

## LD 401 Amendment Overview

LD 401, "An Act To Preserve State Landfill Capacity and Promote Recycling," was introduced to the Maine legislature in early 2019 as a Concept draft, sponsored by Representative Ryan Tipping of Orono.

When legislation is introduced as a Concept draft, the sponsor provides concept draft language outlining the purpose of the bill. It is then up to the members of the committee to adopt detailed statutory language, outlining what sections of the current law would be amended to implement the goals of the bill. This amendment language is usually developed with input from the sponsor, the Department, and stakeholders.

In the case of LD 401, that concept draft language introduced in 2019 specifies, "This bill proposes to enact measures to ensure accurate tracking of the origin and type of waste materials disposed of in Maine, to discourage landfilling of recyclable materials, to preserve landfill capacity at state-owned facilities for Maine-generated materials, and to ensure the rights of host communities and abutters of waste disposal facilities." [Link to Concept draft [https://mainelegislature.org/legis/bills/bills\\_129th/billtexts/HP031001.asp](https://mainelegislature.org/legis/bills/bills_129th/billtexts/HP031001.asp)]

The DEP has been meeting with industry stakeholders from ReEnergy and Casella to develop amendment language to limit the amount of imported construction and demolition debris that may "recycled" through use in Maine landfills. [Link to <https://bangordailynews.com/2020/01/16/opinion/contributors/its-time-to-close-out-of-state-waste-loophole/>]

Amendment language developed by community stakeholders to implement the goals of the bill was provided to the committee at the Public Hearing in April 2019. [<https://mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=115771>]

The amendment language has been updated to address changes to the law made in the last year, and is expected be discussed by the Environment and Natural Resources committee at a February 5th work session. [Link to ENR page <https://legislature.maine.gov/committee/#Committees/ENR>]

The updated community stakeholder amendment addresses law changes needed in order to achieve the goals laid out in the concept draft of LD 401. The concept draft proposes to:

**1. Ensure there is accurate tracking and record keeping identifying the origin, amounts and types of materials disposed in Maine waste facilities.**

+ The amendment would update Title 38, Chapter 24, to require that the State Waste characterization plan include data on the source, type and amount of waste currently generated outside the State that is imported into the State for processing, composting, landspreading, incineration and landfilling.

**2. Ensure waste is effectively tracked from generation point through processing to final disposal point, including the following types of facilities and disposal sites where tracking is required: landfills; landfill leachate discharge sites; incinerator ash and slag disposal sites; and biosolids disposal sites.**

+ The amendment would update Title 38, Chapter 24, to require the State Waste characterization report to include data on the amount of waste by type that is generated within the State of Maine, and the amount of waste by type that is generated outside Maine that is disposed of in landfills within the State.

**3. Ensure that waste materials imported from outside the State that are processed at facilities in the State are not classified as Maine-generated waste.**

+ The amendment would update Title 38 to specify that the definition of "waste that is generated within the State" does not include residue of imported wastes generated outside the state which have been handled by Maine processing or recycling facilities, waste processed in New Hampshire near the Maine border, or unprocessed imported waste used for daily cover, frost protection or stability of a landfill.

**4. Strengthen conflict-of-interest protections in awarding and management and oversight of state waste contracts to prevent price fixing and market manipulation.**

+ The amendment would update Title 38, Chapter 24, to require that the department report setting forth information on statewide generation of solid waste, statewide recycling rates and available disposal capacity for solid waste, include an evaluation of the risk of a monopoly type situation for solid waste markets in the State, whether market manipulation or price fixing is occurring, and whether current waste management policies are resulting in incentives for landfilling.

**5. Ensure adequate legal standing and strengthen protections for the health and well-being of people living in close proximity to waste disposal facilities.**

+ The amendment would update Title 38, Chapter 3, to clarify that wastewater treatment facilities that discharge landfill leachate may not be exempted from mercury testing requirements.

+ The amendment would update Title 38, Chapter 13, to add definitions for Environmental Justice and Equal Protection to Maine statute relating to licensing of waste facilities.

+ The amendment would update Title 38, Chapter 3 to direct the Department to adopt rules regarding the testing of landfill leachate that is discharged into rivers, streams, marine waters, and estuarine waters, including testing requirements for inorganic arsenic, chromium, lead, mercury, PFOA, and PFOS.

+ The amendment would update Title 38, Chapter 24, to require the landfill operator to notify the host community municipal officers and abutters to the facility within 24 hours of a fire at the landfill. The amendment would also require notification of municipal officers and abutters to the landfill immediately upon detection of explosive gas levels exceeding one hundred percent of the lower explosive limit for the gases at the property boundary.

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## Community Stakeholders Amendment

### LD 401 "An Act To Preserve State Landfill Capacity and Promote Recycling"

#### DRAFT AMENDMENT

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

**Sec. 1. 38 MRSA §420, sub§1-B, ¶F is amended to read:**

F. The department may require mercury testing once per year for facilities that maintain at least 5 years of mercury testing data, except that mercury testing at wastewater treatment facilities where landfill leachate is discharged must be conducted when wastewater containing landfill leachate is discharged from the facility into rivers, streams, marine waters, estuarine waters or other waters of the State.

**Sec. 2. 38 MRSA §420, is enacted to read:**

Rules. The department shall adopt rules regarding the testing of landfill leachate that is discharged into rivers, streams, marine waters, estuarine waters or other waters of the State, including, but not limited to, requirements for reporting and maintenance of the test results, and rules establishing testing requirements for inorganic arsenic, chromium, lead, mercury, perfluorooctanoic acid (PFOA), and perfluorooctanesulfonate (PFOS) in waste water discharge that includes landfill leachate. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 3. 38 MRSA §1303-C, is enacted to read:**

12-A. "Environmental Justice" means the right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment regardless of ancestry, class, disability, ethnicity, income, national origin, or religion. Environmental justice shall include the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of waste management laws, regulations, and licensing decisions.

12-B. "Equal Protection," means all groups of people, regardless of ancestry, class, disability, ethnicity, income, national origin, or religion, shall be protected from bearing an unfair burden of environmental hazards resulting from waste facility operations.

**Sec. 4. 38 MRSA §1310-N, sub-§11, is amended to read:**

11. Waste generated within the State. Consistent with the Legislature's findings in section 1302, a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State. For purposes of this subsection, "waste generated within the State" includes 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.~~

**Sec. 5. 38 MRSA §2123-A, sub-§1, is amended to read:**

1. Waste characterization. The state plan must be based on a comprehensive analysis of solid waste generated, recycled and disposed of in the State. Data collected must include, but not be limited to, the source, type and amount of waste currently generated in the State, and the source, type and amount of waste currently generated outside the State that is imported into the State and used for landfilling; and the costs and types of waste management employed including recycling, composting, landspreading, incineration or landfilling.

**Sec. 6. 38 MRSA §2124-A, is amended to read:**

The report shall include an evaluation of whether or not there is risk of a monopoly type situation for solid waste in the state, whether or not market manipulation or price fixing is occurring in the solid waste industry in the state, and whether or not current waste management policies are resulting in incentives for landfilling and disincentives for reuse, recycling, or composting.

The report shall include the following data:

A. The amount of waste by type that is generated within the State;

B. The amount of waste by type that is generated outside the State that is disposed of in landfills within the State.

C. The amount of landfill leachate discharged into Maine rivers, its source, degree of treatment, location of discharge, and test results for levels of inorganic arsenic, chromium, lead, mercury, perfluorooctanoic acid (PFOA), and perfluorooctanesulfonate (PFOS) in landfill leachate.

**Sec. 7. 38 MRSA §2174, sub-§2, ¶ B is amended to read:**

B. The operator of the landfill shall provide the host municipality copies of all air, soil and water quality monitoring data, including leachate and ash testing results, conducted by or on behalf of the operator, within 5 days after that information becomes available to the operator.

Within 24 hours of detection of a fire at a landfill, the operator of the facility shall notify the host community municipal officers and abutters to the facility of the occurrence, and ensure that protective steps are taken to protect the health of sensitive populations. The operator of the landfill shall notify the Department of Environmental Protection immediately upon becoming aware of a fire at the landfill, and the Department shall ensure that abutters and impacted community members are notified within 12 hours.

Immediately upon detection of explosive gas levels exceeding one hundred percent of the lower explosive limit for the gases at the property boundary of a landfill, the operator of the facility shall take all steps necessary to protect human health and shall notify the host community municipal officers and abutters to the facility of the occurrence, and ensure that protective steps are taken if necessary to protect the health of sensitive populations. The operator of the landfill shall notify the Department of Environmental Protection immediately upon becoming aware of explosive gas levels exceeding one hundred percent of the lower explosive limit for the gases at the property boundary, and the Department shall ensure that abutters and impacted community members are notified immediately.

