring additional landfill disposal capacity. Beginning in the fiscal year ending on June 30, 1991 and thereafter, the fund must annually transfer to the General Fund an amount necessary to reimburse the costs of the Bureau of Revenue Services incurred in the administration of Title 36, chapter 719. Allowable expenditures include "Personal Services," "All Other" and "Capital Expenditures" associated with all office activities other than those included in the operations account.

Sec. 2. 38 MRS §2202, sub-§2, as enacted by PL 1989, c. 585, Pt. A, §7, is repealed.

Sec. 3. 38 MRS §2203-A, sub-§1, as enacted by PL 1999, c. 385, §7, is amended to read:

1. Fees. Fees are imposed in the following amounts to be levied for solid waste that is disposed of at commercial, municipal and regional association landfills.

Sec. 4. 38 MRS §2203-A, sub-§2, ¶B, as enacted by PL 1999, c. 385, §7, is amended to

read:

B. A municipal or regional association landfill shall continue to pay \$2 per ton to the department on all categories of special waste other than municipal solid waste ash, asbestos and oil-contaminated soil, gravel, brick, concrete and other aggregate that was generated by the municipality or regional association and accepted for disposal in its landfill in calendar year 1998; and

Sec. 5. 38 MRSA §2203-A, sub-§2, ¶C, as amended by PL 1999, c. 564, §1, is further amended to read:

C. A municipal or regional association landfill that has accepted 550 tons or more of oil-contaminated soil, gravel, brick, concrete and other aggregate in calendar year 1998 shall pay \$5 per ton for that category of waste; and

Sec. 6. 38 MRSA §2203-A, sub-§2, ¶D is enacted to read:

D. A fee may not be imposed under this section on construction and demolition debris or construction and demolition debris processing residue disposed of at a municipal or regional association landfill or a landfill described in section 1303-C, subsection 6, paragraph E.

SUMMARY

This bill creates a 3rd subsidiary account in the Maine Solid Waste Management Fund for the purpose of purchasing additional landfill disposal capacity. The bill imposes fees on the disposal of construction and demolition debris and construction and demolition debris processing residue and imposes higher fees on certain wastes that are disposed of at a landfill granted a license to expand after October 15, 2011. The bill also provides that a disposal fee may not be imposed on construction and demolition debris and construction and demolition debris processing residue that is disposed of at a municipal, regional association or generator-owned landfill.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Transfer Recycling Technical Assistance and Solid Waste Policy Responsibilities from the State Planning Office to the Department of Environmental Protection

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, recycling and solid waste management responsibilities require substantial state resources; and

Whereas, consolidation of these responsibilities is important to conserve these limited state resources; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §3305, sub-§1, ¶N, as amended by PL 1997, c. 393, Pt. B, §4, is repealed and the following enacted in its place:

N. Plan for sufficient, environmentally secure disposal capacity for the State's municipal solid waste; and

Sec. 2. 38 MRSA §1303-C, sub-§35, as amended by PL 1997, c. 393, Pt. B, §9, is further amended to read:

35. State waste management and recycling plan. "State waste management and recycling plan" means the plan adopted by the former Maine Waste Management Agency pursuant to chapter 24, subchapter H₂ and subsequent plans developed by the State Planning Office pursuant to Title 5, section 3305, subsection 1, paragraph N and plans developed by the department pursuant to section 2122 and may also be referred to as "state plan."

Sec. 3. 38 MRSA §1304, sub-§4, as amended by PL 1995, c. 656, Pt. A, §22, is further amended to read:

4. Technical assistance. The commissioner is authorized to establish guidelines for effective waste management, to provide technical assistance to persons planning, constructing or operating waste facilities; and to conduct applied research activities in the field of waste management, disposal technology and environmental effects, including methods of recycling hazardous or solid waste, sludge or septage. ~~The commissioner shall cooperate with the office in the design and delivery of this assistance.~~

Sec. 4. 38 MRSA §1304, sub-§13, as amended by PL 1995, c. 656, Pt. A, §23, is further amended to read:

HP1073, LD 1458, item 1, 125th Maine State Legislature
 An Act To Transfer Recycling Technical Assistance and Solid Waste Policy Responsibilities from the State Planning Office to
 the Department of Environmental Protection

Personal Services	\$215,150	\$221,569
All Other	\$355,165	\$358,115
OTHER SPECIAL REVENUE FUNDS TOTAL	\$570,315	\$579,684

SECTION TOTALS	2011-12	2012-13
OTHER SPECIAL REVENUE FUNDS	\$0	\$0
SECTION TOTAL - ALL FUNDS	\$0	\$0

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill:

1. Gives the following recycling technical assistance and solid waste disposal policy responsibilities, which are currently the responsibilities of the Executive Department, State Planning Office, to the Department of Environmental Protection:

- A. Determining reasonable municipal recycling progress;
- B. Providing technical and financial assistance to municipalities;
- C. Providing technical assistance to businesses;
- D. Collecting municipal solid waste management and recycling reports and data;
- E. Providing recycling marketing assistance;
- F. Assisting entities with meeting office paper recycling requirements;
- G. Participating in national and interstate initiatives for uniform state laws;
- H. Collecting incinerator reports and data;
- I. Preparing the state waste management and recycling plan; and
- J. Staffing the Solid Waste Management Advisory Council; and

2. Provides that the State Planning Office keep the following recycling technical assistance and solid waste disposal policy responsibilities:

- A. Preparing the waste generation and disposal capacity report;
- B. Planning for development of solid waste disposal facilities; and

NOTE

C. Recommending development of state-owned solid waste disposal facilities.