

Air Toxics: The Emperor's New Clothes?

By Ward Peck
Staff Writer

In November of 2002, the then Biddeford City Council unanimously approved an "Air Toxics Ordinance," intended to "prevent, control, abate and limit the emissions of toxic air pollutants into the ambient air," according to the Biddeford Environmental Code Office website.

Jeffrey Meyers, the author of the ordinance and Biddeford's environmental attorney in its ongoing negotiations with Maine Energy Recovery Company, said the ordinance was put in place as part of an effort to get a comprehensive picture of air in Biddeford that may have consequences on public health.

Others say the purpose of the ordinance was to give the city leverage in its negotiations with MERC.

Sam Zaitlan, a consultant for Casella Waste, MERC's parent company, said, "[The Air Toxics Ordinance] has everything to do with MERC. It was a cynical ploy by elected officials as part of an ongoing battle against MERC."

Meyers rejects the argument, saying the ordinance was enacted because the city believed the state's standards for regulating air pollutants are "woefully inadequate." Meyers said the ordinance would have been enacted even if MERC did not exist, a contention affirmed by City Council President John McCurry, who was also a member of the council that passed the ordinance. "We were looking at the whole situation, I believe we would have passed it even if there were no MERC. McCurry also said, even if MERC ceased to exist, the ordinance would remain and may even serve as a model for statewide legislation. "If it holds up and it's a good law, why wouldn't the rest of the state follow?" McCurry said.

The ordinance was modeled after a similar ordinance that was instituted by the town of Jay in the early 1990s, providing tougher emissions standards than state law.

State Rep. Robert Daigle (R-Arundel) challenged the City's ability to pass the law, saying it would negatively affect several Biddeford firms, where many of his constituents are employed.

Biddeford fought the challenge, saying the Air Toxics ordinance fell under "Home Rule" provisions of the State constitution.

David Loper, president of Intermat, which is located in the Airport Industrial Park, said, "There's no doubt that MERC was the focus of the ordinance. They went out and found a consultant to legislate a solution to their MERC problem.

Whether MERC was the primary inspiration for the ordinance, the company figures prominently in the arithmetic of the ordinance.

The environmental code office, which administers the ordinance, was established under the ordinance and operates on a budget of about \$100,000, with roughly half of the budget paying the salary of the environmental code officer.

As Ed Clifford, Biddeford city manager, notes, the ECO budget is, "separate from the general fund and therefore not paid by taxpayers. Instead, expenses for enforcing the air toxics ordinance are paid by fees from industries in the city that fall under its provisions due to plant emissions."

At least, that was the intention.

The ordinance has not collected any revenue since it was enacted and is not expected to until February when the first applications from industry are due.

If the taxpayers are not paying the \$97,700 expended by the office in 2004, and neither are the industries not yet covered under the ordinance, where is the money coming from?

According to Finance Director Curt Koehler, the expenses are assigned to a special revenue fund where this budget line item deficit accumulates, until fees from the ordinance pay it off. Failing that, "the council decides to do something about it, and reconciles the fund with money from the general revenue fund," he said.

The ATO is estimated to generate revenue in the amount of \$99,000, roughly equal to the amount of projected revenue.

Currently, the city anticipates the ordinance will cover four businesses: MERC, Westpoint Stevens, Fiber Materials and its subsidiary Intermat.

Brian Phinney the city's environmental code officer, estimates MERC will contribute \$45,000 of the estimated \$99,000 in revenue; Westpoint Stevens \$35,000; Fiber Materials, \$3,600; and Intermat \$2,300.



THE MAINE ENERGY RECOVERY COMPANY — currently meets and exceeds state and federal emissions requirements. The company also says it has exceeded the standards developed by the city of Biddeford as part of a local Air Toxics Ordinance, which has more stringent requirements than state or federal regulations. The Air Toxics ordinance has created controversy because it also affects several other businesses in Biddeford, many of which say dealing with the ordinance is both expensive and time consuming

Both Clifford and Phinney, acknowledge there is a contradiction in the goals of the ordinance and the way it is funded.

If the city has overestimated the payments, or the ordinance works as intended and regulated pollutants are reduced, the ECO will operate at a funding deficit. The shortfall in revenue would either be passed onto taxpayers or fees could be increased to offset the lower revenue. As Phinney said, the result would be a disincentive for companies to curb their emissions, as they would be paying the same amount in fees for a net drop in emissions.

The ordinance itself is a huge and complicated document, and lists 203 compounds covered by the ordinance. When the ordinance was first being considered, the list of compounds was far larger— around 700 compounds would be regulated.

If a company finds it is emitting a regulated compound over a certain threshold, it must pay a per-pound fee for each pound of that emission produced a year. Emissions are classified into three classes: Class I emissions require a payment of \$1.75 per pound/per year; Class II, \$1 per pound/per year; and Class III, 50 cents per pound/per year.

Any company emitting dioxins over a threshold must pay \$25,000.

Loper said since the list was amended, the ordinance covers far fewer businesses than originally intended. Organizations such as the J.J. Nissan Bakery, Southern Maine Medical Center and the University of New England have found they are no longer under the purview of the ordinance. Loper believes the burden of keeping the ECO fiscally self-sustaining will be borne by the four companies that remain.

Loper, said the company has not yet figured out how much it will be required to pay under the ordinance (as stated above, Phinney believes it to be around \$2,300) but anticipates the amount will be insignificant compared to the expense of ensuring compliance with the ordinance. Determining whether and to what extent an industrial process is covered by the ordinance requires a significant investment of time, money and testing.

"For all practical purposes, we are and have been in compliance with emissions standards. To demonstrate that compliance, basically to hand the city a piece of paper, I will have spent \$20,000 to \$30,000," Loper said.

Phinney said much of the testing required for the ordinance should already have been done for the state. "These companies and chemicals are regulated by the state. They should have done the evaluation to determine compliance anyway," Phinney said.

Loper maintains that the \$20,000 to \$30,000 is over and above any expense to conform to state regulations.

If the purpose of the ordinance was to punish MERC, Loper and Zaitlan maintain the city missed its mark.

"Ironically, the one company in the best position to absorb these

costs is MERC,” Loper said.

“Maine Energy will be able to afford the financial costs, but can Westpoint Stevens?” Zaitlan asked.

The effect, critics charge is to make Biddeford a hostile business environment.

“Towns should put out a welcome mat for business and industry,” Daigle said. “What Biddeford has done is put up an entrance gate.”

Loper agreed, “I can’t imagine any new industrial application coming to the city.”

Robert Dodge, Biddeford’s economic development director said he had never has a potential business cite the ordinance as an obstacle to moving into Biddeford.

Dodge said any lack of industrial development has less to do with the ordinance than with the shifts in Maine’s economic structure. “Manufacturing is on the decline in Maine,” he said. “We’ve lost 30,000 manufacturing jobs in the last five years. The fact that we have not been inundated with manufacturing business has less to do with any regulation than a structural shift in the economy.”

A number of the critics of the ordinance characterized the ordinance as a solution, looking for a problem.

Daigle, himself an environmental consultant, characterize people in his line of work as salesman. “Environmental issues are sold: The product is something you are afraid of and the sell is a villain. In this case the fear is “your air is hurting you and the villain is MERC.”

“The whole thing has been cobbled together and preys on public fear.” Zaitlan said. “To think that one 22-megawatt power plant is the source of the region’s health problems is wrong. The greatest source of air pollution is mobile sources: cars and trucks.”

Phinney says the next step in the process is to conduct an inventory of all emission sources in Biddeford, from mobile sources, small businesses and homes, to get a clearer picture of Biddeford’s air quality.

Phinney concedes it will not be a complete picture. Not all air pollution produced in Biddeford, stays in Biddeford, and not all air pollution affecting residents is produced here. Some air pollution, how much is unknown, is produced by huge midwestern coal-burning power plants and transported by wind into Maine.