Wednesday, May 7, 2025

Kat Taylor Public Hearing Testimony Opposing LD 297 - *An Act Regarding the Management of Oversized Bulky Waste from Wastewater Treatment Plants*

Good Afternoon Members of the Environmental and Natural Resources Committee:

My name is Kat Taylor. I am a resident and property owner in Argyle Twp., located about 20 miles north of Bangor and 2.5 miles west as the crow flies from Juniper Ridge Landfill (JRL). For 15 years I have been fighting the waste mismanagement practices in my area. Those of us who have testified over the years on JRL have kept reciting the same litany of problems without any positive outcomes.

Problem: Capacity

Over the last 20 years **the overarching cause of the premature depletion of Juniper Ridge Landfill's (JRL) capacity is** the importation of **Out-of-State Waste** (OOSW) by Casella who **exploited a weakness in the rules** that defined **Maine Generated Waste**; the only waste allowed at JRL and then **only as *Temporary* Bypass**.

In 2022 advocates finally succeeded in **locking in a definition of Maine Generated Waste** that **banned OOSW** destined for JRL **but did not prohibit commercial landfills and other Material Facilities (MRFs) from importation**, including bringing in WWTS. Casella would have had to **stop importing waste to JRL by June 2022**.

Casella asked for a **stay** and was **granted** one **until January 2023**. That was when the WWTS crisis hit and Casella was granted *another* extension for OOS Bulky Waste until **July 2025**. So if you're keeping count, Casella has made millions using JRL as their dumping ground for OOSW for over two decades.

LD 297 seeks to **extend that deadline** *again* **until July 2028**, coincidently **the date** Casella claims **JRL will reach capacity** if they are not granted a permit for expansion or an extension of their Operating Service Agreement (OSA).

During that time, **despite other waste diversion efforts coming online within 1-2 years**, Casella will be allowed to import as much waste as they can justify to fill up the landfill and force the state's hand in extending their OSA and approving the expansion because **we will once again be running out of space due to exploitation by Casella and inaction by the state**.

LD 297 also makes the law retroactive to June 23, 2023 giving Casella a *Get out of Jail Free card* for any **infractions** they have made importing OOS Bulky Waste as additional "**excess residue**" (exceeding 25,000 tons annually) **after June 2022** since they have exceeded that limit due to "misinterpretations" of the law. Chuck Leithiser provided figures to the ENR committee.

I highly doubt Casella misinterpreted the law since they have hired legions of lawyers **over the last 20 years**, allowing them to **exploit a loophole in the definition of Maine Generated Waste**, filling up JRL with OOSW.

At this time **there is still no solution to the WWTS situation** and **JRL is accepting 90% of sludge generated in Maine**. Solutions are forthcoming; over this summer a Norridgewock dryer is slated to come online to receive up to **85% of Maine's WWTS**.

In Brunswick, **Viridi Energy,** partnering with Casella, will have **an anaerobic digester** they claim will **shrink** the **tonnage** of a load of **biosolids** from **85,000 tons to 10,000 tons** through **digestion and drying** during normal operation. **The company said it may bring in more sludge — up to 50% of its supply — from out of state**.

The **Jay Landfill** with its own onsite Waste Water Treatment Plant is being studied for WWTS treatment and landfill. It is close to Norridgewock so could be a solution once Crossroads is full.

At the **April 28th** hearing DEP Director of Bureau of Remediation and Waste Management **Suzanne Miller testified in support of LD 297.** At **04:07** she cites the Interstate Commerce Clause (**ICC**) as **reason** why **Maine can't stop OOSW.**

Yet, **there is precedent** in Maine law on **restricting businesses** from **importing** OOS products deemed unacceptable.

The 124th legislative session passed an Emergency Ban on untreated firewood. In the **Maine Department of Agriculture, Conservation and Forestry** (**DACF**) FAQ's the ICC is mentioned and ***the state claims it is not violating the ICC*** since **there is precedence** for allowing a ban. https://www.maine.gov/dacf/mfs/forest_health/downloads/firewood_out_of_state_ban_faqs.pdf

From the **DACF FAQ's** webpage:

> ***"Isn't this a violation of the Federal Interstate Commerce Clause affecting trade and business between States?***
>
> **No**. This question has **previously been addressed in the courts for other products** and the question has **been investigated** in regards those judgments as they apply to firewood. **These state regulations do not violate Federal ICC law**."

In my testimony for **LD 401** back **in 2019** I gave another precedent with which I am intimately familiar. Ed Spencer, a long time opponent of JRL, sent me an email containing a **2010 memo** from then **Maine Assistant AG Jerry Reid** (Attached) containing a reference to the case of my father, **Robert J. Taylor, versus the State of Maine** regarding the unconstitutional ban of **importing baitfish** into the state. **His claim held up in state court** but was **appealed by Maine to the US Supreme Court**.

I think my **comments on LD 401** are relevant to the claims made by Casella representative Newall Auger of Pierce Atwood and DEP Director Miller for the LD 297 public hearing.
In it I quoted from claims made by Casella lawyers:

> "*c. because other land fills cannot be prohibited from taking out of state waste **due to the US Constitution's commerce clause**, they would likely be the recipient of ReEnergy's fines, likely at a higher cost to ReEnergy than its current contract with JRL, and **those costs would be passed on to consumers***…"

One paragraph in the **US Supreme Court findings** stood out in my mind as **applicable against importation of Municipal Solid Waste (MSW)**; simply replace "*disease organisms*" with *PFAS/PFOS* and *"baitfish" with MSW*. (*Maine v. Taylor*, *477 .S_v3.pdf. pg 10):*

> "*Moreover, we **agree with the District Court that Maine has a legitimate interest in guarding against imperfectly understood environmental risks**, despite the possibility that they may ultimately prove to be negligible. **"[T]he constitutional principles underlying the commerce clause cannot be read as requiring the State of Maine to sit idly by and wait until potentially irreversible environmental damage has occurred** or until the scientific community **agrees on what disease organisms** are or are not dangerous **before it acts** to **avoid such consequences**. (585 F. Supp., at 397.)"*
>
> *"The Commerce Clause significantly **limits the ability of States** and localities to regulate or otherwise **burden the flow** of **interstate commerce**, **but it does not elevate free trade above all other values**.*
>
> *As long as a State does not needlessly obstruct interstate trade or attempt to "place itself in a position of economic isolation," Baldwin v. G. A. F. Seelig, Inc., 294 U.S. 511,527 (1935), **it retains broad regulatory authority to protect the health and safety of its citizens and the integrity of its natural resources**.*
>
> ***The evidence in this case amply supports the District Court's findings that Maine's ban on the importation of live baitfish serves legitimate local purposes that could not adequately be served by available nondiscriminatory alternatives."***

It seems to me, and many others, that **landfills** in general **threaten 'potentially irreversible environmental damage';** that is why new commercial landfills are banned. The **unfettered importing of OOSW exacerbates this possibility**.

My **father's case, *Maine v. Taylor*, sets a precedent** for the **State of Maine to ban importing of waste** from other states **for all Materials Recovery Facilities (MRFs) without violating the ICC** as any materials not recovered will end up in landfill eventually.

Therefore, **a total ban on a product** (baitfish/firewood/MSW/WWTS) **can be enforced without violating the ICC** since **we have no way of knowing that such importation will not harm** our fragile **ecosystem** and be **detrimental** to our **health**.

At **04:22:47 Newell Augur of Pierce Atwood** representing Casella also **cites the ICC** as the reason why Norridgewock can accept OOS WWTS prompting **ENR Chair Senator Tepler** to ask "**So we allow the transportation of sludge from other states into the state of Maine?"**

To which Mr. Augur responded "**I don't think there would be any law that would prohibit Norridgewock from taking that.**" He referred back to Director Miller's comment on the ICC.

Chair Tepler replied **the state could prohibit toxics from coming into the state** to which Mr. Augur said "Yes."

Mr. Augur then said that **others could attest to whether or not PFAS/PFOS chemicals are toxic substances** and that they come across state lines in forms other than WWTS. Legislators are currently addressing that problem in the 132nd Session.

In my testimony opposing the expansion of JRL this last year I stated that PFAS/PFOS contaminated WWTS was hazardous waste and is not allowed at JRL.

The federal government has classified some PFAS/PFOS chemicals as hazardous waste and is proposing to add more to the list:

PFAS chemicals classified as **Hazardous Waste**

- **Forever chemicals now subject to hazardous designation under Superfund**
  - May 29, 2024
  - https://www.reuters.com/legal/legalindustry/forever-chemicals-now-subject-hazardous-designation-under-superfund-2024-05-24/
- **Proposal to List Nine Per- and Polyfluoroalkyl Compounds as Resource Conservation and Recovery Act Hazardous Constituents**
  - February 8, 2024
  - https://www.**epa.gov**/hw/proposal-list-nine-and-polyfluoroalkyl-compounds-resource-conservation-and-recovery-act

This information confirms Chair Tepler's correct assertion that **the state can**, and should, **stop WWTS,** and **other potential materials containing toxics,** from coming into Maine.

Maine has the authority to establish our own safe water standards as long as those standards meet or exceed federal levels which have yet to be determined for PFAS/PFOS. However, **the state cannot afford to stand idly by and wait until a federal standard is established** to ban importation and begin removing, not just PFAS/PFOS, but all contaminants from land and water.

Solution: Emergency Ban on **all OOSW materials destined for disposal within the borders of Maine** similar to the emergency bans on untreated firewood, and the SCOTUS decision in *Maine v. Taylor* banning baitfish, **which do not violate the Interstate Commerce Clause (ICC).**

A ban will **extend the lifespan** of **all available capacity** existing in commercial and non-commercial MRFs**.** If necessary, **Eminent Domain** may be invoked to **acquire** and **secure any available disposal capacity** by the state until the situation is resolved through waste diversion and remediation methods.

Please vote **Ought Not To Pass on LD 297**.

Respectfully,

Kat Taylor
Argyle Twp.

OFFICE OF THE ATTORNEY GENERAL

6 State House Station
Augusta, Maine 04333-0006

phone: 626-8545
fax: 626-8812
email: jerry.reid@maine.gov

Memorandum

To: Joint Standing Committee on Natural Resources

From: Jerry Reid, AAG, Chief, Natural Resources Division

Date: May 13, 2010

Subject: Commerce Clause Limitations on State Regulation of Solid Waste; Legal Restrictions on Unlined Landfills

I. Commerce Clause

You have requested advice from this Office concerning the limitations that the Commerce Clause of the U.S. Constitution places on the ability of states to regulate the flow of solid waste. In this memorandum, I have attempted to summarize the essentials of this issue in a manner that is concise and accurate, but not unnecessarily technical. As you will see, some of the tests courts use to evaluate potential Commerce Clause violations are subjective, leaving room for interpretation and argument. In fact, the Supreme Court cases in this area often sharply divide the Court. This means that it can be difficult to predict with confidence how various legislative proposals might fare under judicial review. However, the caselaw does provide certain guideposts that are helpful to bear in mind during the drafting and consideration of this type of legislation, and this memorandum attempts to identify and explain them.

A. The Commerce Clause Prevents States from Banning the Importation of Solid Waste.

The clearest and most important effect of the Commerce Clause on the regulation of solid waste is to prevent states from banning its importation. This principle was established in the

landmark Supreme Court case of *Philadelphia v. New Jersey*, 437 U.S. 617 (1978). In determining whether legislation constitutes an impermissible ban, courts evaluate whether the law discriminates against interstate commerce. In this context "discrimination" means giving in-state economic interests preferential treatment as against their out-of-state counterparts. *Oregon Waste Sys. v. Department of Envtl. Quality*, 511 U.S. 93, 99 (1994). If the court concludes a law's discriminatory treatment is motivated by simple economic protectionism, it will almost certainly be found unconstitutional. *Id.* A law discriminating on its face against out-of-state interests will be upheld against a Commerce Clause challenge only upon a showing that it is the only means to advance a legitimate local purpose. *See Maine v. Taylor*, 477 U.S. 131, 138 (1986) (upholding a state ban on the importation of baitfish to prevent the spread of communicable fish-borne disease).

B. States Have Discretion to Control the Flow of Solid Waste When They Are Acting as "Market Participants" Rather Than Regulators.

Courts have recognized an important exception to the general rule preventing states from banning out-of-state waste from their landfills. When states act as "market participants" rather than regulators, states may restrict the type of waste they accept without running afoul of the Commerce Clause. *United Haulers Assn. v. Oneida-Herkimer Solid Waste Management Authority,* 550 U.S. 330, 344 (2007). A state acts as a "market participant" when, for example, it owns the landfill in question, as the State of Maine owns the Juniper Ridge Landfill. Under these circumstances, the State may limit the waste it accepts for disposal at the facility based on type, volume, place of origin or other characteristic in the same way that any private, commercial operator of a landfill is entitled to make such business decisions. State actions that are protected by the "market participant" doctrine include purchasing, selling, hiring or subsidizing of services. *Reeves, Inc. v. Stake*, 447 U.S. 429, 437 (1990).

The premise upon which courts have recognized this exception is that when a state is acting as the owner of a public landfill, its decisions are presumed to be motivated by legitimate public health, safety and welfare interests. By contrast, when a State exercises its regulatory authority in a manner that benefits local businesses and burdens out-of-state competitors, courts often find the law to be economic protectionism that violates the Commerce Clause. *United Haulers,* 550 U.S. at 342.

Most lower courts have also held that when a state, by law, directs the proprietary activities of a municipality, the state is acting as a market participant rather than a regulator. *National Solid Waste Mgmt. Ass'n. v. Williams*, 146 F.3d 595, 597 (8th Cir. 1998); *Smith Setzer & Sons v. South Carolina Procurement Review Panel*, 20 F.3d 1311, 1319-20 (4th Cir. 1994); *Big Country Foods Inc. v. Board of Educ.*, 952 F.2d 1173, 1179 (9th Cir. 1992); *Trojan Tech. Inc., v. Pennsylvania*, 916 F.2d 903, 911 (3rd Cir. 1990).[1] The basic premise for this conclusion is that local governments are simply political subdivisions of the state, and therefore the state may direct their purchasing decisions in the same way it may do so for any of its agencies. While the Supreme Court has yet to address the issue, the weight of legal authority indicates that state legislatures may control municipal decisions governing the purchasing, selling, hiring or subsidizing of solid waste services just as they may control those decisions at the state level.

C. Conclusion

Court decisions reviewing solid waste legislation under the Commerce Clause can be fact-specific, and often turn on the application of legal standards that are subject to differing interpretations. For instance, judges on the same court will often disagree on the extent to which a law burdens out-of-state interests, or whether a law should be considered an exercise of

[1] The Seventh Circuit reached a contrary conclusion in *W.C.M. Window., Inc. v. Bernardi*, 730 F.2d 486, 494 (7th Cir. 1984).

regulatory or proprietary authority. Given this subjectivity, we recommend that the Committee work closely with both its legislative analyst and the Attorney General's Office when considering this type of legislation in order to achieve its policy objectives while minimizing constitutional risks.

II. State and Federal Regulations that Effectively Prohibit Unlined Municipal Landfills

You have also asked for citations to state and federal regulations that have the effect of prohibiting unlined municipal landfills. At the federal level, the Environmental Protection Agency has promulgated regulations requiring composite liners in municipal landfills pursuant to the Resource Conservation and Recovery Act ("RCRA"). 40 CFR 258.40. The Maine DEP has also adopted such requirements in its Chapter 401, *Landfill Siting, Design and Operation*. 06-096 CMR ch. 401(2)(D)(1). These regulations appear to be the most pertinent to your interest.