



STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

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MEMORANDUM

TO: Board of Environmental Protection
FROM: Cindy Bertocci, Executive Analyst *CB*
DATE: April 11, 2006
SUBJECT: LD 141 and Proposed Changes to Beneficial Use Rules

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At the March 16, 2006 Board meeting, members voted to reopen the rulemaking record to receive additional public comment on specific proposed changes to the proposed rules relating to the burning of up to 100% wood from construction and demolition debris (CDD), specifications for fuel quality, and the fines standard for publicly owned sources

Following the Board's decision to reopen the record, the Legislature's Natural Resources Committee reported out LD 141, which directs the Board to adopt amendments to the solid waste management rules as proposed by Department staff on March 16, 2006, except that the use of wood from CDD as a fuel substitute may not exceed 50% total fuel by weight on an average annual basis

The Legislature's action on this matter rendered the Board's earlier decision to reopen the record for additional public comment moot. Accordingly, notice of opportunity to comment was not published.

Provided the Legislature enacts LD 141 prior to the April 20th Board meeting, the Department's proposed amendments to Chapters 402, 405, 409, and 418 concerning the beneficial use of solid waste will be before the Board for adoption

A copy of LD141, as engrossed in the Senate, is attached.



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Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

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

Whereas, the current rules regarding beneficial use of secondary materials do not adequately provide for the regulation of the use of construction and demolition debris; and

Whereas, rules are needed to provide facilities and potential facilities that are seeking to make investments in the State with the necessary regulatory framework under which facilities will be required to operate; 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. 38 MRSA §1306, sub-§6 is enacted to read:

6. Construction and demolition debris. The substitution of wood from construction and demolition debris for conventional fuels used in a boiler may not exceed 50% of total fuel by weight combusted on an average annual basis.

Sec. 2. Rule adoption. Notwithstanding the Maine Revised Statutes, Title 5, chapter 375 and Title 38, section 341-D, subsection 1-B, within 30 days after the effective date of this Act, the Board of Environmental Protection shall adopt the rule amendments to Chapter 418: Beneficial Use of Solid Wastes, Chapter 402: Transfer Stations and Storage Sites for Solid Waste, Chapter 405: Water Quality Monitoring, Leachate Monitoring, and Waste Characterization and Chapter 409: Processing Facilities that were proposed to the Board of Environmental Protection by the Department of Environmental Protection and that, following notice and comment as required by Title 5, chapter 375, were the subject of a public hearing before the board on November 17, 2005, except that the rules must reflect the changes made by the department that were contained in the draft rules submitted to the board on March 16, 2006 and may not allow the substitution of wood from construction and demolition debris for conventional fuels used in a boiler to exceed 50% of total fuel by weight combusted on an average annual basis pursuant to Title 38, section 1306, subsection 6. Amendments to chapters 418, 402, 405 and 409 that are adopted by the board after 30 days after the effective date of this Act are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 3. Source separation report. The Department of Environmental Protection shall evaluate the feasibility of requiring source separation and state-of-the-art processing that will achieve, to the greatest extent practicable, the removal of all toxic materials from construction and demolition debris prior to combustion in a boiler. The evaluation must include, but is not limited to, a review of the "positive pick" method of sorting, and requiring material separation at the location at which buildings are demolished. By February 1, 2007, the department shall submit a report in connection with the evaluation to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must include the department's findings and recommendations and any proposed legislation.

Sec. 4. Best available control technology report. The Department of Environmental Protection shall evaluate the economic and technological feasibility of requiring all boilers that burn construction and demolition debris to use the best available control technology in order to minimize toxic air

emissions. By February 1, 2007, the department shall submit a report in connection with the evaluation to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must include the department's findings and recommendations and any proposed legislation.

Sec. 5. Report regarding amount of construction and demolition debris wood fuel substitution. The Department of Environmental Protection shall evaluate the effects of allowing the substitution of wood from construction and demolition debris for conventional fuels used in a boiler to exceed 50% of total fuel by weight combusted on an annual average basis if the following conditions are met:

1. The boiler is designed and constructed for the primary purpose of power generation and not waste disposal;
2. The boiler employs the best available control technology as determined by the department; and
3. All other applicable regulatory standards are met with regard to the facility.

By February 1, 2007, the Department of Environmental Protection shall submit a report in connection with the evaluation to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must include the department's findings and recommendations and any proposed legislation.

Sec. 6. Authority to report legislation. The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out legislation to the First Regular Session of the 123rd Legislature relating to the reports submitted by the Department of Environmental Protection pursuant to sections 3, 4 and 5.

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

SUMMARY

This amendment is the majority report and replaces the bill. The amendment adds an emergency preamble and clause. The amendment limits the amount of wood from construction and demolition debris that may be substituted for conventional fuel in a boiler. The amendment also requires the Board of Environmental Protection to adopt specific rules regarding beneficial use of solid waste, transfer stations and storage

sites for solid waste, water quality monitoring, leachate monitoring, waste characterization and processing facilities. The amendment requires the Department of Environmental Protection to evaluate the feasibility of requiring best available control technology, source separation and state-of-the-art processing of construction and demolition debris. It also requires the department to evaluate the effects of allowing more than 50% of construction and demolition debris wood fuel to be combusted on an average annual basis. The amendment requires the department to submit reports and authorizes the joint standing committee of the Legislature having jurisdiction over natural resources matters to report out legislation relating to the reports.