

May 16, 2021

Testimony in Support of LD 1639, "An Act To Protect the Health and Welfare of Maine Communities and Reduce Harmful Solid Waste"

To Members of the Committee on Environment and Natural Resources,

My name is Hillary Lister and I live in Athens, down the road from the site of the former Boralex biomass burner. The biomass plant was shut down in 2002 following fires and equipment malfunctions that resulted from stockpiling and burning large volumes of construction and demolition debris (CDD), imported to Maine from other northeast states (at the time, primarily from New York, Massachusetts, and New Hampshire.)

The Athens burner was one of five Maine biomass facilities owned by Boralex.

The remaining Boralex biomass burners were sold in 2011 to ReEnergy, a New York company owned by the Riverstone Holdings LLC Hedge fund.

All the Boralex biomass plants were licensed to burn construction and demolition debris, in addition to clean wood from logging operations.

In 2004, the State arranged a deal for Boralex to remedy license violations by sending the Athens biomass burner to Old Town. The equipment was to be used by the Georgia-Pacific mill to burn CDD from Casella's KTI Biofuels facility in Lewiston, with the resulting ash going to the newly licensed State-owned, Casella-operated landfill (JRL).

The biomass burner continued to have the same operational problems it faced in Athens when burning CDD, violating Carbon Monoxide emissions limits and spewing clouds of lead-contaminated soot on Penobscot river communities in 2007. By 2013 the biomass burner in Old Town ceased operating.

In 2013, ReEnergy bought the CDD processing facility in Lewiston from Casella-subsiary KTI Bio-fuels. The Lewiston operation came with a license to process up to 400,000 tons per year of CDD, more than doubling ReEnergy's capacity to process this waste.

In the past 15 years, neighboring states have taken action to control CDD disposal. MA, VT, and NH have completely banned various types of construction and demolition debris from landfilling, and most other northeast states have implemented much stricter controls on what types of CDD are allowed in their landfills.

Meanwhile, our State policies have created profit incentives to import unwanted CDD wastes from other states for dumping in Maine.

Lawmakers passed legislation in 2016 to provide a multi-million dollar bailout to the biomass industry. Maine legislators supported this bill following testimony from ReEnergy that financial help was needed to save jobs in northern Maine and ensure that loggers had a market for biomass from forestry operations.

In 2017, ReEnergy received over \$7 million from the new subsidy, paid for through the tax-payer funded Rainy Day fund, with the purpose of ensuring viability of the company's Fort Fairfield and Ashland biomass facilities.

In 2018 ReEnergy announced it was shutting down the Fort Fairfield plant. In 2019 it announced shut down of the Ashland biomass facility.

As of 2017, over 90% of the material being processed by ReEnergy's Lewiston facility was coming from out-of-state, with the majority ending up in the State landfill. That year, ReEnergy processed over ten times as much CDD from out of state (195,145 tons from MA and NH) as it took in from Maine sources (11,589 tons.)

According to testimony by ReEnergy in 2019 on LD 401 (last session's bill to address the problem of out-of-state waste filling Maine landfills), the ability to send residuals generated from processing out-of-state CDD to the State landfill and the ability to count CDD used for daily cover at JRL towards the State's recycling goals were key elements of ReEnergy's decision to buy the Lewiston processing facility from Casella.

While the closure of Maine biomass plants has resulted in a loss of demand for CDD as fuel, it hasn't stopped the flood of CDD coming to Maine through ReEnergy's Lewiston processing facility.

ReEnergy's waste services division is now the largest processor of CDD in the Northeast.

If lawmakers don't act to fix the State's waste policies, Maine will be the top destination in the northeast for dumping toxic and bulky wastes that other states are trying to get rid of for cheap.

### Background on Environmental Justice

In addition to significantly limiting the amount of out-of-state waste that could be sent JRL from a processing facility like ReEnergy, LD 1639 would also add a provision requiring consideration of environmental justice in the Public benefit determination required for licensing landfills in Maine.

Earlier this year the Board of Environmental Protection voted to adopt some language proposed by a Citizens' Petition for rule-making on Chapter 400 Solid Waste Rules requiring consideration of impacts of landfill operations on environmental justice in licensing decisions.

LD 1639 would add language to State statute that mirrors the language recently added to Maine's Chapter 400 Rules. Specifically, it would add to the Public Benefit determination standards for licensing landfills the requirement that, "The facility operation is not inconsistent with ensuring environmental justice for the community in which the facility or expansion is proposed."

Surrounding states from which Maine is receiving waste have enacted dozens of policies ensuring consideration of Environmental Justice impacts in waste facility licensing processes.

Specific provisions for consideration of Environmental Justice have been included in the laws of other northeast states for over two decades, and in federal policy since 1994.

The beginning of environmental justice being considered in federal law resulted from responses to State of North Carolina's decision to operate a PCB waste landfill in Warren County, NC.

Despite efforts by the local community and NAACP to secure a preliminary injunction to prohibit the siting of the facility on the ground of racial discrimination, the landfill was approved. In response to major protests, the North Carolina conducted a statewide review of hazardous waste siting procedures. The State then passed a law barring additional sites in Warren County. This also led to actions on the federal level, with Congressman Walter Fauntroy directing the U.S. General Accounting Office to conduct a study of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee waste sites "to determine the correlation between the location of hazardous waste landfills and the racial and economic status of the surrounding communities."

The US GAO report found that three out of every four landfills were located near predominately low- income and minority communities.

In 1990, in response to meetings with community members from communities in Michigan impacted by toxic waste facilities, the EPA formed the Environmental Equity Workgroup to "assess the evidence that racial minority and low-income communities bear a higher environmental burden than the general population, and consider what EPA might do about any identified disparities."

In 1994, the Federal government issued the Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

In 1993, the Connecticut Department of Energy and Environmental Protection adopted the following Environmental Equity Policy policy: "...no segment of the population should, because of its racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits."

The State of Massachusetts Office of Energy and Environmental Affairs began its implementing Environmental Justice policy in 2002, which was developed through collaboration with representatives from local community groups, including indigenous communities.

The Massachusetts policy makes clear that all communities must have a strong voice in environmental decision-making regardless of race, income, or national origin. In addition. It specifies that increased attention must be focused on communities that are built in and around the state's oldest areas with a legacy of environmental pollution, particularly in areas that may already have a status of vulnerable health.

As other northeast states have taken action to adopt strong policies to require consideration of impacts on environmental justice in waste facility licensing decisions, Maine has taken extremely limited steps to implement changes in policy, helping to make this the easiest and most profitable state in the northeast to operate a landfill.

Requiring consideration of impacts on environmental justice in determining whether landfill operations provide Public benefit will be a step toward decreasing the disparity between the our State's waste policies of and the policies of neighboring states that are sending their waste to be dumped in Maine.

I would be happy to answer any questions and provide sources of the information referenced in my testimony.

Sincerely,  
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