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TESTIMONY OF
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SPEAKING NEITHER FOR NOR AGAINST L.D. 1639

**AN ACT TO PROTECT THE HEALTH AND WELFARE OF MAINE COMMUNITIES
AND REDUCE HARMFUL SOLID WASTE**

SPONSORED BY SENATOR CARNEY

**BEFORE THE JOINT STANDING COMMITTEE
ON
NATURAL RESOURCES**

DATE OF HEARING:

MAY 17, 2021

Senator Brenner, Representative Tucker, and members of the Committee, I am Paula Clark of the Department of Environmental Protection, speaking neither for nor against L.D. 1639.

In 2020, the Maine Legislature passed P.L. 2019 Chapter 619 that, in part, revised the statutory definition of “waste that is generated within the State”. The law provides that under a set of established standards, residues generated by recycling, incineration and processing facilities located in Maine are considered to be Maine generated waste regardless of whether the waste recycled, incinerated or processed by those facilities

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was initially generated within or outside of the State. L.D. 1639 proposes to add a standard to that list that would require that: “the weight of the residue disposed of by that facility at a solid waste landfill does not exceed the weight of the solid waste initially generated within the State” that was recycled, incinerated, or processed by that facility during its annual reporting period. The bill also proposes to eliminate an exception in current law to the recycling standard for waste processing facilities, and to add an “environmental justice” provision to the statutory standards for public benefit determinations for new or expanded solid waste disposal facilities.

Prior to 2020, Maine law provided that “waste that is generated within the State” included “residue and bypass generated by incineration, processing and recycling facilities within the State or waste whether generated within the State or outside of the State if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility”. In part, this language addressed the inherent problem, particularly in the case of Maine incinerators, of attempting to identify and potentially segregate residues (e.g. ash) that had been generated through the incineration or processing in Maine of waste that originated in another state, and also took into account such issues as the seasonal fluctuations in the volumes of out-of-state generated waste accepted by Maine incinerators.

The significance of classifying waste as “generated within the State” is that by law (38 M.R.S. § 1310-N(11)) a solid waste disposal facility owned by the State may not be licensed to accept waste that is not generated in Maine (Juniper Ridge Landfill in Old Town is the single currently operating State-owned solid waste disposal facility in Maine). Further, statute requires that any other publicly owned solid waste landfill that proposes to accept waste that is not generated within the State, first obtain a determination of public benefit pursuant to the provisions of 38 M.R.S. §1310-AA.

Maine law (38 M.R.S. §1310-N(5-A)(B2)) requires that a solid waste processing facility that generates residue requiring disposal, recycle or process into fuel for combustion all

waste accepted at the facility to the maximum extent practicable, but in no case at a rate of less than 50%. At the time of statutory enactment, “recycle” in this context included the use of processing residue as shaping, grading or alternative daily cover (ADC) materials at landfills. The intent of the legislation was to maximize recycling and to minimize the volume of processing residues disposed in landfills. This law passed in 2008 at a time when the production of biomass boiler fuel derived from CDD drove the operations of CDD processing facilities. The Department promulgated rules to implement the recycling requirement with the expectation that recycling rates at processing facilities would increase over time. Since then, demand for CDD residue as a boiler fuel has declined, while volumes of CDD generated have not.

Legislation considered during previous legislative sessions highlighted concerns regarding the volume of post-processing residue that is ultimately shipped from CDD processing facilities to a landfill for disposal or use, as compared to the total volume of waste accepted for processing. In 2020: 259,000 tons of CDD waste was received by CDD processing facilities in Maine, 203,000 tons of which originated out-of-state; 473 tons of CDD fuel was produced, 8061 tons of CDD wood was used in manufacturing, and 5400 tons of metal was recovered for recycling. The remainder was disposed or placed in the state-owned Juniper Ridge Landfill in Old Town. The Department does not have quality assured data for all 2020 solid waste volumes at this time, but we are aware that significantly more CDD processing facility residue was used as bulking material to facilitate the landfilling of wastewater treatment plant sludge than in prior years due to new restrictions on land spreading.

The Department’s 2019 update to the *State Waste Management and Recycling Plan*, identified several issues for further evaluation related to the processing, use and disposal of CDD residues originating from out-of-State generated CDD. Based upon this evaluation, the Department developed language for inclusion in L.D. 112 (An Act to Implement Changes to Maine’s Solid Waste Laws Pursuant to a Review of the State Waste Management and Recycling Plan). Ultimately, this topic was carried over to the

Second Regular Session of the 129th Legislature and was addressed in L.D. 401 (An Act to Preserve State Landfill Capacity and Promote Recycling). The resulting statute (P.L. 2019 Chapter 619) revised the definition of “waste that is generated within the State” providing, in part, that residue generated by an incineration or recycling facility located in Maine, regardless of whether the waste incinerated or processed by that facility was initially generated within or outside the State, continued to be considered waste generated within the State. Further, it narrowed and revised the circumstances under which waste processing residue may be used for various operational purposes at a landfill and still be considered “waste generated within the State”. The law requires that the use of this waste be consistent with the statutory provisions requiring waste processing facilities to recycle to the maximum extent practicable but in no case at a rate less than 50%, and further requires that at least 50% of the waste that a solid waste processing facility characterizes as recycled must have been reused or recycled by the facility through methods other than placement in a landfill (i.e. 50% of 50%).

There is an exception in current law that provides that a processing facility that was in operation during calendar year 2018 that accepts exclusively CDD and that accepted more than 200,000 tons of such waste in calendar year 2018 is required to recycle 15% (rather than 50%) through methods other than placement in a landfill by January 1, 2022, and 20% by January 1, 2023. One CDD processing facility qualifies for this exception, made in view of planned facility modifications that are now underway to increase recycling at that facility, and recognizing that the Department may recommend further measures in the 2024 five-year update to the State’s Waste Management Plan.

In January 2020, the Department received a Petition to Require Agency Rulemaking submitted pursuant to 5 M.R.S. § 8055 and signed by 257 qualified State of Maine voters. The petition requested specific amendments to the Maine Solid Waste Management Rules (06-096 C.M.R. Chapter 400) to: “clarify requirements. . . .by ensuring that the definition of ‘waste that is generated within the State’ accurately describes the sources of waste materials disposed in the State, and by requiring Public

Benefit Determinations to include consideration of the impacts on health and welfare, environmental justice and equal protections for communities where waste facilities operate”. In January 2021, the Board of Environmental Protection adopted revisions to the Solid Waste Management Rules. The Board did not adopt the definition of “waste that is generated within the State” proposed in the petition because it was not consistent with the current statutory definition. The Board did, however, adopt language to include “environmental justice” as a consideration in the Public Benefit determination process.

Thank you for the opportunity to provide comments. I would be happy to answer any questions you have.